

ESTTA Tracking number: **ESTTA1206898**

Filing date: **05/04/2022**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	92079590
Party	Plaintiff Acronis International GmbH
Correspondence address	KATHLEEN M. BURCH K&L GATES LLP ONE LINCOLN STREET STATE STREET FINANCIAL CENTER BOSTON, MA 02111 UNITED STATES Primary email: kathleen.burch@klgates.com Secondary email(s): ttblitigationdocket@klgates.com 617-261-3100
Submission	Motion to Amend Pleading/Amended Pleading
Filer's name	Kathleen M. Burch
Filer's email	kathleen.burch@klgates.com, ttblitigationdocket@klgates.com
Signature	/Kathleen M. Burch/
Date	05/04/2022
Attachments	Amended Cancellation Petition for CYBERFIT No. 92079590.pdf(170488 bytes) Exhibit A - TSDR Record for CYBERFIT 5268864.pdf(379863 bytes) Exhibit B - TSDR Record for CYBERFIT Application.pdf(166381 bytes) Exhibit C - CYBERFIT Office Action No. 90540769.pdf(4653107 bytes) Exhibit D - H-ISAC Printout.pdf(2544278 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Registration. No.: 5,268,864

Mark: 
Filed: April 15, 2016
Registered: March 7, 2017
Int'l Class: 042

ACRONIS INTERNATIONAL GMBH,)	
a Swiss Limited Liability Company)	
)	
Petitioner,)	
)	
v.)	
)	
NH-ISAC, INC.)	
a Florida Corporation)	
)	
Respondent.)	

Cancellation No. 92079590

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S MOTION TO AMEND PETITION FOR CANCELLATION

Acronis International GmbH ("Petitioner") moves to amend its Petition for Cancellation under Rule 315 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) to attach the exhibits referenced in the Petition for Cancellation. Petitioner filed its Petition for Cancellation on April 27, 2022 referencing four exhibits (Exhibits A-D). The exhibits failed to upload with the filing. Thus, Petitioner requests to amend its Petition to Cancel in order to provide the supporting exhibits. Said amendment and exhibits are attached hereto as Exhibit A. Petitioner believes that the include Exhibits A-D complete the original Petition for Cancellation filing.

Accordingly, Petitioner respectfully requests the Board to update the record to reflect Petitioner's Amended Petition for Cancellation.

DATED this 4th day of May 2022.

Respectfully submitted,

By: /Kathleen M. Burch/

Kathleen M. Burch, Esq. (BBO #684412)
K&L Gates LLP
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Boston, MA 02111
Tel.: (617) 951-9042
kathleen.burch@klgates.com
ttablitigationdocket@klgates.com

*Attorney for Petitioner, Acronis
International GmbH*

CERTIFICATE OF FILING AND SERVICE

I hereby certify that a true and correct copy of the foregoing AMENDED PETITION FOR CANCELLATION was served upon Respondent's Attorney of Record by e-mailing said copy on May 4, 2022 to:

Amanda G. Hyland
Taylor English Duma LLP
1600 Parkwood Circle, Suite 400
Atlanta, Georgia 30339
(770) 434-6868
ahyland@taylorenghish.com
kelleby@taylorenghish.com
trademarkdocketing@taylorenghish.com


and further certify that the aforementioned AMENDED PETITION FOR CANCELLATION was filed with the Trademark Trial and Appeal Board on the date indicated above online through the ESTTA system of the United States Patent and Trademark Office.

By: /Kathleen M. Burch/
Kathleen M. Burch

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Trademark Registration. No.: 5,268,864


Mark: 
Filed: April 15, 2016
Registered: August 22, 2017
Int'l Class: 041, 042


ACRONIS INTERNATIONAL GMBH,)	
a Swiss Limited Liability Company)	
)	
Petitioner,)	
)	
v.)	
)	
NH-ISAC, INC.)	
a Florida Corporation)	
)	
Respondent.)	

Cancellation No. 92079590

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S AMENDED PETITION FOR CANCELLATION

Acronis International GmbH, a Swiss limited liability company, having a business address at Rheinweg 9, Schaffhausen, Switzerland 8200 ("Petitioner"), believes it will be damaged by Trademark Registration No. 5,268,864, registered August 22, 2017 for the mark  and hereby petitions to cancel the same. To the best of Petitioner's knowledge, the name and address of the current owner of the registration are NH-ISAC, Inc., State Road 405, Building M6-306, Kennedy Space Center, Florida 32899 ("Respondent"). The grounds for cancellation are as follows:


1. Registration No. 5,268,864 is for the mark  (the “CYBERFIT & Design Registration”) and was filed on April 15, 2016 for “educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment” in International Class 41 and for “providing information, news and commentary in the field of computer security and vulnerability assessment” in International Class 42. The mark registered on August 22, 2017. A true and correct printout showing the current status of the CYBERFIT & Design Registration from the United States Patent and Trademark Office (“USPTO”) Trademark Status & Document Retrieval (“TSDR”) page is attached as Exhibit A.

2. Petitioner has a bona fide intent to use and register the mark #CYBERFIT and filed U.S. Application Serial No. 90/540,769 for the #CYBERFIT mark on February 23, 2021 (the “#CYBERFIT Application”) for “downloadable computer software for disk backup and restoration, disk imaging, and bare-metal restore for computers, namely, servers, workstations, desktops, laptops, and mobile computers; downloadable software for file backup, deployment of backup agents on remote computers, creation of disk backup images over the network, restoration of databases, files and folders, disk cloning, incremental disk backup and backup image verification; downloadable software for backup scheduling and scripting and manuals sold therewith; downloadable computer software for system deployment using disk imaging; downloadable software for the creation of a disk image of a standard configuration, including the operating system and applications; downloadable software for the deployment of the image to multiple computer systems; downloadable software for configuration management tools to configure system settings, manage files, and execute applications on networked systems during and after the deployment and manuals sold therewith; downloadable anti-spyware software for networked computers, workstations, desktops, palmtops, laptops and other mobile devices in


business, home and mobile environments; downloadable software for protection of computers from spyware, adware, keyloggers, hidden dialers, browser hijackers, and other malicious programs; downloadable software for prevention of exposure of confidential information, management of spyware control and prevention tasks, namely, management of spyware-related tasks on networked, mobile, desktop, and non-networked computers, and management of spyware-related tasks from a central location; downloadable software for the removal of spyware programs; downloadable software for monitoring computer system for suspicious applications; downloadable software for prevention of spyware installation and updating of spyware definitions; downloadable software for prevention of pop-ups and blocking/preventing pop-up advertisements and manuals sold therewith; downloadable software for secure deletion of data and disk partitions on a hard disk; downloadable software for disk wiping; downloadable software for formatting the disk drive and for partitioning the disk drive and deletion of selected partitions along with the disk wiping process and manuals sold therewith; downloadable software for resizing, copying, deleting and moving of disk partitions; downloadable software for the creation of dual boot and multi-boot environments, manual editing of the hard disk, and partition recovery of lost or deleted partitions and manuals sold therewith; downloadable software for continuous data protection; downloadable software for malware scan, prevention and remediation; downloadable software for system and application vulnerability assessment and patch management; downloadable software for remote management and configuration; downloadable software for system, applications and hardware health status monitoring; downloadable software for data compliance reporting” in International Class 9 and “software as a service (SAAS) services featuring software for recovery of computer data, data replication, erasure encoding, data redundancy, continuous data protection, malware scan, prevention and remediation, system and application vulnerability assessment and patch


management, remote management and configuration, system, applications and hardware health status monitoring, and data compliance reporting” in International Class 42. A true and correct printout showing the current status of the #CYBERFIT Application from the USPTO’s TSDR page is attached as Exhibit B.


3. The Examining Attorney assigned to Petitioner’s application has refused registration of Petitioner’s #CYBERFIT mark under Section 2(d) of the Trademark Act on the asserted grounds that Petitioner’s #CYBERFIT mark when used in connection with Petitioner’s goods and services would purportedly be likely to cause confusion with Respondent’s CYBERFIT & Design Registration No. 5,268,864. Accordingly, Respondent’s CYBERFIT & Design Registration is preventing the registration of Petitioner’s #CYBERFIT Application, and Petitioner is being damaged by the continued presence of Respondent’s CYBERFIT & Design Registration on the Register. A true and correct copy of the #CYBERFIT Office Action is attached as Exhibit C.

4. On information and belief, Respondent has abandoned the CYBERFIT & Design Registration because Respondent has ceased use of the  mark and does not have an intent to resume use of the mark.

5. On information and belief, Respondent is not currently offering “educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment” or “providing information, news and commentary in the field of computer security and vulnerability assessment” under the CYBERFIT & Design Registration.

6. On information and belief, Respondent operates a website at <https://h-isac.org/>. The website does not mention any current use of the  mark. Attached as Exhibit D is screenshot of the <https://h-isac.org/> website.

7. On information and belief, Respondent has no plans to offer “educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment” or provide “information, news and commentary in the field of computer security and vulnerability assessment” under the CYBERFIT & Design Registration and has an intent not to resume use of the  mark.

8. Accordingly, Registration No. 5,258,864 should be cancelled pursuant to 15 U.S.C. § 1064 by reason of Respondent’s abandonment of the  mark.

9. WHEREFORE, Petitioner prays that the Trademark Trial and Appeal Board enter judgment in its favor and cancel the above-identified registration.

DATED this 27th day of April 2022.

Respectfully submitted,
ACRONIS INTERNATIONAL GMBH

By: /Kathleen M. Burch/

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*Attorney for Petitioner, Acronis
International GmbH*

EXHIBIT A

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

Processing Wait Times: Please note that due to an extraordinary surge in applications, processing times are longer than usual. See [current trademark processing wait times](#) for more information.

Downloading files: Bundle document downloads in ZIP format are temporarily unavailable in TSDR. Instead, you must download individual documents by opening the document in your browser and selecting "Download PDF" in the upper right corner. You can still [use the TSDR API](#) to download document bundles.

STATUS

DOCUMENTS

MAINTENANCE

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Mark: CYBERFIT



US Serial Number: 87002886

Application Filing Date: Apr. 15, 2016

US Registration Number: 5268864

Registration Date: Aug. 22, 2017

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

TM5 Common Status

Descriptor:



LIVE/REGISTRATION/Issued and Active

The trademark application has been registered with the Office.

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Aug. 22, 2017

Publication Date: Jun. 06, 2017

Mark Information

Mark Literal Elements: CYBERFIT

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the word "CYBERFIT" sitting atop an image of a heartbeat monitor.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 17.07.25 - Windsock; Geiger counters; Metal detectors (hand-held); Seismograph

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security vulnerability assessment

International Class(es): 041 - Primary Class

U.S Class(es): 100, 101, 107

Class Status: ACTIVE

[Privacy](#) - [Terms](#)

Basis: 1(a)**First Use:** Nov. 14, 2016**Use in Commerce:** Nov. 14, 2016**For:** Providing information, news and commentary in the field of computer security and vulnerability assessment**International Class(es):** 042 - Primary Class**U.S Class(es):** 100, 101**Class Status:** ACTIVE**Basis:** 1(a)**First Use:** Nov. 14, 2016**Use in Commerce:** Nov. 14, 2016

Basis Information (Case Level)

Filed Use: No**Currently Use:** Yes**Filed ITU:** Yes**Currently ITU:** No**Filed 44D:** No**Currently 44E:** No**Filed 44E:** No**Currently 66A:** No**Filed 66A:** No**Currently No Basis:** No**Filed No Basis:** No

Current Owner(s) Information

Owner Name: NH-ISAC, Inc.**Owner Address:** State Road 405, Building M6-306
Kennedy Space Center, FLORIDA UNITED STATES 32899**Legal Entity Type:** CORPORATION**State or Country Where
Organized:** FLORIDA

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Amanda G. Hyland**Docket Number:** 71006-3050**Attorney Primary Email
Address:** ahyland@taylorenglish.com**Attorney Email Authorized:** Yes

Correspondent

Correspondent AMANDA G. HYLAND**Name/Address:** TAYLOR ENGLISH DUMA LLP
1600 PARKWOOD CIRCLE, SUITE 400
ATLANTA, GEORGIA UNITED STATES 30339**Phone:** 770-434-6868**Fax:** 770-434-7376**Correspondent e-mail:** ahyland@taylorenglish.com
kelleby@taylorenglish.com
trademarkdocketing@taylorenglish.com**Correspondent e-mail
Authorized:** Yes**Domestic Representative - Not Found**

Prosecution History

Date	Description	Proceeding Number
Aug. 22, 2017	REGISTERED-PRINCIPAL REGISTER	
Jun. 06, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	

Privacy - Terms

Jun. 06, 2017	PUBLISHED FOR OPPOSITION	
May 17, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Apr. 21, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 15, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Apr. 14, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Apr. 15, 2017	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Apr. 14, 2017	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Apr. 14, 2017	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Apr. 14, 2017	TEAS REQUEST FOR RECONSIDERATION RECEIVED	
Dec. 06, 2016	NOTICE OF ACCEPTANCE OF AMENDMENT TO ALLEGE USE E-MAILED	
Dec. 05, 2016	NOTIFICATION OF FINAL REFUSAL EMAILED	
Dec. 05, 2016	FINAL REFUSAL E-MAILED	
Dec. 05, 2016	USE AMENDMENT ACCEPTED	92838
Dec. 05, 2016	FINAL REFUSAL WRITTEN	92838
Nov. 22, 2016	AMENDMENT TO USE PROCESSING COMPLETE	88889
Nov. 22, 2016	USE AMENDMENT FILED	88889
Nov. 21, 2016	TEAS AMENDMENT OF USE RECEIVED	
Aug. 08, 2016	NOTIFICATION OF PRIORITY ACTION E-MAILED	6326
Aug. 08, 2016	PRIORITY ACTION E-MAILED	6326
Aug. 08, 2016	PRIORITY ACTION WRITTEN	92838
Aug. 01, 2016	ASSIGNED TO EXAMINER	92838
Apr. 21, 2016	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Apr. 20, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Apr. 19, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Aug. 22, 2017

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

United States of America

United States Patent and Trademark Office



Reg. No. 5,268,864

Registered Aug. 22, 2017

Int. Cl.: 41, 42

Service Mark

Principal Register

NH-ISAC, Inc. (FLORIDA CORPORATION)
State Road 405, Building M6-306
Kennedy Space Center, FL 32899

CLASS 41: Educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment

FIRST USE 11-14-2016; IN COMMERCE 11-14-2016

CLASS 42: Providing information, news and commentary in the field of computer security and vulnerability assessment

FIRST USE 11-14-2016; IN COMMERCE 11-14-2016

The mark consists of the word "CYBERFIT" sitting atop an image of a heartbeat monitor.

SER. NO. 87-002,886, FILED 04-15-2016
ELIZABETH STELLA SHEN, EXAMINING ATTORNEY



Joseph Matol

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT B

For assistance with TSDR, email teas@uspto.gov and include your serial number, the document you are looking for, and a screenshot of any error messages you have received.

Processing Wait Times: Please note that due to an extraordinary surge in applications, processing times are longer than usual. See [current trademark processing wait times](#) for more information.

Downloading files: Bundle document downloads in ZIP format are temporarily unavailable in TSDR. Instead, you must download individual documents by opening the document in your browser and selecting "Download PDF" in the upper right corner. You can still [use the TSDR API](#) to download document bundles.

STATUS DOCUMENTS

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Mark: #CYBERFIT

#CYBERFIT

US Serial Number: 90540769

Application Filing Date: Feb. 23, 2021

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status

Descriptor:



LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Oct. 28, 2021

Mark Information

Mark Literal Elements: #CYBERFIT

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable computer software for disk backup and restoration, disk imaging, and bare-metal restore for computers, namely, servers, workstations, desktops, laptops, and mobile computers; downloadable software for file backup, deployment of backup agents on remote computers, creation of disk backup images over the network, restoration of databases, files and folders, disk cloning, incremental disk backup and backup image verification; downloadable software for backup scheduling and scripting and manuals sold therewith; downloadable computer software for system deployment using disk imaging; downloadable software for the creation of a disk image of a standard configuration, including the operating system and applications; downloadable software for the deployment of the image to multiple computer systems; downloadable software for configuration management tools to configure system settings, manage files, and execute applications on networked systems during and after the deployment and manuals sold therewith; downloadable anti-spyware software for networked computers, workstations, desktops, palmtops, laptops and other mobile devices in business, home and mobile environments; downloadable software for protection of computers from spyware, adware, keyloggers, hidden dialers, browser hijackers, and other malicious programs; downloadable software for prevention of exposure of confidential information, management of spyware control and prevention tasks, namely, management of spyware-related tasks on networked, mobile, desktop, and non-networked computers, and management of spyware-related tasks from a central location; downloadable software for the removal of spyware programs; downloadable software for monitoring computer system for suspicious applications; downloadable software for prevention of spyware installation and updating of spyware definitions; downloadable software for prevention of pop-ups and blocking/preventing pop-up advertisements and manuals sold therewith; downloadable software for secure deletion of data and disk partitions on a hard disk; downloadable software for disk wiping; downloadable software for formatting the disk drive and for partitioning the disk drive and deletion of selected partitions along with the disk wiping process and manuals sold therewith; downloadable software for resizing, copying, deleting and moving of disk partitions; downloadable software for the creation of dual boot and multi-boot environments, manual editing of the hard disk, and partition

recovery of lost or deleted partitions and manuals sold therewith; downloadable software for continuous data protection; downloadable software for malware scan, prevention and remediation; downloadable software for system and application vulnerability assessment and patch management; downloadable software for remote management and configuration; downloadable software for system, applications and hardware health status monitoring; downloadable software for data compliance reporting

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Software as a service (SAAS) services featuring software for recovery of computer data, data replication, erasure encoding, data redundancy, continuous data protection, malware scan, prevention and remediation, system and application vulnerability assessment and patch management, remote management and configuration, system, applications and hardware health status monitoring, and data compliance reporting

International Class(es): 042 - Primary Class

U.S Class(es): 100, 101

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: Acronis International GmbH

Owner Address: Rheinweg 9
Schaffhausen SWITZERLAND 8200

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: SWITZERLAND

Attorney/Correspondence Information

Attorney of Record

Attorney Name: David J. Byer

Docket Number: ACR.639/1.US

Attorney Primary Email Address: botrademarks@klgates.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: DAVID J. BYER
K&L GATES LLP
ONE LINCOLN STREET
STATE STREET FINANCIAL CENTER
BOSTON, MASSACHUSETTS UNITED STATES 02111

Phone: 617-261-3100

Fax: 617-261-3175

Correspondent e-mail: botrademarks@klgates.com
kathleen.burch@klgates.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Oct. 28, 2021	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Oct. 28, 2021	NON-FINAL ACTION E-MAILED	6325

Oct. 28, 2021	NON-FINAL ACTION WRITTEN	94050
Sep. 17, 2021	ASSIGNED TO EXAMINER	94050
May 24, 2021	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 26, 2021	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: GILBERT, HANNAH B

Law Office Assigned: LAW OFFICE 121

File Location

Current Location: TMO LAW OFFICE 121 - EXAMINING ATTORNEY ASSIGNED

Date in Location: Oct. 28, 2021

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

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EXHIBIT C

To: Acronis International GmbH (botrademarks@klgates.com)

Subject: U.S. Trademark Application Serial No. 90540769 - #CYBERFIT - ACR.639/1.US

Sent: October 28, 2021 09:28:12 PM

Sent As: ecom121@uspto.gov

Attachments: [Attachment - 1](#)
[Attachment - 2](#)
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[Attachment - 33](#)

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial
No. 90540769

Mark: #CYBERFIT

Correspondence

Address:

DAVID J. BYER
K&L GATES LLP
ONE LINCOLN STREET
STATE STREET
FINANCIAL CENTER
BOSTON, MA 02111

Applicant: Acronis
International GmbH

Reference/Docket No.

ACR.639/1.US

**Correspondence Email
Address:**

botrademarks@klgates.com

NONFINAL OFFICE ACTION

The USPTO must receive applicant's response to this letter within six months of the issue date below or the application will be [abandoned](#). Respond using the Trademark Electronic Application System (TEAS). A link to the appropriate TEAS response form appears at the end of this Office action.

Issue date: October 28, 2021

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issues below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

SUMMARY OF ISSUES:

- Section 2(d) Refusal – Likelihood of Confusion with Registered Marks
- Amended Identification of Goods and Services Required

SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION WITH REGISTERED MARKS

Registration of the applied-for mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 5268866, 5268864, 5157903, and 5157902, which are owned by the same entity. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* *See the attached registrations.*

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Any evidence of record related to those factors need be considered; however, “not all of the *DuPont* factors are relevant or of similar weight in every case.” *In re Guild Mortg. Co.*, 912 F.3d 1376, 1379, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (quoting *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997)).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

Summary of the Marks

Applicant has applied to register the mark **#CYBERFIT in standard characters** for use in connection with “Downloadable computer software for disk backup and restoration, disk imaging, and bare-metal restore for computers, namely, servers, workstations, desktops, laptops, and mobile

computers; downloadable software for file backup, deployment of backup agents on remote computers, creation of disk backup images over the network, restoration of databases, files and folders, disk cloning, incremental disk backup and backup image verification; downloadable software for backup scheduling and scripting and manuals sold therewith; downloadable computer software for system deployment using disk imaging; downloadable software for the creation of a disk image of a standard configuration, including the operating system and applications; downloadable software for the deployment of the image to multiple computer systems; downloadable software for configuration management tools to configure system settings, manage files, and execute applications on networked systems during and after the deployment and manuals sold therewith; downloadable anti-spyware software for networked computers, workstations, desktops, palmtops, laptops and other mobile devices in business, home and mobile environments; downloadable software for protection of computers from spyware, adware, keyloggers, hidden dialers, browser hijackers, and other malicious programs; downloadable software for prevention of exposure of confidential information, management of spyware control and prevention tasks, namely, management of spyware-related tasks on networked, mobile, desktop, and non-networked computers, and management of spyware-related tasks from a central location; downloadable software for the removal of spyware programs; downloadable software for monitoring computer system for suspicious applications; downloadable software for prevention of spyware installation and updating of spyware definitions; downloadable software for prevention of pop-ups and blocking/preventing pop-up advertisements and manuals sold therewith; downloadable software for secure deletion of data and disk partitions on a hard disk; downloadable software for disk wiping; downloadable software for formatting the disk drive and for partitioning the disk drive and deletion of selected partitions along with the disk wiping process and manuals sold therewith; downloadable software for resizing, copying, deleting and moving of disk partitions; downloadable software for the creation of dual boot and multi-boot environments, manual editing of the hard disk, and partition recovery of lost or deleted partitions and manuals sold therewith; downloadable software for continuous data protection; downloadable software for malware scan, prevention and remediation; downloadable software for system and application vulnerability assessment and patch management; downloadable software for remote management and configuration; downloadable software for system, applications and hardware health status monitoring; downloadable software for data compliance reporting” in International Class 09 and “Software as a service (SAAS) services featuring software for recovery of computer data, data replication, erasure encoding, data redundancy, continuous data protection, malware scan, prevention and remediation, system and application vulnerability assessment and patch management, remote management and configuration, system, applications and hardware health status monitoring, and data compliance reporting” in International Class 42.

The registered marks, registered to the same entity, are as follows:

Reg. No. 5268866: **CYBERFIT in standard characters** for use with “Educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment” in Class 41 and “Providing information, news and commentary in the field of computer security and vulnerability assessment” in Class 42.

Reg. No. 5268864: **CYBERFIT with stylization and design** for use with “Educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment” in Class 41 and “Providing information, news and commentary in the field of computer security and vulnerability assessment” in Class 42.

Reg. No. 5157903: **CYBERFIT in standard characters** for use with “Technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of others” in Class 42.

Reg. No. 5157902: **CYBERFIT with stylization and design** for use with “Technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of

others” in Class 42.

Similarity of the Marks

Marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)), *aff’d per curiam*, 777 F. App’x 516, 2019 BL 343921 (Fed. Cir. 2019); TMEP §1207.01(b).

The wording “CYBERFIT” in the applied-for mark is identical in appearance, sound, connotation and overall commercial impression to the registered marks CYBERFIT. Applicant has merely added a hash symbol to the beginning of the wording in the registered marks. The addition of the term HASHTAG or the hash symbol (#) adds little or no source-indicating distinctiveness to a mark when used as a social media tool. See *In re DePorter*, 129 USPQ2d 1298, 1303 (TTAB 2019); *In re i.am.symbolic*, 127 USPQ2d 1627, 1633 (TTAB 2018); TMEP §1202.18. Moreover, the term or symbol adds a similar lack of source-identifying function when used to emphasize a sentiment conveyed by the term that follows, similar to the function of an exclamation point. *In re i.am.symbolic*, 127 USPQ2d at 1633 n.7 (TTAB 2018) (citing as analogous *In re Litehouse, Inc.*, 82 USPQ2d 1471, 1474 (TTAB 2007), in which the Board found inclusion of exclamation points in word mark did not negate the mark’s overall unregistrability). Thus, the non-source-identifying term HASHTAG or the hash symbol (#) is less significant in creating a commercial impression in the minds of consumers, and is generally given little weight when comparing marks. Cf. TMEP §1215.09 (“[T]he examining attorney must consider the marks as a whole, but generally should accord little weight to a non-source identifying gTLD portion of the mark” (citing *Apple Computer v. TVNET.net, Inc.*, 90 USPQ2d 1393 (TTAB 2007))).

In addition, the designs appearing in Reg. Nos. 5268864 and 5157902 are insufficient to overcome the similarities between the wording in the registered marks and the applied-for mark. When evaluating a composite mark consisting of words and a design, the word portion is normally accorded greater weight because it is likely to make a greater impression upon purchasers, be remembered by them, and be used by them to refer to or request the goods and/or services. *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1184 (TTAB 2018) (citing *In re Viterro Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012)); TMEP §1207.01(c)(ii). Thus, although marks must be compared in their entireties, the word portion is often considered the dominant feature and is accorded greater weight in determining whether marks are confusingly similar, even where the word portion has been disclaimed. *In re Viterro Inc.*, 671 F.3d at 1366-67, 101 USPQ2d at 1911 (citing *Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1570-71, 218 USPQ2d 390, 395 (Fed. Cir. 1983)). Here, the design of a heartbeat monitor is less dominant in the appearance of the mark, and is unlikely to be used by consumers to request or refer to the registrant’s services. Therefore, the wording is rendered as the more dominant portion of the marks, which, as discussed above, is identical to the wording in the applied-for mark.

Moreover, a mark in typed or standard characters may be displayed in any lettering style; the rights reside in the wording or other literal element and not in any particular display or rendition. See *In re Viterro Inc.*, 671 F.3d 1358, 1363, 101 USPQ2d 1905, 1909 (Fed. Cir. 2012); *In re Mighty Leaf Tea*, 601 F.3d 1342, 1348, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); 37 C.F.R. §2.52(a); TMEP §1207.01(c)(iii). Thus, a mark presented in stylized characters and/or with a design element generally will not avoid likelihood of confusion with a mark in typed or standard characters because the word portion could be presented in the same manner of display. See, e.g., *In re Viterro Inc.*, 671 F.3d at 1363, 101 USPQ2d at 1909; *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 1041, 216 USPQ 937, 939 (Fed. Cir. 1983) (stating that “the argument concerning a difference in type style is not viable where one party asserts rights in no particular display”). Therefore, in this instance, applicant’s mark in standard characters can be displayed in any manner of stylization or display, including the same as that shown in Reg. Nos. 5268864 and 5157902. Thus, the stylization in the registered marks is insufficient to distinguish the marks at issue in a likelihood of confusion analysis.

Therefore, for the reasons discussed above, the applied-for mark is confusingly similar to the registered mark.

Relatedness of the Goods and Services

The goods and/or services are compared to determine whether they are similar, commercially related, or travel in the same trade channels. See *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369-71, 101 USPQ2d 1713, 1722-23 (Fed. Cir. 2012); *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1165, 64 USPQ2d 1375, 1381 (Fed. Cir. 2002); TMEP §§1207.01, 1207.01(a)(vi).

The compared goods and/or services 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); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are 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).

The Court of Appeals for the Federal Circuit and the Trademark Trial and Appeal Board have held that various electronic goods are sufficiently

related to computer or technology-related services such that a likelihood of confusion exists when the marks at issue are otherwise identical or highly similar. *See Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002) (holding PACKARD TECHNOLOGIES, with “technologies” disclaimed, for “electronic transmission of data and documents via computer terminals” to be sufficiently related to HEWLETT PACKARD marks for facsimile machines, computers, and computer software such that confusion would be likely where the marks at issue convey a similar commercial impression); *MSI Data Corp. v. Microprocessor Sys., Inc.*, 220 USPQ 655, 659-60 (TTAB 1983) (holding MSI for “computer hardware manufacturing services to the order of or specification of others” likely to be confused with MSI for “electronic ordering systems for gathering and transmitting source data comprising a recorder-transmitter and data receiver”).

Here, the attached Internet evidence, consisting of screenshots from the webpages of McAfee, Norton, and Bitdefender, establishes that entities that commonly provide educational, informational, and technical and consulting services in the fields of computer and cyber security, like the registrant, commonly also make or sell downloadable software and provide software as a service in the fields of computer and cyber security, like the applicant. In other words, consumers are accustomed to seeing both applicant’s software goods and services and registrant’s services provided under the same mark. As a result, the use of confusingly similar marks for both applicant’s and registrant’s goods and services is likely to result in consumer confusion. Thus, applicant’s and registrant’s goods and services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009). The trademark examining attorney has also attached screenshots from the webpage of BusinessWire featuring an article that establishes that applicant also provides the same educational and informational services under the applied-for mark as those services listed in the registrations. *See attachments*.

Therefore, because the marks are confusingly similar and the goods and services are related, registration of the applied-for mark is refused under Section 2(d) of the Trademark Act.

Although applicant’s mark has been refused registration, applicant may respond to the refusal(s) by submitting evidence and arguments in support of registration. However, if applicant responds to the refusal(s), applicant must also respond to the requirement(s) set forth below.

AMENDED IDENTIFICATION OF GOODS AND SERVICES REQUIRED

The wording “for remote management and configuration” in the identification for downloadable software in International Class 9 and software as a service in International Class 42 is indefinite and applicant must clarify the purpose or function of the software. *See* 37 C.F.R. §2.32(a)(6); TMEP §§1402.03(d), 1402.11(a). The USPTO requires such specificity in order for a trademark examining attorney to examine the application properly and make appropriate decisions concerning possible conflicts between the applicant’s mark and other marks. *See In re N.A.D. Inc.*, 57 USPQ2d 1872, 1874 (TTAB 2000); TMEP §1402.03(d).

Applicant may adopt the following wording, if accurate, with changes in bold:

INTERNATIONAL CLASS 09: Downloadable computer software for disk backup and restoration, disk imaging, and bare-metal restore for computers, namely, servers, workstations, desktops, laptops, and mobile computers; downloadable software for file backup, deployment of backup agents on remote computers, creation of disk backup images over the network, restoration of databases, files and folders, disk cloning, incremental disk backup and backup image verification; downloadable software for backup scheduling and scripting and manuals sold therewith; downloadable computer software for system deployment using disk imaging; downloadable software for the creation of a disk image of a standard configuration, including the operating system and applications; downloadable software for the deployment of the image to multiple computer systems; downloadable software for configuration management tools to configure system settings, manage files, and execute applications on networked systems during and after the deployment and manuals sold therewith; downloadable anti-spyware software for networked computers, workstations, desktops, palmtops, laptops and other mobile devices in business, home and mobile environments; downloadable software for protection of computers from spyware, adware, keyloggers, hidden dialers, browser hijackers, and other malicious programs; downloadable software for prevention of exposure of confidential information, management of spyware control and prevention tasks, namely, management of spyware-related tasks on networked, mobile, desktop, and non-networked computers, and management of spyware-related tasks from a central location; downloadable software for the removal of spyware programs; downloadable software for monitoring computer system for suspicious applications; downloadable software for prevention of spyware installation and updating of spyware definitions; downloadable software for prevention of pop-ups and blocking/preventing pop-up advertisements and manuals sold therewith; downloadable software for secure deletion of data and disk partitions on a hard disk; downloadable software for disk wiping; downloadable software for formatting the disk drive and for partitioning the disk drive and deletion of selected partitions along with the disk wiping process and manuals sold therewith; downloadable software for resizing, copying, deleting and moving of disk partitions; downloadable software for the creation of dual boot and multi-boot environments, manual editing of the hard disk, and partition recovery of lost or deleted partitions and manuals sold therewith; downloadable software for continuous data protection; downloadable software for malware scan, prevention and remediation; downloadable software for system and application vulnerability assessment and patch management; downloadable software for **remote computer access in connection with** remote management and configuration; downloadable software for system, applications and hardware health status monitoring; downloadable software for data compliance reporting

INTERNATIONAL CLASS 42: Software as a service (SAAS) services featuring software for recovery of computer data, data replication, erasure encoding, data redundancy, continuous data protection, malware scan, prevention and remediation, system and application vulnerability assessment and patch management, **remote computer access in connection with** remote management and configuration, **computer** system, applications and hardware health status monitoring, and data compliance reporting

Applicant may amend the identification to clarify or limit the goods and/or services, but not to broaden or expand the goods and/or services beyond those in the original application or as acceptably amended. *See* 37 C.F.R. §2.71(a); TMEP §1402.06. Generally, any deleted goods and/or services may not later be reinserted. *See* TMEP §1402.07(e).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

HOW TO RESPOND TO THIS OFFICE ACTION

[Click to file a response to this nonfinal Office action.](#)

Please call or email the assigned trademark examining attorney with questions about this Office action.

The USPTO does not accept emails as responses to Office actions; however, emails can be used for informal communications and are included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

/Hannah Gilbert/
Trademark Examining Attorney
Law Office 121
(571) 272-5029
hannah.gilbert@uspto.gov

RESPONSE GUIDANCE

- **Missing the response deadline to this letter will cause the application to [abandon](#).** A response or notice of appeal must be received by the USPTO before midnight **Eastern Time** of the last day of the response period. TEAS and ESTTA maintenance or [unforeseen circumstances](#) could affect an applicant's ability to timely respond.
- **[Responses signed by an unauthorized party](#)** are not accepted and can **cause the application to [abandon](#)**. If applicant does not have an attorney, the response must be signed by the individual applicant, all joint applicants, or someone with [legal authority to bind a juristic applicant](#). If applicant has an attorney, the response must be signed by the attorney.
- If needed, **find [contact information for the supervisor](#)** of the office or unit listed in the signature block.

DESIGN MARK

Serial Number

87002875

Status

REGISTERED

Word Mark

CYBERFIT

Standard Character Mark

No

Registration Number

5157902

Date Registered

2017/03/07

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

NH-ISAC, Inc. CORPORATION FLORIDA State Road 405, Building M6-306
Kennedy Space Center FLORIDA 32899

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and

penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of others. First Use: 2016/11/14. First Use In Commerce: 2016/11/14.

Description of Mark

The mark consists of the word "CYBERFIT" sitting atop an image of a heartbeat monitor.

Colors Claimed

Color is not claimed as a feature of the mark.

Filing Date

2016/04/15

Examining Attorney

SHEN, ELIZABETH S

Attorney of Record

Amanda G. Hyland

CYBERFIT



DESIGN MARK

Serial Number

87002886

Status

REGISTERED

Word Mark

CYBERFIT

Standard Character Mark

No

Registration Number

5268864

Date Registered

2017/08/22

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

Owner

NH-ISAC, Inc. CORPORATION FLORIDA State Road 405, Building M6-306
Kennedy Space Center FLORIDA 32899

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment. First Use: 2016/11/14. First Use In Commerce: 2016/11/14.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Providing information, news and commentary in the field of computer security and vulnerability assessment. First Use: 2016/11/14. First Use In Commerce: 2016/11/14.

Description of Mark

The mark consists of the word "CYBERFIT" sitting atop an image of a heartbeat monitor.

Colors Claimed

Print: Oct 27, 2021

87002886

Color is not claimed as a feature of the mark.

Filing Date

2016/04/15

Examining Attorney

SHEN, ELIZABETH S

Attorney of Record

Amanda G. Hyland

CYBERFIT



DESIGN MARK

Serial Number

87003893

Status

REGISTERED

Word Mark

CYBERFIT

Standard Character Mark

Yes

Registration Number

5157903

Date Registered

2017/03/07

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

NH-ISAC, Inc. CORPORATION FLORIDA State Road 405, Building M6-306
Kennedy Space Center FLORIDA 32899

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Technical support services, namely, identifying and remedying web-based security breaches and malware issues; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems for cyber-security systems of others; consulting services in the fields of security and vulnerability of computers, computer systems, networks, hardware, software applications, digital devices, digital data, and mobile devices; consulting services in the fields of designing, developing, customizing, configuring, deploying, installing, maintaining, analyzing, integrating, repairing, and managing the computer software of others in the field of cyber-security; computer services in the nature of detecting and diagnosing computer hardware and software security problems and vulnerabilities; creation of databases for use in computer security and prevention and mitigation of computer risks; computer consultation and research in the field of computer and network security; computer security consultancy in the field of malware, intrusion and

penetration testing and diagnosis of computers and networks to assess information technology security and vulnerability; research in the field of information security and network security technologies; compliance and vulnerability assessments, namely, providing consultancy in the field of scanning and penetration testing of computers and networks to assess information security vulnerability; compliance and vulnerability assessments, namely, technical verification and validation of computer hardware and software controls for cyber-security systems of others. First Use: 2016/11/14. First Use In Commerce: 2016/11/14.

Filing Date

2016/04/18

Examining Attorney

SHEN, ELIZABETH S

Attorney of Record

Amanda G. Hyland

CYBERFIT

DESIGN MARK

Serial Number

87003894

Status

REGISTERED

Word Mark

CYBERFIT

Standard Character Mark

Yes

Registration Number

5268866

Date Registered

2017/08/22

Type of Mark

SERVICE MARK

Register

PRINCIPAL

Mark Drawing Code

(4) STANDARD CHARACTER MARK

Owner

NH-ISAC, Inc. CORPORATION FLORIDA State Road 405, Building M6-306
Kennedy Space Center FLORIDA 32899

Goods/Services

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: Educational services, namely, providing training of cyber security and privacy professionals in the fields of computer security and vulnerability assessment. First Use: 2016/11/14. First Use In Commerce: 2016/11/14.

Goods/Services

Class Status -- ACTIVE. IC 042. US 100 101. G & S: Providing information, news and commentary in the field of computer security and vulnerability assessment. First Use: 2016/11/14. First Use In Commerce: 2016/11/14.

Filing Date

2016/04/18

Examining Attorney

SHEN, ELIZABETH S

Print: Oct 27, 2021

87003894

Attorney of Record
Amanda G. Hyland

CYBERFIT



Protecting what matters most - you

All-in-one protection to safeguard your privacy and **identity** with award-winning **antivirus** and **VPN** so you can enjoy life online.

Get protection now

Pick my plan

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Feed back

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9:00:23 PM 10/28/2021

https://www.mcafee.com/en-us/index.html

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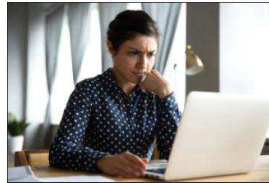
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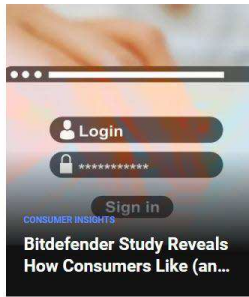
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Acronis Launches 2020 Global Acronis #CyberFit Partner Program

Acronis adds new #CyberFit benefits to its award-winning Partner Program, with updated levels, free and discounted licenses, sports benefits, and so much more

April 28, 2020 08:30 AM Eastern Daylight Time

SCHAFFHAUSEN, Switzerland--(BUSINESS WIRE)--Acronis, a global leader in [cyber protection](#), has announced the launch of an updated, streamlined 2020 [Acronis #CyberFit Partner Program](#).

With over 50,000 partners and technology alliances with every major technology player, Acronis is more than just a vendor; it is an ally in partner success.

"Our enhanced Acronis #CyberFit Partner Program ensures partners, who are at the core of our business, have a state-of-the-art program that gives them easy-to-use processes for more deals and bigger profits, with advanced sales and technical support that help every step of the way. Our partner program is as easy and efficient as our cyber protection solutions," said Gaidar Magdanurov, Acronis Cyber Officer and Chief Operating Officer.

Because the world is more dependent upon data than at any time in history, with [more people working from home](#) than ever as well as new and increased cyberthreats, businesses require the highest level of cyber protection. Such urgency makes it important for Acronis to provide partners with superior technology and tools that address ever-evolving threats.

The Acronis #CyberFit Partner Program provides partners with numerous tools and support to amplify growth potential:

Increased Marketing Resources

Available to partners who are committed to growing together with Acronis. Acronis provides to partners funds and the marketing tools to successfully execute marketing campaigns and activities.

Acronis #CyberFit Academy

Acronis has updated its training and certification programs, to build and reinforce cyber protection sales and technical competencies, so partners are enabled to protect customers better while keeping costs down.

Acronis #CyberFit Challenge Program

ACRONIS

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Contacts

Press
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Acronis International GmbH
+1 (978) 635-6686
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Acronis #CyberFit Challenge Program

Acronis has developed the #CyberFit Challenge Program, inviting partners to trainings and masterclasses, access to #CyberFit events and webinars with famous athletes, as well as the chance to compete for exclusive rewards offered by Acronis' sports partners.

Remote-work solutions

Acronis is providing partners with the tools they need to support their customers with secure, remote-work environments, including offering enterprise-grade file sync and share technology at no additional cost. These features – protecting remote workers and workloads – further expand the integrated backup and cybersecurity features available in [Acronis Cyber Protect Cloud](#), ensuring organizations can remain both productive and safe during this particularly challenging time.

Easy access to the Acronis #CyberFit Platform Program

This developer-, service provider-, and ISV- friendly program is built for developers to extend, customize and integrate quickly, and provides the training and certification to help accelerate development cycles and bring solutions to market. The Acronis Cyber Platform is the foundation of all Acronis services; it features a series of APIs that are supported by software development kits (SDK) and sample code. By accessing the platform, partners can differentiate from competitors by protecting new data sources, support new data storage destinations, and/or enhance their applications with cyber protection. Partners can choose to market their solutions to the Acronis ecosystem in the [Acronis Cyber Solutions Portal](#).

Acronis #CyberFit Financing

As many small businesses in our industry struggle during the [coronavirus outbreak](#), Acronis is taking action to support our partners and customers. For more information, please visit <https://www.acronis.com/en-us/tp/financing> and share the link with your contacts.

Acronis Cyber Foundation

Acronis has been [creating and sharing knowledge](#) by funding schools, research and training programs in communities around the world. Acronis invites its partners to build cyber schools and attend school construction treks, so we can build better futures for children in underserved areas globally.

The Acronis #CyberFit Partner Program is thrilled to offer these benefits and much more, including exclusive channel promotions, boosted technical support, and enriched campaigns-in-a-box.

Award-winning and proven cyber protection technology for businesses of all sizes

Acronis Cyber Protection solutions allow partners not only to proactively avoid cyberattacks and downtime, experience fast and easy recoveries, and automate client-protection configurations that are needed to counter the latest threats, but also to offer all of these



To: Acronis International GmbH (botrademarks@klgates.com)
Subject: U.S. Trademark Application Serial No. 90540769 - #CYBERFIT - ACR.639/1.US
Sent: October 28, 2021 09:28:14 PM
Sent As: ecom121@uspto.gov
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Office Action (Official Letter) has issued
on **October 28, 2021** for
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Your trademark application has been reviewed by a trademark examining attorney. As part of that review, the assigned attorney has issued an official letter that you must respond to by the specified deadline or your application will be [abandoned](#). Please follow the steps below.

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hannah.gilbert@uspto.gov

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Health-ISAC is a trusted community of critical infrastructure owners and operators within the Healthcare and Public Health sector (HPH). The community is primarily focused on sharing timely, actionable and relevant information with each other including intelligence on threats, incidents and vulnerabilities that can include data such as indicators of compromise, tactics, techniques and procedures (TTPs) of threat actors, advice and best practices, mitigation strategies and other valuable material. Sharing can occur via machine to machine or human to human. Health-ISAC also fosters the building of relationships and networking through a number of educational events in order to facilitate trust. Working groups and committees focus on topics

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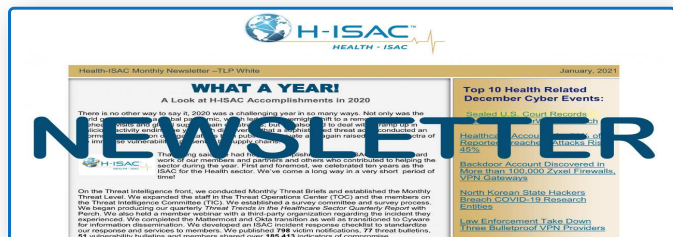
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