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Subject: U.S. TRADEMARK APPLICATION NO. 79145528 - INGAGE - N/A - Request for Reconsideration Denied - Return to TTAB

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**UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION**

**U.S. APPLICATION SERIAL NO.** 79145528

**MARK:** INGAGE



**CORRESPONDENT ADDRESS:**

SAMANTHA M QUIMBY

FROST BROWN TODD LLC

10 W BROAD STREET STE 2300

COLUMBUS, OH 43215-3484

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/trademarks/index.jsp>

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**APPLICANT:** INGAGE IR LIMITED

**CORRESPONDENT'S REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

trademarks@fbtlaw.com

**REQUEST FOR RECONSIDERATION DENIED**

**ISSUE/MAILING DATE:** 12/3/2015

**INTERNATIONAL REGISTRATION NO. 1199346**

The trademark examining attorney has carefully reviewed applicant's request for reconsideration and is denying the request for the reasons stated below. See 37 C.F.R. §2.63(b)(3); TMEP §§715.03(a)(ii)(B), 715.04(a). The amended recitation of services, including deletion of international class 35, has been accepted and entered. Given the amendment deleting class 35, the refusal to register international

class 35 under Trademark Act Section 2(d) has been obviated. In addition, reference to U.S. Registration No. 4533055 is withdrawn. See TMEP §§715.03(a)(ii)(B), 715.04(a). However, the refusal to register international classes 9 and 42 under Trademark Act Section 2(d) with regard to U.S. Registration No. 4425819 made final in the Office action dated February 19, 2015, is maintained and continues to be final. See TMEP §§715.03(a)(ii)(B), 715.04(a).

In the present case, applicant's request has not resolved all the outstanding issue(s), nor does it raise a new issue or provide any new or compelling evidence with regard to the outstanding issue(s) in the final Office action. In addition, applicant's analysis and arguments are not persuasive nor do they shed new light on the issues. Accordingly, the request is denied.

Both Applicant's mark and Registrant's mark share the same overall meaning and commercial impression for related goods and services.

Whether the goods and/or services of the applicant are related to the goods and/or services of the registrant is determined based upon the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. See *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1323, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014) (quoting *Octocom Sys. Inc. v. Hous. Computers Servs. Inc.*, 918 F.2d 937, 942, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990)).

Absent restrictions in a registration, the identified goods and/or services are presumed to travel in the channels of trade that are ordinary and customary for those types of goods and services and available to the typical class of purchasers for those goods and/or services. See *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (citing *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002))

The goods and/or services of the parties need not be identical or even competitive to find a likelihood of confusion. See *On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods.”); TMEP §1207.01(a)(i).

The respective goods and/or services need only be “related in some manner and/or if the circumstances surrounding their marketing [be] such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

Here, the evidence shows that providers of software for enterprise networks, public comment management, and customer relationship management frequently offer communications software capable of use however they desire, including in the field of investor relations. For example:

AT&T offers enterprise networking software and compatible communications software with a global capability, touting a “unified communications, vpn, VoIP and conferencing solutions for medium to large businesses” with “end-to-end enterprise services” and ability to “real-time conferencing with web, audio and video in a single, easy-to-use tool” so you can connect with “colleagues, partners, vendors, and customers.”

Cisco offers enterprise networking software and compatible communications software with “unlimited meetings”, “...from anywhere, on any device.”

Citrix offers cloud based enterprise networking software with compatible communications software enabling the planning, promoting and conducting of online events, including those for investor relations

Microsoft offers enterprise networking software and compatible communications software which may be used for virtual shareholder meetings, as it recently did.

Adobe provides enterprise networking platforms and compatible communications software to conduct large scale meetings for any purpose and allows users to participate in real time

HP offers enterprise networking software compatible communications software for conducting meetings, including virtual shareholder meetings

Google offers enterprise social networking software for use in the workplace and a platform for conducting online communications

This evidence shows that Applicant's and Registrant's goods and services are related in that the same entity may provide both types of software in the same channels of commerce and available to the same class of purchasers. Applicant's restriction in his identification to investor relations does not change this conclusion. Instead, based upon the identification of goods and services stated in the registration, Registrant may offer his networking, public comment management and customer relationship software to companies who also have a need for compatible communications software for use however the business would like, including in the field of investor relations.

Applicant's assertion that the average consumer is sophisticated, thereby avoiding a likelihood of confusion, is not persuasive. That purchasers are sophisticated or knowledgeable in a particular field does not necessarily mean that they are sophisticated or knowledgeable in the field of trademarks or immune from source confusion. TMEP §1207.01(d)(vii); *see, e.g., Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d. 1317, 1325, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014); *Top Tobacco LP v. N. Atl. Operating Co.*, 101 USPQ2d 1163, 1170 (TTAB 2011).

If applicant has already filed a timely notice of appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If no appeal has been filed and time remains in the six-month response period to the final Office action, applicant has the remainder of the response period to (1) comply with and/or overcome any outstanding final requirement(s) and/or refusal(s), and/or (2) file a notice of appeal to the Board. TMEP §715.03(a)(ii)(B); *see* 37 C.F.R. §2.63(b)(1)-(3). The filing of a request for reconsideration does not stay or extend the time for filing an appeal. 37 C.F.R. §2.63(b)(3); *see* TMEP §§715.03, 715.03(a)(ii)(B), (c).

/VJ/

Gene V.J. Maciol, II

Attorney-advisor

Law Office 103

[gene.maciol@uspto.gov](mailto:gene.maciol@uspto.gov)

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http://www.nbcnews.com/id/15196982/ns/business-us\_business/#google-buys-youtube-billion/10/28/2015 11:44:36 AM

# Google buys YouTube for \$1.65 billion

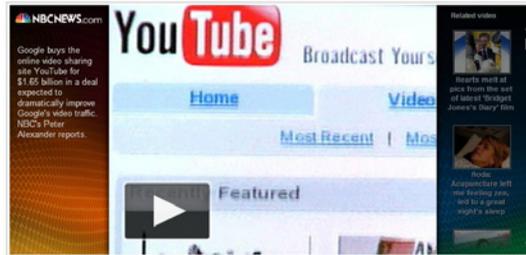
Search giant's purchase of video sharing service biggest in its history

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Internet search leader Google is snapping up YouTube for \$1.65 billion in a deal expected to dramatically improve Google's video traffic. NBC's Peter Alexander reports.

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SAN FRANCISCO — Internet search leader Google is snapping up YouTube for \$1.65 billion, brushing aside copyright concerns to seize a starring role in the online video revolution.

The all-stock deal announced Monday unites one of the Internet's marquee companies with one of its rapidly rising stars. It came just a few hours after YouTube unveiled three separate agreements with media companies to counter the threat of copyright-infringement lawsuits.

The price makes YouTube Inc., a still-unprofitable startup, by far the most expensive purchase made by Google during its eight-year history. Last year, Google spent \$130.5 million buying a total of 15 small companies.

Although some cynics have questioned YouTube's staying power, Google is betting that the popular video-sharing site will provide it an increasingly lucrative marketing hub as more viewers and advertisers migrate from television to the Internet.

"This is the next step in the evolution of the Internet," Google Chief Executive Officer Eric Schmidt said during a conference call Monday.

YouTube will continue to retain its brand, its new headquarters in San Bruno and all 67 employees, including co-founders Chad Hurley and Steve Chen. Meanwhile, Google will continue to run a less popular video service on its own site.

The deal is expected to close before the end of the year.

"I'm confident that with this partnership we'll have the flexibility and resources needed to pursue our goal of building the next-generation platform for serving media worldwide," said Hurley, YouTube's 29-year-old CEO.

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Schmidt thinks so highly of Hurley and Chen, 27, that he compared them to Google's now 33-year-old co-founders, Sergey Brin and Larry Page.

Brin sees the similarities too. "It's hard to imagine a better fit with another company," Brin said during Monday's conference call. "This really reminds me of Google just a few short years ago."

The two companies even share a common financial bond: Sequoia Capital, an early Google investor that owns a roughly 30 percent stake in YouTube. Menlo Park-based Sequoia remains a major Google shareholder and retains a seat on the company's board — factors that might have helped the deal come together after just a week of negotiation.

YouTube has drawn less flattering comparisons to the original Napster, the once-popular music sharing service that was buried in an avalanche of copyright infringement lawsuits filed by incensed music companies and artists.

While most videos posted on YouTube are homemade, the site also features volumes of copyrighted material — a problem that has caused some critics to predict the startup eventually would be sued into oblivion.

But Hurley and Chen have spent months cozying up with major media executives in an effort to convince them that YouTube could help them make more money by helping them connect with the

On the 'Tube'

convince them that YouTube could help them make more money by helping them connect with the growing number of people who spend most of their free time on the Internet.

As its negotiations with Google appeared to be near fruition, YouTube on Monday announced new partnerships with Universal Music Group, CBS Corp. and Sony BMG Music Entertainment. Those alliances followed a similar arrangement announced last month with Warner Music Group Inc.

The truce with Universal represented a particularly significant breakthrough because the world's largest record company had threatened to sue YouTube for copyright infringement less than a month ago.

While Google has been hauling away huge profits from the booming search market, it hasn't been able to become a major player in online video.

That should change now, predicted Forrester Research analyst Charlene Li. "This gives Google the video play they have been looking for and gives them a great opportunity to redefine how advertising is done," she said.

Investors applauded the possible acquisition as Google Inc. shares climbed \$8.50 to close at \$479 on the Nasdaq Stock Market, then added another \$3.11 in extended trading.

Several other suitors, including

Microsoft Corp., Yahoo Inc. and News Corp., reportedly have discussed a possible YouTube purchase in recent weeks.

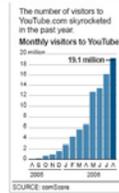
(MSNBC.com is a joint venture of Microsoft and NBC Universal News.)

"This deal looks pretty compelling for Google," said Standard & Poor's analyst Scott Kessler. "Google has been doing a lot of things right, but they are not sitting on their laurels."

Google's YouTube coup may intensify the pressure on Yahoo to make its own splash by buying Facebook.com, the Internet's second most popular social-networking site. Yahoo has reportedly offered as much as \$1 billion for Palo Alto-based Facebook during months of sporadic talks.

"Yahoo really needs to step up and do something," said Roger Aguinaldo, an investment banker who also publishes a dealmaking newsletter called the M&A Advisor. "They are becoming less relevant and looking less innovative with each passing day."

Selling to Mountain View-based Google will give YouTube more technological muscle and advertising know-how, as well as generate a staggering windfall for a company that was running on credit card debt just 20



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Washington, D.C. 20549  
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Check the appropriate box:

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- Definitive Proxy Statement
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Microsoft Corporation

(Name of Registrant as Specified in Its Charter)

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## 2014 Proxy Statement

### Annual Shareholders Meeting

The Annual Shareholders Meeting of Microsoft Corporation will be held at  
Meydenbauer Center  
11100 NE 6th Street  
Bellevue, Washington 98004

### Admission requirements

See Part 5 – “Information about the meeting” for details on admission requirements to attend the Annual Shareholders Meeting.

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# Microsoft

## 2014 Proxy Statement

### Annual Meeting of Shareholders

The Annual Meeting of Shareholders of Microsoft Corporation will be held at  
Meydenbauer Center  
11100 NE 6th Street  
Bellevue, Washington 98004

## Annual Meeting of Shareholders

The Annual Meeting of Shareholders of Microsoft Corporation will be held at:  
Meydenbauer Center  
11100 NE 6th Street  
Bellevue, Washington 98004

### Admission requirements

See Part 6 – "Information about the meeting" for details on admission requirements to attend the Annual Meeting.

### Proxy voting options

#### Your vote is important!

Whether or not you expect to attend in person, we urge you to vote your shares by phone, via the Internet, or by signing, dating, and returning the enclosed proxy card or voting instruction form at your earliest convenience. This will ensure the presence of a quorum at the meeting. Promptly voting your shares will save us the expense and extra work of additional solicitation. Submitting your proxy now will not prevent you from voting your stock at the meeting if you desire to do so, as your vote by proxy is revocable at your option.

Voting by the Internet or telephone is fast and convenient, your vote is immediately confirmed and tabulated, and helps Microsoft reduce postage and proxy tabulation costs.

If you prefer, you can vote by mail by returning the enclosed proxy card or voting instruction form in the addressed, prepaid envelope provided.

Please do not return the enclosed paper ballot if you are voting via the Internet or by telephone.

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October 20, 2014

#### Dear Shareholder,

We invite you to attend the Annual Shareholders Meeting of Microsoft Corporation ("Annual Meeting"), which will be held at Meydenbauer Center, 11100 NE 6th Street, Bellevue, Washington 98004, on December 3, 2014 at 8:00 a.m. Pacific Time. Doors open at 7:00 a.m. As we did last year, we will feature a Microsoft Store at our product showcase. This will give you the opportunity to experience Microsoft's latest consumer products including the latest devices running Windows 8.1, Microsoft Surface, Xbox, and the latest Windows Phones. Driving directions to Meydenbauer Center are on the last page of this document. Parking will be validated only for Meydenbauer Center garage. Parking is limited, so plan ahead if you are driving to the meeting.

The attached Notice of Annual Shareholders Meeting and Proxy Statement contain details of the business to be conducted at the Annual Meeting.

Whether or not you attend the Annual Meeting, it is important that your shares be represented and voted at the meeting. Therefore, we urge you to promptly vote and submit your proxy via the Internet, by phone, or by signing, dating, and returning the enclosed proxy card in the enclosed envelope. If you attend the Annual Meeting, you can vote in person, even if you have previously submitted your proxy.

This year's shareholder question and answer session will include both live questions and questions submitted in advance. You may submit a question in advance through the Shareholder Forum available at [www.theinvestornetwork.com/forum/submit/default.aspx](http://www.theinvestornetwork.com/forum/submit/default.aspx); we will respond to as many inquiries as time allows.

This year we are offering a [Virtual Shareholder Meeting](#) through which you can view the meeting, submit questions and vote online. We will also provide a live webcast of the Annual Meeting from the Microsoft Investor Relations website at [www.microsoft.com/investor](http://www.microsoft.com/investor). A transcript with video and audio of the entire Annual Meeting will be available on the Investor Relations website after the meeting. We hope this will allow those who cannot attend the meeting in person to hear Microsoft executives discuss the year's results and our plans for the future. In addition, we make available at our Investor Relations website a variety of information for investors. Our goal is to maintain the Investor Relations website as a portal through which investors can easily find or navigate to pertinent information about us.

On behalf of the Board of Directors, we would like to express our appreciation for your continued investment in Microsoft. We look forward to greeting as many of you as possible.

Sincerely,



Satya Nadella

On behalf of the Board of Directors, we would like to express our appreciation for your continued investment in Microsoft. We look forward to greeting as many of you as possible.

Sincerely,



**Satya Nadella**  
Chief Executive Officer



**John W. Thompson**  
Independent Chairman

The use of cameras at the Annual Meeting is prohibited and they will not be allowed into the meeting or any other adjacent areas, except by credentialed media. We realize that many mobile phones have built-in cameras, while these phones may be brought into the venue, the camera function may not be used at any time.

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**LETTER TO OUR SHAREHOLDERS FROM THE BOARD OF DIRECTORS**

As stewards of Microsoft, the Board of Directors values direct engagement with our shareholders. In this year of tremendous change and growth for the Company, it is especially important for us to maintain a regular rhythm of communication with you. We would like to take this opportunity to highlight four areas of particular significance for the Board this past year:

**CEO Succession**

The chief executive officer role at Microsoft is demanding, requiring mastery of complex, rapidly evolving business models and the ability to lead a highly technical organization. We conducted an exhaustive and thoughtful search, looking both externally and internally to identify the best possible individual to lead the Company into its next chapter of innovation and growth. With the appointment of Satya Nadella, we believe we fulfilled our goal, selecting the best candidate to bring the Company renewed and continued success.

**Shareholder Outreach and Engagement**

While it has long been a priority of the Board to maintain an active dialogue with shareholders, over the past fiscal year we placed renewed emphasis on this area. Independent members of our Board spoke with investors collectively holding over 30 percent of outstanding shares, and members of our management team continued our practice of speaking with shareholders and provided feedback received directly to us.

From the outset, Mr. Nadella committed to investing time with shareholders to increase transparency and better understand their perspectives, including by meeting with our largest investors shortly after his appointment and participating in quarterly earnings calls beginning with last April's third quarter report.

As we move closer to our annual shareholders meeting, we invite you to write us at [AsxBoard@microsoft.com](mailto:AsxBoard@microsoft.com) about the Board of Directors or corporate governance at Microsoft. We sincerely value the continued feedback from our shareholders and are committed to ensuring a diversity of perspectives are thoughtfully considered as we work to deliver long-term value.

**Board Development and Composition**

**Board Refreshment:** Our Board regularly adds directors to infuse new ideas and fresh perspectives in the boardroom. The Governance and Nominating Committee is focused on how the experience and skill set of each individual director complements those of fellow directors to create a balanced Board with diverse viewpoints, deep expertise, and a strong technology-specific knowledge base.

**Independent Chairman:** With Mr. Nadella's appointment as CEO, John Thompson, former lead independent director for the Board, assumed his current role as non-executive Chairman of the Board. Previous Chairman Bill Gates assumed a new role as Founder and Technology Advisor to devote time to the Company supporting Mr. Nadella in shaping technology and product direction.

**Independent Directors:** Our current Board includes ten engaged independent directors with diverse skills and expertise. We look forward to building on this foundation as we continue to identify and attract additional perspectives to help us advance our position as one of the world's leading technology companies. Since our last annual meeting, we've made the following additions:

- Teri List-Stoll, Executive Vice President and Chief Financial Officer of Kraft Foods Group, joined the Board in October. She brings exceptional financial and operational expertise and great insight from her two decades of experience in consumer and retail industries.
- Mason Morft, president of ValueAct Capital, joined the Board in March following the announcement of last year's cooperation agreement between our two companies. He brings valuable insights as a significant Microsoft shareholder, an experienced, financially sophisticated investor, and a director of several public companies.
- Charles Scharf, Chief Executive Officer of Visa, joined the Board in October. As a CEO of a technology-driven global business, he brings strategic and operational experience and a deep understanding of how commerce is changing globally.
- John Stanton, a pioneer and innovator in the U.S. and global wireless industry, joined the Board in July. He brings extraordinary experience in the mobile communications industry, deep business acumen, and extensive Board experience.

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