BL O/0939/26

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF UK REGISTRATION NO. UK00910658342 IN THE NAME OF XIAOMI INC.

IN RESPECT OF THE FOLLOWING TRADE MARK

MIUI

IN CLASSES 9, 37, 38 AND 42

AND

AN APPLICATION FOR REVOCATION THEREOF

UNDER NO. CA000505068 BY VAILLANT GMBH

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF A. ROSSI (O/0935/25) DATED 2 OCTOBER 2025.

DECISION

Introduction

1. This is an appeal by Xiaomi Inc. ("**Appellant**") from decision O/0935/24 of Mr A. Rossi ("**Decision**") concerning the application for revocation by Vaillant GmbH ("**Respondent**") of the Appellant's registered trade mark No. UK00910658342 ("**Mark**").

2. The Mark is for the word **MIUI** and was filed on 20 February 2012 and registered on 20 July 2012. The Mark was registered for the goods and services listed in the Annex to this decision.

3. On 30 June 2022 the Respondent sought revocation of the mark, in its entirety, for non-use under sections 46(1)(a) and 46(1)(b) of the Trade Marks Act 1994 ("**the Act**"). The period in respect of which non-use was claimed under section 46(1)(a) is 21 July 2012 to 20 July 2017, with an effective date of revocation of 21 July 2017. The period in respect of which non-use was claimed under section 46(1)(b) is 30 June 2017 to 29 June 2022, with an effective date of revocation of 30 June 2022.

4. The Appellant filed a defence and counterstatement, denying the claims made by the Respondent. The Appellant filed evidence. The parties agreed to a decision on the papers, and the Appellant filed written submissions in lieu.

5. Mr A. Rossi for the Registrar held that the application for revocation was successful in full. On 28 October 2025 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Trade Marks Act 1994.

Subsequent events

6. The appeal was assigned to me and initially listed for a hearing on 23 March 2026. Shortly before the hearing, the parties informed me (via the Secretariat) that they were engaged in settlement discussions. The hearing was accordingly adjourned to 30 June 2026. The parties then requested

a further adjournment to 4 August 2026 to enable settlement discussions to continue. On 29 July the parties informed the Secretariat that a settlement had been reached, and filed a consent order, pursuant to which they asked that the revocation for non-use be set aside and the Mark maintained on the register for all goods and services.

7. I sought the Registrar's views in relation to the consent order, and on 4 August the Registrar responded to say "On the assumption that the Registrar's decision is well-founded, and subject to the appeal, our view is that the trade mark *should* remain revoked because of its non-use" (I set out the Registrar's views in full later in this decision).

8. On 4 August, the Secretariat wrote to the parties on my behalf as follows:

> "Thank you for submitting the signed consent order. I was happy to vacate the hearing and extend the stay, thereby obviating the need for skeleton arguments to be filed immediately.
>
> Having reviewed the consent order, however, I am afraid that I do not believe I can approve it as things stand. I have no desire to be difficult, but it seems to me that the consequences of the order affect the world at large, rather than only the parties themselves. As I see it, the situation therefore falls within the scope of the *Halliburton* decision, where the CoA ruled that it is inappropriate for a patent, held invalid by the High Court, to be restored to the register by consent. That of course is because such a decision affects third parties, not just the parties to the appeal: https://www.bailii.org/ew/cases/EWCA/Civ/2006/185.html.
>
> I have also sought the view of the Registrar, which I can confirm accords with my view.
>
> As such, in order to approve the order, I shall need to be satisfied on the merits that the Hearing Officer's decision was wrong. That can be done on the papers, and the respondent need not be involved.
>
> If you disagree with my analysis, then please do let me know. Otherwise, I would propose a four week deadline for the appellant to file written submissions explaining why the decision was wrong. Of course, if you would prefer for a hearing to be held in order for your submissions to be amplified, that is also fine and I can let you know my availability".

9. The Appellant requested a hearing, which was held on 13 October 2026.

Grounds of Appeal

10. The Appellant's arguments, by the date of the hearing, were as follows:

Ground 1: Appointed Person has power to set aside by consent a revocation for non-use. Contrary to my and the Registrar's initial view, the Appointed Person has (and should here exercise) the long-established power to set aside the Decision and give effect to the parties' settlement by consent, without conducting a merits review.

Ground 2: Artificial division between operating software and the device it operates. If the consent order is not approved, the Hearing Officer wrongly treated the MIUI operating system as something categorically distinct from the device on which it runs and from the functions that device performs. Specifically, the Hearing Officer was wrong to hold that the Mark was not used in relation to *Global positioning systems software; Wireless communications global positioning systems software* in class 9.

Ground 3: Error in relation to the Class 42 software design and development services. The Hearing Officer erred in finding that the Mark had not been used in relation to *software design and development services*.

11. The Appellant filed a skeleton argument, and its trade mark attorney, Matthew Bedford, expanded upon its submissions at the hearing. I set out below further details as are necessary to understand my overall conclusions. I thank Mr Bedford for his clear written and oral submissions, which I found very helpful. The Respondent took no part in the appeal.

Standard of review

12. The approach to be adopted in an appeal hearing has been laid down on a number of occasions in case law, most recently in *Iconix Luxembourg Holdings SARL v. Dream Paris Europe Inc* [2025] UKSC 25 at §§94-95:

> "94. It is perhaps obvious, and certainly an inevitable conclusion drawn from experience, that reasonable minds, and in particular reasonable judicially trained minds, each faithfully applying the relevant law and principles, will come to different conclusions about the answer to these multifactorial questions. While of course the decision of an appellate court trumps that of the court below, the law has imposed structured constraints designed to prevent a free for all in a higher court whenever a party (with the necessary resources) wishes to challenge the first instance decision of the trial judge. The reasons for these constraints are set out in a string of well-known authorities including, in the intellectual property context, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] FSR 29, per Lewison LJ at para 114. The reasons there set out relevantly include the following:
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> > (i) The trial is not a dress rehearsal. It is the first and last night of the show.
> >
> > (ii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court.
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> > (iii) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping.
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> 95. In *Lifestyle Equities CV v Amazon UK Services Ltd* [2024] UKSC 8; [2024] Bus LR 532 this court reviewed those constraints in a trade mark context. After citing from the *Fage* case this court in a joint judgment said, at paras 49- 50:
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> > "49. That does not, however, mean the appeal court is powerless to intervene where the judge has fallen into error in arriving at an evaluative decision such as whether an activity was or was not targeted at a particular territory. It may be possible to establish that the judge was plainly wrong or that there has been a significant error of principle; but the circumstances in which an effective challenge may be mounted to an evaluative decision are not limited to such cases. Many of the important authorities in this area were reviewed by the Court of Appeal in *In re Sprintroom Ltd* [2019] 2 BCLC 617, paras 72–76. There, in a judgment to which all members of the court (McCombe, Leggatt and Rose LJJ) contributed, the court concluded, at para 76, in terms with which we agree, that on a challenge to an evaluative decision of a first instance judge, the appeal court does not carry out the balancing exercise afresh but must ask whether the decision of the judge was

wrong by reason of an identifiable flaw in the judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take into account some material factor, which undermines the cogency of the conclusion.

50. On the other hand, it is equally clear that, for the decision to be 'wrong' under CPR r 52.21(3), it is not enough to show, without more, that the appellate court might have arrived at a different evaluation.""

13. Further guidance was provided in *Axogen v Aviv* [2022] EWHC 95 (Ch) at §24-25:

"24. Although I was referred to numerous cases on the subject (including *English v Emery Demibold & Struck Ltd* [2002] 1 WLR 2409, *REEF Trade Mark* [2003] RPC 5, *Fine & Country Ltd v Okotoks Ltd* [2014] FSR 11, *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, *Shanks v Unilever Plc* [2014] RPC 29, *TT Education Ltd v Pie Corbett Consultancy* [2017] RPC 17, *Apple Inc v Arcadia Trading Limited* [2017] EWHC 440 (Ch), *Actavis Group PTC v ICOS Corporation* [2019] UKSC 15 and *NINEPLUS* O/039/21), the approach of the appeal court to a statutory appeal under section 76(1) of the TMA is uncontroversial. I bear the following principles, relevant to the issues before me, firmly in mind:

i) The appeal is by way of a review, not a rehearing (see *TT Education Ltd v Pie Corbett Consultancy Ltd* (O/017/17) at [52(i)]);

ii) The appeal court will allow an appeal where the decision of the lower court was "wrong" (see CPR 52.11). Neither surprise at a Hearing Officer's conclusion, nor a belief that he or she has reached the wrong decision suffices to justify interference (*NINEPLUS* O/039/21 at [14]);

iii) The decision of the lower court will be "wrong" if the judge makes an error of law, which might involve asking the wrong question, failing to take account of relevant matters or taking into account irrelevant matters. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge's conclusion was "outside the bounds within which reasonable disagreement is possible" (*Actavis Group* at [81]);

iv) The approach required by the appeal court depends on a number of variables including the nature of the evaluation in question (*REEF Trade Mark* [2003] RPC per at [26]). There is a "spectrum of appropriate respect for the Registrar's determination depending on the nature of the decision" (*TT Education* at [52(ii)]), with decisions of primary fact at one end of the spectrum and multi-factorial decisions (of the type which the parties agree were made in this case by the Hearing Officer) being further along the spectrum.

v) In the case of a multifactorial assessment or evaluation, involving the weighing of different factors against each other, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere in the absence of a distinct and material error of principle. Special caution is required before overturning such decisions (*TT Education* at [52(iv)], *REEF* at [28] and *Fine & Country* at [50]-[51]).

vi) An error of principle is not confined to an error as to the law but extends to certain types of error in the application of a legal standard to the facts in an evaluation of those facts. The evaluative process is often a matter of degree upon which

different judges can legitimately differ and an appellate court ought not to interfere unless it is satisfied that the judge's conclusion is outside the bounds within which reasonable disagreement is possible (*Actavis Group* at [80]).

vii) Another variable to be taken into account will be "the standing and experience of the fact-finding judge or tribunal" (*REEF* at [26], *Actavis Group* at [78]). Expert tribunals are charged with applying the law in the specialised fields and their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts (*Shanks* at [28] citing the warning given by Baroness Hale in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49).

viii) The appellate court should not treat a judgment as containing an error of principle simply because of its belief that the judgment or decision could have been better expressed; "The duty to give reasons must not be turned into an intolerable burden" (see *REEF* at [29]). The reasons need not be elaborate. There is no duty on a judge, in giving her reasons, to deal with every argument presented by counsel in support of his case. It is sufficient if what she says shows the basis on which she has acted (*English* at [17], *Fage* at [115]). The issues the resolution of which were vital to the judge's conclusions should be identified and the manner in which she resolved them explained (*English* at [19]).

ix) In evaluating the evidence, the appellate court is entitled to assume, absent good reason to the contrary, that the first instance judge has taken all of the evidence into account (*TT Education* at [52(vi)])."

14. To the above should be added the judgment of the Court of Appeal in *Lidl Great Britain Ltd v. Tesco Stores Ltd* [2024] EWCA Civ 262, where Arnold LJ said at §110 "It is common ground that, in so far as the appeals challenge findings of fact made by the judge, this Court is only entitled to intervene if those findings are rationally insupportable".

15. I shall bear all the above in mind when reviewing the Decision.

Discussion

(1) Appointed Person has power to set aside by consent a revocation for non-use

16. In *Halliburton Energy Services Inc v Smith International (North Sea) Limited & Ors* [2006] EWCA Civ 185, the Court of Appeal overturned an earlier practice pursuant to which it allowed appeals against revocation of patents by consent, restoring the patent to the register without argument and with a comment that the restoration did not mean the patent had been held valid or ruled upon in any way by the Court. Jacob LJ said at §2:

> "*The previous practice, save perhaps in some exceptional circumstance which I cannot imagine at the moment, is not appropriate. The normal position must be that the Court of Appeal will not restore a patent which has been held invalid by the court below unless that decision is shown to be wrong*".

17. Although *Halliburton* concerned patents, the underlying rationale – that reinstatement by consent of registered rights which have been held to be invalid may be contrary to public policy – is potentially equally applicable to registered trade marks. In the case of *Specsavers*

International Healthcare Ltd & Ors v Asda Stores Limited [2014] EWCA Civ 1294, Arnold LJ said at §3:

> "Specsavers and Asda have now settled the dispute between them on terms which are confidential. They have, however, agreed that Specsavers are at liberty, at their own expense, to pursue their appeal against the order that the Wordless logo mark be revoked. Accordingly that is the only issue which remains to be resolved on this appeal. This now being an appeal with no respondent, and in accordance with the practice explained by this court in relation to patents in *Halliburton Energy Services Inc's Patent* [2006] RPC 26 , we directed that Specsavers must inform the Registrar of Trade Marks of the order they would be inviting this court to make; we invited the Registrar to consider whether he was able to assist this court, and for that purpose gave him permission to intervene; and we directed that Specsavers must pay to the Registrar his costs of any such intervention. The Registrar has intervened and has been represented at this hearing by Miss Charlotte May QC. She has properly recognised that the Registrar's role is to protect the public interest by intervening to the extent necessary to prevent invalid trade marks being restored to the Register and she has assisted us considerably by rehearsing the counter-arguments to Specsavers' appeal, while at the same time maintaining a balanced view consistent with the Registrar's position. We are most grateful for the assistance that she and the Registrar have provided to us".

18. I considered that this case is analogous to an appeal with no respondent, and I accordingly sought the Registrar's views on whether the consent order in this case should be approved. The Registrar responded as follows:

> "In considering the public interest point, the Registrar notes the following comments made by Thomas Mitcheson KC sitting as the Appointed Person in BL O/0050/24 (paragraphs 30 and 31):
>
> *30. …it is important to recall that there is a public interest in not allowing invalid marks to remain on the register, particularly where absolute grounds are in issue. It is right that the public interest point potentially applies to all intellectual property rights, including patents. However, there is a difference in nature between trade mark proceedings in the Registry and, for example, High Court patent proceedings, which are usually much more time consuming and complex (and so there is more reason to want to avoid double vexation). In my view the absolute nature of objections under e.g. s.3 of the Act combined with the relatively informal Registry procedure give the public interest point more weight in trade mark matters.*
>
> *31. However, the public interest in not allowing invalid marks to remain registered cannot trump every other interest, otherwise it would always be the case that further proceedings should be allowed, which would not be consistent with Virgin or Arnold. Related to this, third, the tribunal needs to be satisfied before relying on the public interest that the objection to validity which is sought to be raised is at least arguable.*
>
> Whilst Mr Mitcheson's case addressed absolute grounds, and was primarily concerned with deciding if the rules regarding estoppel/abuse should be more relaxed in the context of trade mark proceedings before the Registrar, we consider his fundamental points to be equally applicable to considerations of revocation based on non-use.

Having reviewed the Registrar's first instance decision in the appeal now before you (including the hearing officer's rationale and the conclusions drawn), we think that - despite the parties' private agreement - there is public interest in recognising and preserving the finding of non-use at this point (and notwithstanding any further decisions you may take as a consequence of the appeal proceedings). Furthermore, we think that this public interest overrides all other competing factors - including any further time, investment and cost that may result from continuing with the appeal (despite the aforementioned private agreement).

On the assumption that the Registrar's decision is well-founded, and subject to the appeal, our view is that the trade mark *should* remain revoked because of its non-use. Without such action, the registration will remain a potential obstacle to other prospective users of the same or similar marks despite its continuing registration being unjustified. Furthermore, it will continue to provide the registered proprietor with a basis for enforcement against third parties in future opposition and/or cancellation proceedings. (We acknowledge that the proof of use provisions provide some protection against such a scenario occurring; however, we also note that the activation of those provisions is subject to a request being made by the third party, and not by right.)

In presenting these views, the Registrar also notes the comments of Jacob J in *La Mer Technology Inc v Laboratoires Goemar SA* [2001] EWHC 492 (Ch) where, at paragraph 19(a), the following was stated:

"*There is an obvious strong public interest in unused trade marks not being retained on the registers of national trade mark offices. They simply clog up the register and constitute a pointless hazard or obstacle for later traders who are trying actually to trade with the same or similar marks. They are abandoned vessels in the shipping lanes of trade.*""

19. My preliminary view was in line with that of the Registrar. My concern was that setting aside the finding of non-use by consent would result in the reinstatement of a trade mark, enforceable against the world at large, in circumstances where the mark ought (in the absence of an error by the Hearing Officer) to be removed from the register. Consequently, the agreement reached between the parties would impact negatively upon third parties.

20. The Appellant relies upon eight arguments in support of its contention that the consent order ought to be approved. First, it contends that there is a "long and established practice" of consent orders being approved by the Appointed Person. The Appellant drew my attention to ten Appointed Person decisions in which the power to set aside substantive Hearing Officer decisions by consent was exercised, following settlement during the course of an appeal, with the agreement of the Registrar and without any merits review. Eight of these decisions[1] relate to substantive opposition decisions being set aside by consent. I believe these do not assist the Appellant. The outcome of opposition proceedings primarily impacts only the parties to the opposition, and consequently public policy issues – particularly the impact on third parties – are far less engaged than in relation to proceedings concerning absolute grounds of invalidity or revocation for non-use.

[1] BL O/195/03 *OKO* (23 June 2003); BL O/127/05 *QUORN HUNT* (29 April 2005); BL O/206/06 *MAILSOURCE* (20 July 2006); BL O/369/07 *PURE MASSAGE* (19 December 2007); BL O/324/11 *Mets* (14 September 2011); BL O/395/11 *ELAN* (3 November 2011); BL O/076/12 *CUCINA* (15 February 2012); BL O/0049/25 *ARTIVION* (18 January 2025).

21. Two of the decisions[2] relied upon by the Appellant do relate to non-use revocation decisions being set aside by consent. However, in both instances the registered proprietor had failed (owing to an administrative oversight) to file a counterstatement and evidence of use of the mark. The application for revocation was accordingly treated as unopposed, and the revocation granted administratively. Again, I do not consider that these two decisions assist the Appellant, as they are not examples of a substantive revocation decision being set aside by consent.

22. The Appellant has not brought to my attention any instances of a substantive revocation decision being set aside by consent in the absence of error on the part of the Hearing Officer, and nor am I aware of any such instance. In my view, therefore, it cannot be said that there is a "long and established practice" of revocation decisions being set aside by consent in the absence of error.

23. Secondly, the Appellant contends that *Halliburton* was decided in the context of CPR 52 and the accompanying Practice Direction, which is not applicable to appeals before the Appointed Person. Paragraph 13.1 of the version of PD52 in force at the time said:

> "The Appeal Court will not normally make an order allowing an appeal unless satisfied that the decision of the lower court was wrong but the Appeal Court may set aside or vary the order below a court with consent and without determining the merits of the appeal if it is satisfied there are good and sufficient reasons for doing so. Where the Appeal Court is requested by all parties to allow an application or an appeal the court may consider the request on the papers".

24. It is true that s. 76 of the Trade Marks Act 1994 and rules 70–73 of the Trade Marks Rules contain no equivalent restriction on the disposal of an appeal by consent. However, the underlying rationale of the rule in *Halliburton* is based on public policy considerations rather than mere procedural rules, as recognised by the Court of Appeal in *Specsavers* cited at §17 above.

25. Further, the Appellant contends that the version of PD52A currently in force is expressly permissive. Paragraph 6.4 provides that the Appeal Court "may, however, set aside or vary the order of the lower court by consent and without determining the merits of the appeal if it is satisfied that there are good and sufficient reasons for so doing". It contends that the requirement to determine the merits, whilst the normal position, is not an invariable rule. Furthermore, the present circumstances - a fully negotiated commercial settlement between the only two parties to the dispute, forming part of a wider cross-border settlement under which the respective EUIPO and DPMA proceedings have already been resolved - constitute compelling "good and sufficient reasons" for departing from that position.

26. I do not agree. It seems to me that I am required to balance the various interests at stake (about which I say more below), and the fact that there has been a cross-border settlement is only one of the factors that I need to take into account.

27. Thirdly, the Appellant distinguishes *Halliburton* on the basis that "patent invalidity is a determination that the monopoly should never have existed, and the register-affecting character of a patent-invalidity decision was the reason the Court of Appeal was unwilling to restore the patent by consent. A non-use revocation decision is a materially different matter".

[2] BL O/576/01 *Pepsico/Citylink* (13 December 2001); BL O/121/05 *Jailhouse Rock* (15 March 2005).

28. Whereas I accept that revocation for non-use is not a determination that a trade mark should never have granted in the first place, I am mindful of the observations of Jacob J in *La Mer* cited at §18 above. The retention on the register of an unused trade mark may not be as harmful to the public interest as retention of a mark which ought to be removed on absolute grounds, but it does nonetheless constitute an obstacle to and impose a burden on other traders.

29. Fourthly, the Appellant contends that in *Halliburton* the patent proprietor agreed that the appeal should be determined on its merits, whereas here neither party seeks a judicial determination overturning the Hearing Officer's findings. Whereas that is true, it does not address the underlying public interest concern, and in any case the Registrar in this case has stated that, absent an error on the part of the Hearing Officer, the mark should remain revoked.

30. Fifthly, the Appellant contends that the Appointed Person's consent-order practice has continued without interruption both alongside and after *Halliburton*. It says that "Within just five months of *Halliburton*, Arnold QC (as he then was) made precisely the form of consent order the provisional view suggests is now unavailable, in BL O/206/06 *MAILSOURCE* (20 July 2006), setting aside a substantive opposition decision below". For the reasons set out in §§20-22 above, I do not accept that there is any such practice in relation to orders for revocation for non-use.

31. Sixthly, the Appellant contends that a non-use revocation action is closer to opposition decisions than Halliburton. Specifically, it says that revocation actions differ from patent invalidity actions as follows:

    - Time-bound, insofar as they are directed to specifically pleaded five-year periods;
    - Evidence-bound – trade mark revocation actions turn on the particular evidence filed by the parties;
    - Party-driven – the Registrar does not revoke marks for non-use of its own motion; and
    - No reach into the future – a consented setting aside of a trade mark revocation does not immunise it against future challenge, including the s. 47(2A) proof-of-use burden where the mark is relied on in invalidity proceedings.

32. The Appellant states "Taken together, those features place a non-use revocation decision firmly at the opposition end of the spectrum of UKIPO determinations".

33. In my view, however, only the first of the above bullet points constitutes a genuine distinction between the types of action. Once a patent is registered, the Registry will not revoke it of its own motion – rather it relies on third parties challenging the patent's validity. Assessment of the validity will depend upon the evidence filed by the parties, and a consented setting aside of a patent revocation (if such was permitted) would not prevent other parties from challenging the validity of the patent on the same, or other grounds.

34. For the reasons set out at §28 above, I consider that non-use revocation decisions do raise public interest issues, and are closer in that regard to patent invalidity actions than to trade mark opposition proceedings. The availability of proof of use requirements does not eliminate the public interest in removing unused marks. Those provisions merely provide a limited defence in particular types of proceedings if invoked. They do not prevent an unused mark from remaining on the register nor remove the burden imposed upon third parties to raise and establish those points.

35. Seventhly, the Appellant states "Before any first-instance decision, the parties to a non-use revocation action may at any time agree the withdrawal of the application, and the Registrar will give effect to that withdrawal without any merits review. If, however, the same parties cannot obtain corresponding relief by consent once the Hearing Officer's decision has been issued and is under appeal, the statutory appeal process would create an artificial cliff-edge against settlement.

36. I am unable to agree. The distinction relied upon by the Appellant is not arbitrary. Before determination there is no finding of non-use. After determination there is a reasoned decision concluding that statutory grounds for revocation have been established. The public interest engaged following such a determination is materially different.

37. Eighthly and finally, the Appellant contends that there is "a positive and independent public interest in encouraging and giving effect to the settlement of disputes. That interest is expressly reflected in Part 1 of the Civil Procedure Rules 1998 (the overriding objective), which includes promoting or using alternative dispute resolution, and in the court's duty to further that objective through active case management, including by encouraging alternative dispute resolution and helping the parties to settle the whole or part of the case".

38. It is true that there is a public interest in encouraging parties to settle disputes, however that consideration must be balanced against other public interests, including the public interest in ensuring that unused trade marks are not retained on the register. Balancing those factors, as I am required to do, I consider that the public interest, as expressed by Jacob LJ in *La Mer*, must take precedence over the interests of the parties to this action.

39. Accordingly, I decline to approve the consent order as agreed between the parties.

(2) Artificial division between operating software and the device it operates

40. The Appellant states that the Hearing Officer wrongly treated the MIUI operating system as something categorically distinct from the device on which it runs and from the functions that device performs. That meant that she was wrong to reject use for the class 9 items that expressly refer to software, namely *Global positioning systems software; Wireless communications global positioning systems software*.

41. At §37 the Hearing Officer said of the above items:

> "whilst I appreciate that smartphones have built-in GPS technology and that the 'MIUI' OS provides the Proprietor's smartphones with a compass application, I do not find the evidence shows use of the Contested Mark for these types of goods. In particular, the Proprietor, in its submissions in lieu, referred me to a piece of evidence that describes the compass app. I note the review concerns the application's user interface (UI), and accordingly states that "the compass behaves slightly different when you place your phone and when you have it in your hand. On a flat surface, you get a UI which tells you the direction. Swiping onto the second pane gives you a spirit level app. When you hold the phone in your hand, the phone utilizes the camera, and lets you know the direction in which the camera is pointing". Therefore, it seems to me that the evidence refers to the compass' user interface (i.e., how it looks) rather than describing GPS features provided by the 'MIUI' OS. Absent a clearer account from the Proprietor, I do not find the evidence shows more than the mere use of the Contested Mark for the Proprietor's OS (i.e., user interface)".

42. At §40 he said “The location/navigation function remains a general function available in all smartphones and devoid of any direct link with the ‘MIUI’ software”. The Appellant contends “The relevant question for section 46 purposes was not whether the operating system is “synonymous with” any individual registered good, but whether the mark MIUI has been used “in relation to” each specific category of goods or services within the meaning of section 46”.

43. I agree with the Appellant in this regard. The Hearing Officer accepted that MIUI was used as the operating system for Xiaomi devices. The evidence demonstrated location, navigation and compass functionality operating through that software environment. The question was therefore whether the mark had been used in relation to GPS software functionality, not whether MIUI itself constituted a GPS system. By focusing on whether the evidence showed a sufficiently direct link between MIUI and location functions, the Hearing Officer applied an unduly restrictive approach to the concept of use "in relation to" those software goods.

44. I allow this second ground of appeal.

(3) Error in relation to the Class 42 software design and development services

45. The Hearing Officer revoked Class 42 at §45 of the Decision on the basis “the evidence does not show the Proprietor provided software design and development to third parties as a commercial activity … Beijing Xiaomi Mobile Software Co., Ltd (i.e., the Proprietor) is both the designer and the client of the ‘MIUI’ OS".

46. The Appellant’s written arguments on appeal said that the Appellant’s “design and development activity that produces each MIUI release is directed at those end-users as consumers”. However, all such use is internal use – whereas the end result of the use may be directed at consumers, the Hearing Officer was correct to state that it would be necessary for the Appellant to prove provision of the services themselves to third parties in order to prove use.

47. At the hearing, Mr Bedford on behalf of the Appellant stated that its MIUI software is not just used on its specific devices, but is also made available for download and installation onto third party devices as well. He contended that working with a third party on a device was sufficient to constitute provision of development services for that device. He very fairly conceded that the software in question is largely in stock form and is “tweaked” for different end users.

48. It seems to me that whether or not such use constitutes provision of development services to third parties is a matter of fact and degree. Providing stock software for installation on third party devices would not constitute provision of development services, whereas development of bespoke software for the same purpose clearly would. The evidence filed below by the Appellant gives no details of what the “tweaking” may involve, and accordingly the Hearing Officer was entitled to make the finding that use of the Class 42 services had not been proven.

49. The Appellant argues that if the Hearing Officer’s approach is correct, “every integrated hardware/software provider such as Apple, Google or Microsoft would lose protection for software design and development services”. However, the issue is not whether software design and development can ever support Class 42 protection for vertically integrated undertakings. The issue is whether this proprietor proved use of the mark in relation to software design and development services supplied to third parties. The Hearing Officer was entitled to find that the evidence did not establish such use.

50. I dismiss this third ground of appeal.

Conclusion

51. The appeal succeeds in part. The Mark is maintained on the register for *Global positioning systems software; Wireless communications global positioning systems software* within Class 9. It remains revoked in relation to all other goods and services.

Costs

52. Clearly, the Respondent has been the successful party in this appeal. However, the parties have reached an overall agreement on costs, pursuant to which each party has agreed to bear its own costs of this appeal. In light of the parties' compromise and their agreed position on costs, I consider it appropriate to depart from the result that would otherwise follow from the outcome of the appeal. I therefore make no order as to costs in the appeal.

53. The Hearing Officer ordered that the Appellant should pay the Respondent £450. The agreement reached between the parties is that each party shall bear its own costs of the original proceedings before the Hearing Officer. Accordingly, I set the Hearing Officer's order for costs aside.

Dr. Brian Whitehead

20 October 2026

Representation

Mr Matthew Bedford, trade mark attorney, of Abion UK Limited, for the Appellant

The Respondent played no part in the appeal

Annex – goods and services in the specification of the Mark

Class 9: Fixed and mobile telephones; Magnetic media readers; Hi-fi systems; Radios, televisions; Computers, Apparatus for recording, Duplicating and, Broadcasting of sound, Images or data; Magnetic media; Navigation and positioning equipment, namely, electronic and computer instruments for determining precise geographic locations of aircraft, marine vessels, land vehicles, human beings; Electronic and computer instruments for surveying, mapping, marine tracking and navigation, aviation navigation and tracking, land vehicles tracking and navigation, and human being tracking and navigation; Global positioning sensors, software, receivers, transmitters; Global positioning systems hardware and software; Wireless communications global positioning systems software and hardware; Parts and fittings for all the aforesaid goods, included in class 9.

Class 37: Maintenance and repair services: Fixed and mobile telephones sets; Magnetic media readers; Stereo hi-fi systems; Television and radio sets; Computers, apparatus for the recording, reproduction and transmission of sound, images and data; Magnetic media; For navigation and positioning equipment, namely electronic and computer instruments for determining precise geographic locations of aircraft, marine vessels, land vehicles, human beings; Electronic and computer instruments for surveying, mapping, marine tracking and navigation, aviation navigation and tracking, land vehicles tracking and navigation, and human being tracking and navigation; Global positioning sensors, receivers, transmitters; Computer hardware for global positioning systems; Computer hardware for global positioning systems for wireless communication; Parts and components for the afore- mentioned goods.

Class 38: Communication services including positioning, navigation, location, network correction and network communication services.

Class 42: Hardware and software design and development services; Computer software maintenance services.