O/0841/25

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001686416

DESIGNATING THE UK

BY VALO THERAPEUTICS OY

VALOTX

IN CLASSES 1, 5, 10, 40, 42 AND 44

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 438879

BY VALO HEALTH, LLC

BACKGROUND AND PLEADINGS

1. International trade mark 1686416 ("the IR") consists of the sign shown on the cover page of this decision. The holder is Valo Therapeutics Oy. The IR is registered with effect from 21 April 2022. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. The mark also claims priority from 24 January 2022. The holder seeks protection for the IR in relation to the goods and services contained in Annex 1 to this decision.

2. The request to protect the IR was published on 21 October 2022. On 23 January 2022, Valo Health, LLC ("the opponent") fully opposed the protection of the IR in the UK based upon section 5(2)(b) of the Trade Marks Act 1994 ("the Act"). The opponent relies upon the following marks:

VALO

International registration no. WO000001570555
International registration and designation date 3 December 2020.
Date of protection granted in UK 26 August 2021.
Priority date 3 June 2020.
("The First Earlier IR")

VALO

Transformed mark, UK registration no. UK00004115585
Filing date 3 December 2020.
Registration date 26 August 2021.
Priority date 3 June 2020.
("The Second Earlier Mark")

3. In its original Form TM7 filed on 23 January 2022, the opponent only relied upon its First Earlier IR. However, on 4 October 2024, the USPTO notified WIPO that the US base registration for this mark was partially ceased, and as a result, on the same day, WIPO partially cancelled the First Earlier IR. This narrowed down the protection of certain goods and services within classes 5 and 42, which are now contained in Annex 2 to this decision. In relation to the goods which were removed from the First Earlier IR, the opponent made an application for transformation at the UK IPO on 22 October 2024, and on the 1 November 2024, the transformed UK mark was created, that being the Second Earlier Mark. On 5 November 2024, the UK IPO issued a preliminary view which allowed the opponent to amend its Form TM7, which they did on the 19 November 2024, to include and rely upon the Second Earlier Mark in these proceedings. The holder filed its amended counterstatement on 6 January 2025.

4. In these proceedings, the opponent therefore relies upon all of its goods and services, for which its earlier marks are registered, contained in Annex 2 to this decision.

5. The opponent claims that there is a likelihood of confusion because the marks are highly similar and the goods and services are identical or similar.

6. The holder filed a counterstatement denying that the marks are similar enough that there would be a likelihood of confusion in paragraph 3 of its statement of grounds. At paragraph 5, the holder also stated, “it is denied that there is any identity of goods and services (other than some minor overlap in classes 5 and 42- as discussed in paragraph 8 below)”. At paragraph 8 of its statement of grounds, the holder provided a comparison table which is contained in Annex 3 to this decision. However, alongside this table, the holder has not provided any specific submissions as to what it means by there being some “minor overlap in classes 5 and 42”.

7. A hearing took place before me on 4 June 2025. The opponent was represented by Mr David Rose and Mr Mohammed Nazeer of Mishcon de Reya LLP, and the holder was represented by Ms Carin Burchell of BRANDED TM LIMITED T/A BRANDED!. I make this decision having taken full account of all the papers, referring to them below as necessary.

RELEVANCE OF EU LAW

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

EVIDENCE

9. The opponent's evidence consists of the witness statement of David Rose dated 7 March 2024. Mr Rose is a Partner at Mishcon de Reya LLP, the representatives of the opponent. His statement has been filed addressing the meaning of "TX" and "VALO" in relation to the goods and services. His statement is accompanied by 4 exhibits (DR1-DR4).

10. I have taken all of the evidence and submissions into consideration in reaching my decision and will refer to them where necessary below.

PRELIMINARY ISSUES

11. It is noted that less than an hour before the hearing, Ms Burchell provided a "backup specification" for the holder's class 42 services, that being:

> Biological analysis and immuno-oncology research services; biopharmaceutical research and development with a focus on cancer immunotherapy, therapeutic vaccine engineering, and antigen presentation technologies; biotechnology laboratory services relating to viral vector design, peptide-coated oncolytic viruses, and immune activation strategies; scientific and clinical research in the fields of immunology, haematology, oncology, and personalized immunotherapy; preclinical and clinical trials of viral immunotherapeutic platforms; development and optimization of therapeutic constructs based on tumor antigen profiling and immune modulation;

consultation services in immuno-oncology, immunotherapy development, and cancer vaccine research; biological research including immunopeptidomics, neoantigen discovery, and T-cell response assessment; provision of scientific data and results from immunological testing and peptide-based cancer vaccine development.

12. As this was provided last minute, and Mr Rose did not have sufficient time to prepare himself on the matter before the hearing, I gave the opponent 7 days to provide written submissions on the matter. On 11 June 2025, the opponent emailed stating that the proposal of the back-up specification "is rejected". I find it reasonable to infer that this rejection means that the opponent believes that this specification is still similar to their own, enough for a likelihood of confusion to occur. Nonetheless, I note that this specification will be dealt with accordingly later in my decision should it become necessary to do so.

DECISION

Section 5(2)(b)

13. Section 5(2)(b) reads as follows:

> "5(2) A trade mark shall not be registered if because –
>
> (a)…
>
> (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

14. The opponent's marks qualify as earlier marks in accordance with section 6(1)(a) as the priority dates are earlier than the priority date of the holder's IR. The opponent's

earlier marks have not completed their registration process more than five years before the relevant date (the priority date of the IR in issue). Accordingly, the use provisions at section 6A of the Act do not apply. The opponent may rely on all of the goods and services it has identified without demonstrating that it has used the marks.

Section 5(2)(b) - case law

15. In making this decision, I bear in mind the following principles gleaned from the decisions of the EU courts in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is

permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods and services

16. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

"In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary."

17. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

(a) The respective uses of the respective goods or services;

(b) The respective users of the respective goods or services;

(c) The physical nature of the goods or acts of service;

(d) The respective trade channels through which the goods or services reach the market;

(e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;

(f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

18. In *Gérard Meric v OHIM*, Case T- 133/05, the General Court ("GC") stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 Institut für Lernsysteme v OHIM – Educational Services (ELS) [2002] ECR II-4301, paragraph 53) or

where the goods designated by the trade mark application are included in a more general category designated by the earlier mark."

19. In *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36, Lord Kitchin set out the proper approach to considering terms in specifications:

> "365. […] The correct approach, as a matter of principle, in considering a specification of services which is defined by terms which are not clear or precise, is to confine the terms used to the substance or core of their possible meanings: see, for example, *Reed Executive plc v Reed Business Information Ltd* [2004] EWCA Civ 159; [2004] RPC 40, at para 43. So too, if a specification of goods is defined by terms which are ambiguous, then it should be confined to those goods which are clearly covered. These principles are consistent with first, the requirement that the specifications of goods and services must be clear and precise so that others know what they can and cannot do; and secondly, general fairness because any ambiguity is the responsibility of the owner of the mark. If despite this, the words used are still unclear so that they cannot be interpreted, then it is permissible to disregard them. But, in my opinion, that will rarely be the case."

20. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons (see *Separode Trade Mark* (BL O/399/10) and *BVBA Management, Training en Consultancy v. BeneluxMerkenbureau* [2007] ETMR 35 at paragraphs 30 to 38).

21. In *Kurt Hesse v OHIM,* Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the GC stated that "complementary" means:

> "… there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think the responsibility for those goods lies with the same undertaking."

22. The holder's goods and services are contained in Annex 1 to this decision, and the opponent's goods and services are contained in Annex 2 to this decision.

23. In its skeleton argument, for the comparison of some of goods and services, the opponent has put forward specific combinations of terms to compare, whereas for others, the opponent has generally compared its class 5 and 42 services to the holder's goods and services, usually only refering to complementary rather than explicitly going through the *Canon* and *Treat* factors and without refering to any specific terms. I remind myself of paragraph 28 of the appeal to the Appointed Person in *SMARTX* BL O/0911/24 which states that:

> . "… it is for the Opponent to put forward the combinations of goods on which it relies for similarity (or identicality). If it fails to identify a particular combination, it cannot expect the Hearing Officer to do the job for it. The approach for which Mr Wood contends would place an intolerable burden on Hearing Officers in cases of this nature in which there will be thousands of potential combinations of goods which could be relied on, and for each combination a slightly different argument for similarity could be made. Furthermore, such an approach would be unfair on the Applicant for the mark, since they will have had no opportunity to address points on similarity taken by the Hearing Officer if those points are not first raised by the Opponent."

24. I bear in mind that the holder's specification is quite lengthy and the goods and services are quite technical. I will therefore proceed on the basis that I will only consider similarities which have been highlighted by the opponent, or where it is obvious to do so, otherwise, the goods and services will be found to be dissimilar.

Class 1

Chemical and biological agents for scientific and research use; animal albumen [raw material]; biochemical catalysts; chemical preparations for scientific purposes, other than for medical or veterinary use; protein [raw material]; preparations of microorganisms, other than for medical and veterinary use; biological preparations, other than for medical or veterinary purposes.

25. At the hearing, Mr Rose stated that the holder's above goods fall within the opponent's broader category of "chemical and biological agents for scientific and research use" in the Second Earlier Marks specification. I agree, the goods are identical on the principle outlined in *Meric.*

Antioxidants for use in the manufacture of pharmaceuticals; antioxidants for use in manufacture.

26. Mr Rose also stated that the holder's above goods fall within the opponent's broader category of "chemical and biological agents for scientific and research use" in the Second Earlier Marks specification, and in his submissions in reply at the hearing, he stated that "just because you manufacture something, does not mean it is not for scientific or research use". However, to find the parties terms identical on the principle of *Meric* would be unnaturally broadening the protection of the opponent's term, a term which clearly only covers chemical and biological agents for scientific and research use". For the sake of completeness, I do not consider that the manufacturing process (which is to make something on a large scale) is a scientific process either. The holder's goods are clearly only used in the manufacturing process, and therefore the purpose and method of use of these goods differ to those in paragraph 25 which are being used for scientific and research use. However, I appreciate that fundamentally all of the goods are a type of chemical, and therefore overlap in nature. I also find that the goods could overlap in trade channels, originating from the same specialist chemical undertakings. Nonetheless, the user of the goods will not overlap as the holder's users will be manufacturers and the opponent's users will be scientists and laboratory technicians. I also do not consider that these goods are in competition, nor are they complementary in the way described by the case law cited above, specifically, they are neither important not indispensable to one another. Therefore, taking the above into account, I find that the goods are similar, but only to a low degree.

Collagen for industrial purposes.

27. I find that whilst the holder's above goods differ in user, purpose and method of use to the opponent's "chemical and biological agents for scientific and research use" in the Second Earlier Marks specification, again, fundamentally all of these goods are

chemicals, which would likely be sold by the same specialist chemical undertakings. The goods are not in competition or complementary, and therefore I find that they are similar, but only to a low degree.

Diagnostic preparations, other than for medical or veterinary purposes.

28. In their skeleton argument, the opponent has stated that as the holder's above term is "open-ended" that it would be appropriate to consider it in the context of the class that it sits in, and as the NICE Classification covers chemicals for use in industry, it would be "appropriate to interpret" the holder's goods as to pertaining to chemical agents in a laboratory setting.

29. I note that recognised terms in class 1 include "diagnostic reagents for scientific use", "diagnostic preparations for scientific purposes" and "diagnostic preparations for research laboratory" and as per *Pathway IP Sarl (formerly Regus No. 2 Sarl) v Easygroup Ltd (formerly Easygroup IP Licensing Limited)*, [2018] EWHC 3608 (Ch), the late Mr Justice Carr considered whether it was appropriate to take the class(es) in which the trade mark was registered into account in revocation or invalidation proceedings when deciding whether a description covered the goods/services shown in the evidence. After considering the judgments of the High Court in the *Omega 1* [2010] EWHC 1211 (Ch) and *Omega 2* [2012] EWHC 3440 (Ch) cases, the judge stated that in his (provisional) view, the class number should be taken into account where the meaning of the disputed term is not otherwise sufficiently clear and precise. In particular the judge stated that where "*the words chosen may be vague or could refer to goods or services in numerous classes* [of the Nice classification system], ***the class may be used as an aid to interpret what the words mean with the overall objective of legal certainty of the specification of goods and services***."

30. I therefore find that the holder's goods could cover diagnostic preparations for scientific purposes and for research laboratory use. On this basis, I consider the holder's above goods overlaps in purpose with Second Earlier Mark's "chemical and biological agents for scientific and research use". Whilst the goods will not overlap in nature or method of use, without any evidence or submissions on the contrary, I find that the goods may be complementary, being important or indispensable to one

another, and I believe that the user of the goods may believe that they both originate from the same undertaking (especially as they serve the same purpose). On this basis, I find that the goods are similar, but again, only to a low degree.

Class 5

Biopharmaceutical and pharmaceutical preparations for treatment of autoimmune diseases, cancer, cardiovascular diseases and disorders, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders.

31. The opponent's "pharmaceutical preparations for treatment of cardiovascular diseases and disorders" in its First Earlier IR's specification falls within the holder's above broader category. The goods are identical on the principle outlined in *Meric.* The opponent's "pharmaceutical preparations for treatment of autoimmune diseases, cancer, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders" in its Second Earlier Mark's specification also falls within the holder's above broader category, making them identical on the principle outlined in *Meric.*

Therapeutic agents for the treatment of autoimmune diseases, cancer, cardiovascular diseases and disorders, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders.

32. The opponent's "therapeutic agents for the treatment of cardiovascular diseases and disorders" in its First Earlier IR's specification falls within the holder's above broader category. The goods are identical on the principle outlined in *Meric.* The opponent's "therapeutic agents for the treatment of autoimmune diseases, cancer, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders,

neurological diseases and disorders, rare diseases, and respiratory diseases and disorders" in its Second Earlier Mark's specification also falls within the holder's above broader category, making them identical on the principle outlined in *Meric.*

Pharmaceutical preparations and products.

33. The opponent's "pharmaceutical preparations for treatment of autoimmune diseases, cancer, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders" in its Second Earlier Mark's specification falls within the holder's above broader category. The goods are identical on the principle outlined in *Meric.*

Cultures of microorganisms for medical and veterinary use; biological preparations for medical purposes; drugs for medical purposes; diagnostic preparations for medical purposes; enzymes for medical purposes; biochemical medicines; vaccines; bioengineering pharmaceutical solutions for use in expanding cells for therapeutic use to patients with blood cancers and other diseases; biopharmaceuticals; cells and biological preparations intended for medical and clinical use, including, blood, stem cells, adult blood cells, immune cells, immunomodulatory cells, umbilical cord cells, umbilical cord blood, and placental tissue; bioengineered cells for use in immunotherapies; diagnostic materials and diagnostic preparations for medical purposes; gene and cell therapy and prophylaxis products; gene and cell therapy prophylaxis vector and vector manufacturing preparations; pharmaceutical preparations in the nature of cell solutions to enable cell expansion for therapeutic purposes; reagents for ex vivo cell processing in particular media suitable for the expansion of cells; cell therapy products, including stem and progenitor cell, adult cell, immune cell, cell therapy and gene therapy products; cells for medical purposes.

34. I find that the holder's above goods overlap with the opponent's "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" services in the First Earlier IR's specification. I find that whilst the holder's class 5 goods and the opponent's class 42 services clearly do not overlap in nature or method of use, I find that the purpose of these goods and services overlap as they all pertain

to medicine, science and biotechnology. I also bear in mind that the opponent's services are not limited in any way and therefore the services could share the same purposes (for example, all be intended for gene and cell therapy etc). The goods and services may be complementary, as the goods and services are important and indispensable to one another, and the user would believe that they originate from the same undertakings. I also find that there would be an overlap in user and trade channels as the same undertakings would not just conduct the research and development, but they would develop and make products from its findings. I therefore consider that the goods and services are similar to a medium degree.

Veterinary preparations.

35. At the hearing, Mr Rose drew my attention to the General Court case *Emcur* T-165-17. He specifically referred to paragraphs 49, and 59 to 65, which accepts that pharmaceutical and veterinary preparations in class 5 are similar to medical and veterinary services in class 44.

36. I note that in the *Emcur* case, the contested registration had class 44 veterinary services, and the earlier mark which was being relied upon had class 5 veterinary products. Therefore a finding between these goods and services is logical, as they both pertain to veterinary medicine (the medicine of animals).

37. At the hearing, Mr Rose submitted that the opponent's pharmaceutical goods are not limited to humans, and therefore this broader category could include veterinary pharmaceuticals. I bear in mind that the term pharmaceuticals covers medicines and drugs that helps treat, cure, prevent and diagnose a disease or illness. I note that these goods can include pain relievers, antibiotics and vaccines, all of which can be made for both humans and animals. While I bear in mind the guidance of *SkyKick* not to apply too liberal an interpretation to the natural meaning of the goods at issue, I consider that the opponent's pharmaceutical preparations in class 5 and pharmaceutical services in class 42, can encompass pharmaceuticals intended for use on both humans and animals. In reaching this view, I bear in mind that the respective goods and services appear in class 5 and class 42, which the NICE

classification identifies as including preparations and services for medical and veterinary purposes.

38. Therefore, taking the above into account, I find that the opponent's "pharmaceutical preparations for treatment of cardiovascular diseases and disorders" in its First Earlier IR, which would include veterinary pharmaceutical preparations for treatment of cardiovascular diseases and disorders, falls within the holder's broader category of "veterinary preparations". The goods are identical on the principle outlined in *Meric.*

Biological preparations for veterinary purposes.

39. I find that the holder's above goods would include preparations that are made from living organisms, such as vaccines and antibiotics, which are used to diagnose, treat or immunize animals. I therefore find that these goods are similar to the opponent's "pharmaceutical preparations for treatment of cardiovascular diseases and disorders" in its First Earlier IR, which, as noted in paragraph 37, would include veterinary pharmaceutical preparations for treatment of cardiovascular diseases and disorders. All of the goods are types of preparations which are used to help treat animals, to improve their health, albeit they will be used to treat different ailments. I find that there will be an overlap in trade channels, as both goods are likely to be made and supplied by the same specialist veterinary preparation undertakings. The goods are also likely to be sold to the same users (vets as well as owners of pets that need medication). The nature and method of use of the goods are likely to differ, and they are neither in competition nor complementary in the way described by the case law cited above. Taking the above into account, I find that the goods are similar to a medium degree.

Class 10

40. In its skeleton argument, all of the holder's class 10 goods are grouped together, and are submitted as being "highly complementary" to the opponent's class 5 goods and class 42 services. Mr Rose relied upon the GC decision *Radecki v OHMI - Vamed (AKTIVAMED)* T-551/13 where at paragraph 35 it accepted that class 5 and 10 goods "fall within the scope of medicine and therefore intended to be used in the

context of therapeutic treatment". This was further supported in the Board of Appeal decision for *Radecki v OHMI - Vamed (AKTIVAMED)* T-551/13, where in paragraph 34 it stated that:

> *The goods 'pharmaceutical and veterinary preparations; sanitary preparations for medical use; dietetic substances adapted for medical use, material for stopping teeth, dental wax', and likewise the goods 'surgical, medical and dental apparatus and instruments' in Class 10 of the opposition trade mark belong to the medical sector and are intended to be used in the course of treatment. They are also complementary to one another in this respect (see judgment of 18 October 2007, T-425/03, 'AMS Advanced Medical Services', paras. 60 and 61). The goods in Class 10 are not purchased by patients, but by experts in the specialist trade, who supply hospitals, for instance, with all their medical products. Alongside these goods, the goods of the goods item applied for can also be obtained there. On the other hand, the goods in question in Class 5 generally come from pharmaceutical companies, whereas the goods in Class 10 are manufactured by medical engineering undertakings. This is due primarily to their varying nature and the different know-how which is required for the development and manufacture thereof. Overall, the Board of Appeal considers these opposing goods to be similar.*

41. I bear this case in mind when comparing the following class 5 and 10 goods.

Veterinary apparatus and instruments.

42. As noted in above, I have found that the opponent's "pharmaceutical preparations for treatment of cardiovascular diseases and disorders" in the First Earlier IRs specification can include veterinary preparations for treatment of cardiovascular diseases and disorders. I also find that the holder's goods could cover veterinary apparatus and instruments that are used for cardiovascular diseases and disorders. On this basis, without any submissions or evidence on the contrary, I find that the goods will likely overlap in trade channels, being made and sold by the same veterinary cardiovascular specialist undertakings. I also find that the users overlap, and to some extent, the purpose of these goods overlap (as they all help with the treatment of

veterinary cardiovascular diseases and disorders). However, the goods do not overlap in nature or method of use, nor do I consider them in competition nor complementary. I therefore find that they are similar to a medium degree.

Diagnostic apparatus for medical purposes; apparatus for use in medical analysis; medical apparatus and instruments; surgical apparatus and instruments.

43. The holder's above goods are not limited by a type of medical condition, and therefore would cover apparatus and instruments for cardiovascular diseases and disorders. On this basis, I find that the same comparison applies in paragraph 42 above. The holder's above goods and the opponent's "pharmaceutical preparations for treatment of cardiovascular diseases and disorders" in the First Earlier IRs specification are similar to a medium degree.

Medical instruments and apparatus for the administration of gene and cell therapy, immunotherapy and immunomodulation and prophylaxis products; surgical and medical apparatus and instruments for gene and cell therapy, immunotherapy and immunomodulation and prophylaxis; radiological apparatus for medical purposes; physiotherapy apparatus; galvanic therapeutic appliances; blood testing apparatus; medical devices for ex vivo cell processing.

44. For the holder's above goods which all pertain to different specialist medical areas, I do not find the above case mentioned in paragraph 40 to be persuasive. The holder's above goods clearly do not overlap in purpose with "pharmaceutical preparations for treatment of cardiovascular diseases and disorders" in the opponent's First Earlier IRs specification. I do not consider that there would be an overlap in trade channels as the opponent's goods would be made and sold by cardiovascular specialist undertakings, whereas the holder's goods would derive from gene and cell therapy specialists, immunotherapy specialists, physiotherapy specialists and radiology specialists. The goods clearly do not overlap in nature or method of use, nor do I consider them in competition nor complementary. I find that the parties' goods are dissimilar.

45. However, the opponent also argues that the above goods will overlap with its class 42 services. I bear in mind that the opponent's term "pharmaceutical, medical,

scientific, biotechnology, and biopharmaceutical research and development" is broad, and would naturally encompass the research and development of pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical apparatus and devices. On this basis, I find that the parties terms would overlap in trade channels, with the same undertakings researching, developing and providing the medical apparatus and devices. I also consider that the goods and services are complementary, as they are important and indispensable to one another and the user will assume that they are provided by the same undertakings. On this basis, I find that the goods and services are similar to no more than a medium degree.

Breast pumps; apparatus, devices and articles for nursing infants.

46. At the hearing, I drew Mr Rose's attention to the holder's above goods, and asked how they were complementary to its class 5 goods and class 42 services. Mr Rose responded that he would "accept that is it a much harder assessment" for him to make, compared to the other goods contained within the holder's class 10 specification.

47. In this case, in accordance with the above case law, I am unable to see how the holder's above goods are complementary to any of the opponent's class 5 goods and class 42 services, which relate to pharmaceutical preparations and the research and development of them. The goods and services clearly do not overlap in nature, method of use, purpose, user or trade channels, and they are neither in competition nor complementary. I find that they are dissimilar.

Class 40

Contract manufacturing of pharmaceuticals, cells and gene therapy reagents, including custom manufacturing services; custom manufacturing services for others in the field of pharmaceuticals, biopharmaceuticals, cellular immunotherapies, health care products and medical products; manufacture of pharmaceuticals and biopharmaceuticals to order and/or specification of others; custom manufacturing of biological tissue, blood, and cells (including stem and progenitor cells, adult cells and immune cells); treatment of materials, namely, pharmaceutical and chemical products

and their components used in the manufacture of pharmaceuticals and biopharmaceuticals and cellular immunotherapies.

48. I find that the holder's above services overlaps with the opponent's "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development", "technical scientific consultation and product development for others in the field of biotechnology and immunology" and "development of pharmaceuticals" in the First Earlier IR's specification.

49. Whilst the opponent's services pertains to the development of pharmaceuticals, biopharmaceuticals, and cells, and the holder's services pertains to the manufacture of pharmaceuticals, biopharmaceuticals, and cells, I consider that these services are complementary, being important and indispensable to one another, and that the user of these services would believe that they derive from the same undertaking. I also find that there would be an overlap in trade channels as the same companies would develop and manufacture pharmaceuticals, biopharmaceuticals, and cells for use in immunology. I find that there is some overlap in purpose, which is to create and distribute pharmaceuticals, biopharmaceuticals, and cells for use in immunology. I consider that these services are similar to between a medium and high degree.

Class 42

Development of pharmaceuticals; providing medical and scientific research information in the field of pharmaceuticals and clinical trials; research and development of pharmaceutical preparations and substances for use in clinical trials; technical scientific consultation and product development for others in the field of biotechnology and immunology; research and development in the field of computational biology, bioinformatics, and genomics.

50. All of the above terms appear identically in the holder's specification and the First Earlier IRs specification.

Biopharmaceutical and pharmaceutical development and research and evaluation services in the field of cell based therapeutics and gene therapy for the treatment of

disease, injuries and disorders; scientific, medical and clinical research consultation services and scientific, medical and clinical research and development services, including in the field of haematology, immunology, cancer research, developmental biology and life sciences, biotechnology, medical technology, cell culture, tissue engineering, genetic engineering, regenerative medicine, immunotherapy and immunomodulation; pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development; scientific research; pre-clinical and clinical trials.

51. The holder's above services falls within the opponent's term "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" in the First Earlier IRs specification. They are identical on the principle outlined in *Meric.*

Research and development of new products for others.

52. I find that the holder's above term is extremely broad and would therefore encompass the opponent's "development of pharmaceuticals" and "research and development of pharmaceutical preparations and substances for use in clinical trials" in its First Earlier IRs specification. I find that the services are, therefore, identical on the principle outlined in *Meric.*

Cloud computing.

53. In its submissions in lieu, the opponent states that the holder's above services are similar to its class 9 software goods in the Second Earlier Marks specification, and its class 42 computer software services in the First Earlier IRs specification.

54. I note that cloud computing is the delivery of computing services over the internet, which includes providing storage, database and software services via the internet. I therefore find that it is a very broad term, and that it would encompass the opponent's "providing on-line non-downloadable computer software for collecting, analyzing, reporting, and tracking data and information in the fields of genetics, genomics, biology, biochemistry" services in the First Earlier IRs class 42 specification. I find that

they are identical on the principle outlined in *Meric.* However, if I am wrong in this finding, the services will overlap in trade channels, nature, purpose, method of use and user, making them similar to a high degree.

Biotechnology laboratory services; medical and scientific laboratory services; scientific laboratory services.

55. I find that the holder's above services overlap in trade channels with the opponent's "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" services in the First Earlier IRs specification, as all the of the services will be conducted by laboratories. I also find that the services are complementary, as they are important and indispensable to one another (the holder's laboratory services encompasses testing and experiments conducted in a controlled environment, which is essential for the research and development of the opponent's aforementioned fields), and the user will assume that the services come from the same undertaking. The purpose of these services overlap, that being, they are all used for medical and scientific purposes. I therefore find that the services are similar to a high degree.

Analysis of biological samples; chemical analysis; biological research; bacteriological research; material testing.

56. I find that the holder's above services overlap in trade channels and to some extent in nature with the opponent's "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" services in the First Earlier IRs specification, as, firstly all the of the services will be conducted by laboratories, and secondly, the opponent's research and development services will likely involve some degree of analysis. I also find that the services are important and indispensable to one another, with the holder's services being conducted in order to facilitate the opponent's research and development services. The user would also believe these services are provided by the same undertaking. Consequently, I find that they are complementary. Therefore, taking all of the above into account, I consider that the services are similar to a medium degree.

Industrial design.

57. In its skeleton argument, the opponent stated that all of the holder's services (apart from cloud computing) are encompassed within its class 42 "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" services in the First Earlier IRs specification. However, I do not consider that industrial design (that being the practice of designing objects for manufacture) falls within the opponent's aforementioned term. I find that the nature, function and purpose of these services clearly differ. Without any evidence before me, I do not consider that the services would overlap in trade channels. The services are clearly neither in competition or complementary in the way described by the case law cited above. If there was an overlap in user, this is not enough on its own to establish similarity. Taking all of the above into account, I find that the services are dissimilar.

Conducting technical project studies.

58. The holder's above services would involve the evaluation of whether a project is feasible, and working out how the project can be successfully implemented. Without any evidence before me, I do not consider that these services overlap with the opponent's class 42 "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" services in the First Earlier IRs specification. The services would not overlap in trade channels (as I find the holder's services would be conducted by project management specialists). The parties' services clearly do not overlap in nature, method of use or purpose, and they are neither in competition or complementary in the way described by the case law cited above. Even if there was an overlap in user, this is not enough on its own to establish similarity. I find that the parties' services are dissimilar.

Backup Class 42 specification

59. The holder provided a "backup specification" for its class 42 services, which are contained in paragraph 11 above. I find that its "biotechnology laboratory services relating to viral vector design, peptide-coated oncolytic viruses, and immune activation strategies" are highly similar to the opponent's "pharmaceutical, medical, scientific,

biotechnology, and biopharmaceutical research and development" services in the First Earlier IRs specification, for the same reasons as stated in paragraph 55 above. I also find that all of the holder's remaining terms in its backup specification fall within the opponent's class 42 "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" services in the First Earlier IRs specification, making them identical on the principle outlined in *Meric.*

60. As the "back up" specification does not put the holder in a better position, it is therefore dismissed, and I will not consider it any further.

Class 44

Medical services, including regenerative treatment services; medical diagnostic testing, monitoring and reporting services; medical evaluation of immuno-oncological disorders, cancer, diabetes, respiratory, heart, neurological and auto immune disorders; providing health and medical information about medical disorders and their diagnosis, prevention and treatment; cell therapy and gene therapy services.

61. I bear in mind that the word "including" does not limit the preceding term but is used to provide examples of goods and services falling within the wider category. I also note that in its skeleton argument, the opponent quotes EUIPO opposition case B 2 911 447, specifically:

> *"The contested scientific research for medical purposes; consultancy in the fields of biotechnology, pharmaceutical research and development, laboratory testing and pharmacogenetics and the contested scientific analysis; research, testing and analysis that can also be provided for medical purposes are similar to the earlier medical services, in particular services of a medical-surgical hospital because they are complementary, they coincide in distribution channels, in end user and in provider."*

62. Whilst I am not bound by EUIPO decisions, I do find the above reasoning to be persuasive.

63. I find that the holder's medical services, medical information services, and cell therapy and gene therapy services will overlap in trade channels with the opponent's "pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development" and "providing medical and scientific research information in the field of pharmaceuticals and clinical trials" in the First Earlier IR's specification. The services can both be provided by hospitals, and are complementary in the way described by the case law cited above. I also note that the services are all medical in nature and the end purpose of the services is to improve the health of patients. I find that the services are similar to between a medium and high degree.

64. It is a prerequisite of section 5(2)(b) that the goods and services be identical or at least similar. The opposition will, therefore, fail in respect of the goods and services that I have found to be dissimilar.[1]

65. The opposition under section 5(2)(b) fails for the following goods and services:

Class 10 Breast pumps; apparatus, devices and articles for nursing infants.

Class 42 Industrial design; conducting technical project studies.

The average consumer and the nature of the purchasing act

66. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods and services. I must then determine the manner in which the goods and services are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the

[1] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

67. In *Olimp Laboratories sp. z o.o. v EUIPO*, Case T-817/19, EU:T:2021:41, the GC considered the average consumer for and level of attention which would be paid in the selection of pharmaceutical and medical products in class 5. It said:

"39 Where the goods in question are medicinal or pharmaceutical products, the relevant public is composed of medical professionals, on the one hand, and patients, as end users of those goods, on the other (see judgment of 15 December 2010, *Novartis* v *OHIM – Sanochemia Pharmazeutika (TOLPOSAN)*, T-331/09, EU:T:2010:520, paragraph 21 and the case-law cited; judgment of 5 October 2017, *Forest Pharma* v *EUIPO – Ipsen Pharma (COLINEB)*, T-36/17, not published, EU:T:2017:690, paragraph 49).

40 Moreover, it is apparent from case-law that, first, medical professionals display a high degree of attentiveness when prescribing medicinal products and, second, with regard to end consumers, in cases where pharmaceutical products are sold without prescription, it must be assumed that those goods will be of concern to consumers, who are deemed to be reasonably well informed and reasonably observant and circumspect where those goods affect their state of health, and that these consumers are less likely to confuse different versions of such goods. Furthermore, even assuming that a medical prescription is mandatory, consumers are likely to demonstrate a high level of attentiveness upon prescription of the goods at issue in the light of the fact that those goods are pharmaceutical products. Thus, **medicinal products, whether or not issued on prescription, can be regarded as receiving a heightened level of attentiveness on the part of consumers who are normally well informed and reasonably observant and circumspect** (see judgment of 15 December 2010, *TOLPOSAN*, T-331/09, EU:T:2010:520, paragraph 26 and the case-law cited).

41 […]

> 42 In the present case, having regard to the nature of the goods concerned, namely medical or pharmaceutical products in Class 5, the Board of Appeal acted correctly in finding in paragraphs 18 to 21 of the contested decision – which, moreover, is not disputed by the applicant – that, in essence, the relevant public was made up of medical professionals and pharmacists and consumers belonging to the general public with a higher than average degree of attentiveness."

68. The average consumer for the goods and services will include members of the general public and medical professionals (human and veterinary). The cost of the goods and services in question is likely to vary. For the general public, the cost of the goods via prescription, or over-the-counter, is likely to be relatively low. I also note that providing health and medical information could be free, or low in cost. However, for medical professionals, the purchase of the goods and services can be much more expensive. I also note that for both consumers, the goods will be purchased relatively frequently. The average consumer will also take various factors into consideration such as the cost, formulation and ingredients, dosage, potential side effects, the efficacy of the goods or services for treating an illness or condition and the reputational standing of the provider. Furthermore, for all of the goods and services that are in relation to improving the end user's health, (being all of the terms apart from "cloud computing"), I consider that the level of attention paid during the purchasing process will be high. For cloud computing, the level of attention paid will be medium.

69. As highlighted above, the pharmaceutical preparation goods are likely to be obtained by prescription by the general public at general practices or pharmacies, or pet stores and veterinary centres. However, medical professionals will obtain the goods directly from the pharmaceutical suppliers and their online equivalents, with the veterinary apparatus and instruments being purchased from specialist suppliers. The medical services are likely to be obtained from the premises of medical body such as a hospital or a medical laboratory. Alternatively, the goods and services may be purchased following perusal of signage on physical premises, advertisements or inspection of a catalogue/brochure. Visual considerations are, therefore, likely to dominate the selection process. However, I do not discount that there will also be an

aural component to the purchase given that some of the goods could be verbally ordered or requested if stocked behind a counter. Moreover, I note that there may be an aural component to the purchase of the services through advice sought from a medical professional or sales assistant.

Comparison of the trade marks

70. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU stated, at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

> "… it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

71. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

72. The respective trade marks are shown below:

Opponent's trade marks	Holder's IR
VALO	**VALOTX**

73. The opponent's First Earlier IR and Second Earlier Mark consist of the word "VALO". There are no other elements to contribute to the overall impression of the mark which lies in the word itself.

74. The holder's IR consists of the word "VALOTX". There are no other elements to contribute to the overall impression of the mark which lies in the word itself.

75. Visually, the opponent's marks are wholly contained at the beginning of the holder's IR, a position to which the average consumer usually pays more attention.[2] However, the holder's IR ends in the letters TX. These act as visual points of difference. I also bear in mind that there is no special test which applies to the comparison of short marks, the visual similarities must be assessed in the normal way.[3] Nevertheless, it is clear that the addition of two letters to a mark which is only four letters long is clearly more significant than the addition of two letters to a longer mark. Therefore, taking the above into account, I find that the marks are visually similar to a medium degree.

76. Aurally, both the opponent and holder submit in their skeleton arguments that the opponent's marks are likely to be pronounced as VAY-LOW. At the hearing, Mr Rose highlighted that the holder's submissions on the aural pronunciation of its mark in its counterstatement and skeleton argument were different. In its counterstatement, the holder stated that "the puzzling difficult double consonant formation of the letters "TX" at the end of the mark – requiring each letter to be pronounced separately – "tee" and then "ex" and being inventive and unusual". However, in its skeleton argument, the holder submitted that its mark will be pronounced as VALLOT-EX. At the hearing, Ms Burchell stated as follows:

> "Since the original Statement of Grounds was written, I have had further discussions with the instructing attorney and understand that, as is actually referred to in the skeleton argument of the Opponent at 7.3, an invisible letter is often inserted because the "T" and the "X" are so difficult to pronounce, so

[2] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02
[3] *Bosco Brands UK Limited v Robert Bosch GmbH*, Case BL- O/301/20, paragraph 44

that it is often referred to, as would logically be, "vallot-ex" or "vallot-ix". It is not "vay-low" so much for the [holders], it is "vallot-ex" or "vallot-ix", **or it could be "vay-low-tee-ex", I guess.** I just wanted to mention that that was also referenced in the skeleton, as I mentioned, of the Opponents." **(my emphasis)**

77. In his submissions in reply, Mr Rose stated that:

"As far as the pronunciation is concerned, I understood that my learned friend was basically saying there were various ways that this mark could be pronounced, and that may be correct. Obviously, we are looking at the average consumer here, not just anybody. **Regardless, she did accept quite clearly that one of the ways it would be pronounced is "vay-low-tee-ex", and that is good enough for me.** As long as the average consumer, or some of the average consumers, that come across this mark pronounce it "vay-low-tee-ex", that is consistent with my primary case, so I welcome that." **(my emphasis)**

78. Whilst the holder has argued that there may be other ways that its IR can be pronounced, it is also clear that in both its counterstatement and at the hearing, that the holder admits that its IR can be pronounced as VAY-LOW-TEE-EX. This pronunciation is also argued by the opponent. On the basis that the parties are not in dispute about this pronunciation, I find that this is no longer a contentious point. I also find that, on the basis that the parties' marks overlap in the beginning 2 syllables, with the third and fourth syllable in the holder's mark creating an aural point of difference, the marks are aurally similar to a medium degree.

79. Conceptually, Ms Burchell submitted that the opponent's marks would be recognised as the French word for "bike". However, I bear in mind that my assessment must be made from the perspective of the UK average consumer. I also accept that whilst there may be some individuals in the UK who may speak and understand French, without any evidence before me, I do not consider that they will amount to a significant proportion of average consumers in the UK. On this basis, I do not find that significant proportion of UK average consumers would know or assign the French meaning to the word VALO.

80. I bear in mind that **exhibit DR3** contains an Oxford English Dictionary print out which shows that "valo" means "the relative worth, usefulness, or importance of a thing or (occasionally) a person". This exhibit also contains a printout from Wikipedia on its definition, however, this is a platform that allows entries to be updated by the public, and therefore, the information from it should be approached with a certain degree of caution. Nonetheless, at the hearing, Mr Rose stated that the definitions contained in **exhibit DR3** would not be widely known, and that they are obscure. I agree a significant proportion of the average consumer would not know this definition, and therefore, the opponent's marks will be perceived as invented words with no conceptual meaning.

81. **Exhibit DR2** of Mr Rose's statement also contains printouts containing the definition of the abbreviation of "Tx". I note that this exhibit contains:

1. A printout from merriam-webster.com, which is dated 12 May 2017. It states that the medical definition of Tx is "treatment".
2. A printout from rescourcepharm.com dated 4 December 2019 which shows a table of medical abbreviations and their meaning, including "Tx." which means "treatment".
3. A printout from openmd.com dated 15 January 2021, which again shows a list of medical abbreviations, including "Tx" standing for treatment.
4. A printout from medical-dictionary.thefreedictionary.com dated 17 October 2021. It shows "Tx" as being an abbreviation for treatment. It also shows "TX", the capitalised version, as being the "abbreviation for individual thromboxanes, designated by capital letters with subscripts indicating structural features". Under another section it lists TX as meaning 1) thromboxane, 2) treatment and 3) traction.
5. A printout from acronymfinder.com which states that "TX stands for treatment (medical)". However, I also note that it states it has "10 other meanings of TX in its Acronym Attic", but these are not provided in the evidence.

82. Firstly, I note that all of the above printouts are from .com websites which means it can be accessed all over the world. I am therefore unable to determine whether the abbreviation of TX is specifically known to UK professionals or consumers. Secondly,

the majority of the printouts assign the meaning of treatment to the upper-case letter “T” followed by a lower-case letter “x”. I also bear in mind that the opponent has provided evidence from the holder’s website, which was referred to at the hearing, contained in **exhibit DR1**, which shows that on the holder’s website, the IR is presented as “ValoTx” as follows:

83. At the hearing, Mr Rose also drew my attention to the following part of the holder’s website:

84. He stated at the hearing that "Valo Therapeutics" implicitly suggests that Valo Therapeutics when abbreviated, is ValoTx, and therefore the "Tx" means therapeutics or, as he submitted in his evidence, a treatment. He also stated that treatment and therapeutics are “pretty synonymous terms”.

85. Ms Burchell also made submissions on the meaning of “Tx”, and for the sake of completeness, I include the following dialogue from the hearing:

> *MS. BURCHELL: I would also like to reference at this point the letters "TX" and my learned friend's discussion about his belief that it comes from the word therapeutics; "TX". Yes, I can imagine that it might, I do not know the answer, but I would say that that also homes in on the average consumer and who the average consumer would be in this case. That would be somebody very*

specialised, in a highly professional field, connected with therapeutic products and their administration and use, so people working in hospitals, who would use great care and would know exactly what it is that they were intending to use. It is a very specialised market.

THE HEARING OFFICER: Sorry, can I just confirm, you are saying that the "TX" element might be recognised as deriving from the word therapeutics to the specialised consumer who works in hospitals, et cetera?

MS. BURCHELL: ***I was just drawing that thread across from the comment that "TX" could mean that and it could come from the [holder's] name, in a sense. I do not know whether it does or not, but I think if it is something that is commonly used for "therapeutics" then, yes, that reference is who the user is and that is a professional in the medical field, probably, or the scientific and development medical field****.* **(my emphasis)**

86. Based on what Ms Burchell said before me, I do not find that the above amounts to a clear admission that "Tx" is known to a significant proportion of average UK consumers. Furthermore, I find that the evidence provided by the opponent is not compelling enough for me to find that "Tx" or "TX" would be known to a significant proportion of average UK consumers, including professionals and the general public, as meaning "treatment" or "therapeutics". I do not have any evidence before me showing the use of "Tx" in practice in the UK medical field, or by UK medical professionals, which may have been persuasive. Instead, I find that the average consumer would not assign any conceptual meaning to the letters "Tx", since these letters may stand for any number of word combinations. The letters on their own would not convey a particular concept over and above their existence as letters in the English alphabet to the UK average consumer.

87. Nonetheless, my comparison must be of the marks as registered. Therefore, the above evidence and submissions about the way in which the holder uses its IR in practice does not assist the opponent. However, I bear in mind that all of the parties' marks are word marks and therefore, normal and fair use of them means that they may

be used in any standard typeface, which covers all upper or lower-case lettering, as well as a combination of the two.[4] Therefore the presentation of the holder's IR as "ValoTx" or "ValoTX" could arguably be encompassed by fair use.

88. I bear in mind the case of *BUILDXACT (word mark)* BL O/0934/23 where Mr Philip Johnson sitting as the Appointed person considered the issue of notional use:

> "35. This brings me to Mr Malynicz's suggestion that using BUlLD**XACT** is not using the mark BUILDXACT.
>
> 36. It is well-established that a word mark is granted protection in relation to every typeface and font: T-24/17 *La Superquimica v EUIPO*, EU:T:2018:668, [39]; *DREAMERS CLUB* [2019] RPC 16, [11] and [12]; *MR HERON* (O/954/22), [15]. **However, slightly different considerations apply to notional and fair use than to the scope of protection. If the use of a word with particular letters emphasised is a notional and fair use of a mark then such emphasis is objectively notional and fair. In other words, it would be such a use even if the Respondent had not done it in the marketplace. Such a finding would open it up to any party in any proceedings to suggest particular letters within a word mark are emboldened so that common elements stand out. *This would be quite wrong*.**
>
> 37. Accordingly, I think the Hearing Officer adopted the correct approach in his analysis (Decision, [60]) and the assessment was right to use the contested mark BUILDXACT and not BUILD**XACT** (even though this form was found in certain promotional material). I therefore dismiss the fourth and fifth ground of appeal." **(My emphasis)**

89. The above case pertains to the use of bolding certain elements of word marks. However, I find that this approach would also clearly apply to using letters in upper

[4] I also bear in mind the case of *Mr Heron* BL O/954/22 where "at paragraph 15" Mr Iain Purvis KC sitting as the Appointed Person stated that the monopoly of a word mark is not limited by any features such as fonts or capitalisation appearing on the Register, listing MR HERON, mr heron, Mr Heron, Mr HERon, and Mr HERON (in a stylised typeface) as all being identical to the word mark "mr heron".

and lower-case, in a way which would allow you to distinguish between certain elements within a word mark.

90. While the holder's mark could be fairly used as "ValoTx" (and has in practice, albeit this is not a factor that can be taken into consideration), this is one of many combinations that would be open to the holder when using its mark, such as those discussed in *Mr Heron*. However, I agree with Mr Johnson that it would be *quite wrong* to undertake and base my comparison of the marks only taking into account the ways in which the holder's mark could be presented if it was notionally and fairly used in a way which allows the *common elements to stand out* between the parties marks. I also find that this approach would be artificially dissecting a mark in a way that would unfairly benefit the opponent.

91. I therefore consider that taking all of the above into account, while word marks can be used in a variety of ways (in different combinations of upper and lower-case, as well as in different standard typefaces), to base my assessment on anything but how the marks are registered would be artificial.

92. In this case, the holder's mark, as registered is "VALOTX". For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] ECR I-643; [2006] E.T.M.R 29. Consequently, I consider that the average consumer will see this word as invented, and therefore does not evoke any meaning. I also bear in mind that this invented word does not contain any recognisable ordinary dictionary words which the average consumer could see, including the "VALO" and "TX" elements. This is supported by my findings above where I have found that the word "VALO" would be seen as an invented word with no meaning and the "TX" element will also not be assigned any meaning, it will just be seen as a combination of two letters. Therefore, as the elements are not capable of immediate grasp by the average consumer, I do not consider that they will be seen within the holder's IR. Consequently, on the basis that both of the parties marks will be perceived as invented words with no conceptual meanings, they are conceptually neutral.

Distinctive character of the earlier trade mark

93. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

> "22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C108/97 and C-109/97 Windsurfing Chiemsee v Huber and Attenberger [1999] ECR 1-2779, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promotion of the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see Windsurfing Chiemsee, paragraph 51)."

94. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

95. Before I proceed to assess the inherent distinctiveness of the opponent's earlier marks, I bear in mind that at the hearing, Ms Burchell submitted that there are "many VALO marks" that coexist on the register, with there being "around 33" of these marks

in classes 1 and 5, 77 VALO marks in class 9 and 64 VALO marks in class 42. She invited me to take note of these marks on the UK register, and apologised for not raising this before the hearing as it has "not occurred until recently".

96. In *Zero Industry Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)*, Case T-400/06 in which the GC stated that:

> "73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '… there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T-135/04 GfK v OHIM – BUS(Online Bus) [2005] ECR II-4865, paragraph 68, and Case T-29/04 Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH) [2005] ECR II-5309, paragraph 71)."

97. The mere fact that there are multiple marks on the Register (not that I have any evidence before me to support this notion) which contains the word "VALO" for classes 1, 5, 9 and 42 in the UK is not relevant to my assessment. I have no evidence of how these companies have used the word "VALO" in practice or that customers have become accustomed to differentiating between them. Consequently, I do have any evidence to show the distinctive character of the word "VALO" has been weakened because of its frequent use in the fields concerned. This submission, therefore, does not assist the holder.

98. As the opponent has not filed any evidence to show that the distinctiveness of its marks have been enhanced through use, I only have the inherent position to consider. As noted above, while **exhibit DR3** contains definition of the word "VALO", I find that a significant proportion of UK average consumers would not know these definitions. I

therefore find that the opponent's "VALO" marks will be perceived as invented words with no conceptual meaning. On this basis, the First Earlier IR and the Second Earlier Mark are inherently distinctive to a high degree.

Likelihood of confusion

99. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

100. The following factors must be considered to determine if a likelihood of confusion can be established:

- I have found the marks to be visually similar to a medium degree.
- I have found the marks to be aurally similar to a medium degree.
- I have found the marks to be conceptually neutral.
- I have found the opponent's First Earlier IR and Second Earlier Mark to be inherently distinctive to a high degree.
- I have identified the average consumer as the general public and medical professionals (human and veterinary), who will select the goods and services primarily by visual means, although I do not discount an aural component.

- I have concluded that a high degree of attention will be paid during the purchasing process for all of the goods and services which improve the user's end health. For the "cloud computing" services, a medium degree of attention will be paid.
- The parties' goods and services range from being identical to similar to a low degree.

101. Taking all of the factors listed in paragraph 100 into account, even bearing in mind the principle of imperfect recollection, I am satisfied that the parties' marks are unlikely to be mistakenly recalled as each other. Notwithstanding the high level of inherent distinctive character possessed by the opponent's marks, I do not consider that a consumer paying a medium or high degree of attention during the purchasing process will overlook the letters "Tx"/"TX" at the end of the holder's IR. Moreover, I bear in mind that where the length of the parties marks are short, the differences are more likely to be noticed. Consequently, I do not consider there to be a likelihood of direct confusion between the parties marks.

102. It now falls to me to consider the likelihood of indirect confusion. Indirect confusion was described in the following terms by Iain Purvis Q.C. sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10:

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: "The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

> (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
>
> (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
>
> (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)".

103. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor Q.C. (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion.

104. Mr Purvis QC *in L.A Sugar Limited* sets out that there are three main categories of indirect confusion and that indirect confusion 'tends' to fall in one of them (paragraphs 16 & 17). I also bear in mind that the examples set out by Mr Purvis are not exhaustive. However, having noticed that the competing trade marks are different, I see no reason why the average consumer would assume that they come from the same or economically linked undertakings. I do not consider that the average consumer, paying a medium or high degree of attention during the purchasing

process, would think the opponent's marks were connected with the holder or vice versa. As highlighted above, the consumer normally perceives a trade mark as a whole, does not artificially dissect it, or proceed to analyse its various details. In this instance, I do not consider that the average consumer would see the opponent's VALO marks at the beginning of the holder's VALOTX IR. The holder's IR as registered will simply be seen, as a whole, as an invented word with no meaning. I also do not consider that the invented word marks are natural variants or brand extensions of each other. Therefore, taking all of the above into account, I do not consider there to be a likelihood of indirect confusion.

CONCLUSION

105. The opposition is unsuccessful, and the request for protection in the UK may be granted.

COSTS

106. The holder has been successful and is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023. In the circumstances, I award the holder the sum of £1,200 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the Notice of opposition and preparing a counterstatement	£250
Considering the opponent's evidence and preparation for and attendance at the hearing	£950
Total	**£1,200**

107. I therefore order Valo Health, LLC to pay Valo Therapeutics Oy the sum of £1,200. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 12th day of September 2025

L FAYTER

For the Registrar

ANNEX 1

Class 1

Chemical and biological agents for scientific and research use; antioxidants for use in the manufacture of pharmaceuticals; animal albumen [raw material]; collagen for industrial purposes; antioxidants for use in manufacture; biochemical catalysts; chemical preparations for scientific purposes, other than for medical or veterinary use; protein [raw material]; preparations of microorganisms, other than for medical and veterinary use; biological preparations, other than for medical or veterinary purposes; diagnostic preparations, other than for medical or veterinary purposes.

Class 5

Biopharmaceutical and pharmaceutical preparations for treatment of autoimmune diseases, cancer, cardiovascular diseases and disorders, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders; therapeutic agents for the treatment of autoimmune diseases, cancer, cardiovascular diseases and disorders, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders; veterinary preparations; biological preparations for veterinary purposes; cultures of microorganisms for medical and veterinary use; biological preparations for medical purposes; drugs for medical purposes; diagnostic preparations for medical purposes; enzymes for medical purposes; biochemical medicines; vaccines; bioengineering pharmaceutical solutions for use in expanding cells for therapeutic use to patients with blood cancers and other diseases; biopharmaceuticals; cells and biological preparations intended for medical and clinical use, including, blood, stem cells, adult blood cells, immune cells, immunomodulatory cells, umbilical cord cells, umbilical cord blood, and placental tissue; bioengineered cells for use in immunotherapies; diagnostic materials and diagnostic preparations for medical purposes; gene and cell therapy and prophylaxis products; gene and cell therapy prophylaxis vector and vector manufacturing preparations; pharmaceutical preparations and products; pharmaceutical preparations in the nature of cell solutions to enable cell expansion for

therapeutic purposes; reagents for ex vivo cell processing in particular media suitable for the expansion of cells; cell therapy products, including stem and progenitor cell, adult cell, immune cell, cell therapy and gene therapy products; cells for medical purposes.

Class 10

Medical instruments and apparatus for the administration of gene and cell therapy, immunotherapy and immunomodulation and prophylaxis products; surgical and medical apparatus and instruments for gene and cell therapy, immunotherapy and immunomodulation and prophylaxis; veterinary apparatus and instruments; radiological apparatus for medical purposes; diagnostic apparatus for medical purposes; apparatus for use in medical analysis; medical apparatus and instruments; surgical apparatus and instruments; breast pumps; apparatus, devices and articles for nursing infants; physiotherapy apparatus; galvanic therapeutic appliances; blood testing apparatus; medical devices for ex vivo cell processing.

Class 40

Contract manufacturing of pharmaceuticals, cells and gene therapy reagents, including custom manufacturing services; custom manufacturing services for others in the field of pharmaceuticals, biopharmaceuticals, cellular immunotherapies, health care products and medical products; manufacture of pharmaceuticals and biopharmaceuticals to order and/or specification of others; custom manufacturing of biological tissue, blood, and cells (including stem and progenitor cells, adult cells and immune cells); treatment of materials, namely, pharmaceutical and chemical products and their components used in the manufacture of pharmaceuticals and biopharmaceuticals and cellular immunotherapies.

Class 42

Analysis of biological samples; biopharmaceutical and pharmaceutical development and research and evaluation services in the field of cell based therapeutics and gene therapy for the treatment of disease, injuries and disorders; biotechnology laboratory services; medical and scientific laboratory services; scientific, medical and clinical research consultation services and scientific, medical and clinical research and development services, including in the field of haematology, immunology, cancer

research, developmental biology and life sciences, biotechnology, medical technology, cell culture, tissue engineering, genetic engineering, regenerative medicine, immunotherapy and immunomodulation; pre-clinical and clinical trials; pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development; technical scientific consultation and product development for others in the field of biotechnology and immunology; development of pharmaceuticals; research and development in the field of computational biology, bioinformatics, and genomics; providing medical and scientific research information in the field of pharmaceuticals and clinical trials; research and development of pharmaceutical preparations and substances for use in clinical trials; cloud computing; chemical analysis; industrial design; conducting technical project studies; research and development of new products for others; material testing; biological research; scientific laboratory services; scientific research; bacteriological research.

Class 44

Medical services, including regenerative treatment services; medical diagnostic testing, monitoring and reporting services; medical evaluation of immuno-oncological disorders, cancer, diabetes, respiratory, heart, neurological and auto immune disorders; providing health and medical information about medical disorders and their diagnosis, prevention and treatment; cell therapy and gene therapy services.

ANNEX 2

The First Earlier IR

Class 5

Pharmaceutical preparations for treatment of cardiovascular diseases and disorders, and therapeutic agents for the treatment of cardiovascular diseases and disorders.

Class 42

Pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development; technical scientific consultation and product development for others in the field of biotechnology and immunology; development of pharmaceuticals; research and development in the field of computational biology, bioinformatics, and genomics; providing medical and scientific research information in the field of pharmaceuticals and clinical trials; research and development of pharmaceutical preparations and substances for use in clinical trials; providing on-line non-downloadable computer software for genetic assessment and identification of cancer, diseases, health status and metrics, and gene mutations for scientific, medical, diagnostic, treatment, and research purposes; providing on-line non-downloadable computer software for collecting, analyzing, reporting, and tracking data and information in the fields of genetics, genomics, biology, biochemistry.

The Second Earlier Mark

Class 1

Chemical and biological agents for scientific and research use.

Class 5

Pharmaceutical preparations for treatment of autoimmune diseases, cancer, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders and therapeutic agents for the treatment of autoimmune diseases, cancer, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders.

Class 9

Downloadable computer software for genetic assessment and identification of cancer, diseases, health status and metrics, and gene mutations for scientific, medical, diagnostic, treatment, and research purposes; downloadable computer software for collecting, analyzing, reporting, and tracking data and information in the fields of genetics, genomics, biology, biochemistry.

ANNEX 3

Class	Applicant's goods and services	Opponent's goods and services
1	Chemical and biological agents for scientific and research use; antioxidants for use in the manufacture of pharmaceuticals; animal albumen [raw material]; collagen for industrial purposes; antioxidants for use in manufacture; biochemical catalysts; chemical preparations for scientific purposes, other than for medical or veterinary use; protein [raw material]; preparations of microorganisms, other than for medical and veterinary use; biological preparations, other than for medical or veterinary purposes; diagnostic preparations, other than for medical or veterinary purposes.	
5	Biopharmaceutical and pharmaceutical preparations for treatment of autoimmune diseases, cancer, cardiovascular diseases and disorders, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders; therapeutic agents for the treatment of autoimmune diseases, cancer, cardiovascular diseases and disorders, endocrine diseases and disorders, gastrointestinal diseases and disorders, infectious diseases, psychiatric and psychological diseases and disorders, neurological diseases and disorders, rare diseases, and respiratory diseases and disorders; veterinary preparations; biological preparations for veterinary purposes; cultures of microorganisms for medical and veterinary use; biological preparations for medical purposes; drugs for medical purposes; diagnostic preparations for	Pharmaceutical preparations for treatment of cardiovascular diseases and disorders, and therapeutic agents for the treatment of cardiovascular diseases and disorders.

	medical purposes; enzymes for medical purposes; biochemical medicines; vaccines; bioengineering pharmaceutical solutions for use in expanding cells for therapeutic use to patients with blood cancers and other diseases; biopharmaceuticals; cells and biological preparations intended for medical and clinical use, including, blood, stem cells, adult blood cells, immune cells, immunomodulatory cells, umbilical cord cells, umbilical cord blood, and placental tissue; bioengineered cells for use in immunotherapies; diagnostic materials and diagnostic preparations for medical purposes; gene and cell therapy and prophylaxis products; gene and cell therapy prophylaxis vector and vector manufacturing preparations; pharmaceutical preparations and products; pharmaceutical preparations in the nature of cell solutions to enable cell expansion for therapeutic purposes; reagents for ex vivo cell processing in particular media suitable for the expansion of cells; cell therapy products, including stem and progenitor cell, adult cell, immune cell, cell therapy and gene therapy products; cells for medical purposes.	
10	Medical instruments and apparatus for the administration of gene and cell therapy, immunotherapy and immunomodulation and prophylaxis products; surgical and medical apparatus and instruments for gene and cell therapy, immunotherapy and immunomodulation and prophylaxis; veterinary apparatus and instruments; radiological apparatus for medical purposes; diagnostic apparatus for medical purposes; apparatus for use in medical analysis; medical apparatus and instruments; surgical apparatus and	

	instruments; breast pumps; apparatus, devices and articles for nursing infants; physiotherapy apparatus; galvanic therapeutic appliances; blood testing apparatus; medical devices for ex vivo cell processing.	
40	Contract manufacturing of pharmaceuticals, cells and gene therapy reagents, including custom manufacturing services; custom manufacturing services for others in the field of pharmaceuticals, biopharmaceuticals, cellular immunotherapies, health care products and medical products; manufacture of pharmaceuticals and biopharmaceuticals to order and/or specification of others; custom manufacturing of biological tissue, blood, and cells (including stem and progenitor cells, adult cells and immune cells); treatment of materials, namely, pharmaceutical and chemical products and their components used in the manufacture of pharmaceuticals and biopharmaceuticals and cellular immunotherapies.	
42	Analysis of biological samples; biopharmaceutical and pharmaceutical development and research and evaluation services in the field of cell based therapeutics and gene therapy for the treatment of disease, injuries and disorders; biotechnology laboratory services; medical and scientific laboratory services; scientific, medical and clinical research consultation services and scientific, medical and clinical research and development services, including in the field of haematology, immunology, cancer research, developmental biology and life sciences, biotechnology, medical technology, cell culture, tissue engineering, genetic engineering, regenerative medicine, immunotherapy	Pharmaceutical, medical, scientifc, biotechnology, and biopharmaceutical research and development; technical scientifc consultation and product development for others in the feld of biotechnology and immunology; development of pharmaceuticals research and development in the feld of computational biology, bioinformatics, and genomics; providing medical and scientifc research information in

	and immunomodulation; pre-clinical and clinical trials; pharmaceutical, medical, scientific, biotechnology, and biopharmaceutical research and development; technical scientific consultation and product development for others in the field of biotechnology and immunology; development of pharmaceuticals; research and development in the field of computational biology, bioinformatics, and genomics; providing medical and scientific research information in the field of pharmaceuticals and clinical trials; research and development of pharmaceutical preparations and substances for use in clinical trials; cloud computing; chemical analysis; industrial design; conducting technical project studies; research and development of new products for others; material testing; biological research; scientific laboratory services; scientific research; bacteriological research.	the feld of pharmaceuticals and clinical trials; research and development of pharmaceutical preparations and substances for use in clinical trials; providing on-line non-downloadable computer software for genetic assessment and identifcation of cancer, diseases, health status and metrics, and gene mutations for scientifc, medical, diagnostic, treatment, and research purposes; providing on-line non-downloadable computer software for collecting, analyzing, reporting, and tracking data and information in the felds of genetics, genomics, biology, biochemistry.
44	Medical services, including regenerative treatment services; medical diagnostic testing, monitoring and reporting services; medical evaluation of immuno-oncological disorders, cancer, diabetes, respiratory, heart, neurological and auto immune disorders; providing health and medical information about medical disorders and their diagnosis, prevention and treatment; cell therapy and gene therapy services.	