Opinion by Bergsman, Administrative Trademark Judge:

KCI Licensing, Inc. (“Applicant”) seeks registration on the Principal Register of the mark ION HEALING and design, shown below, for the following goods and services:

Downloadable software in the nature of a mobile application for providing healthcare professionals with medical, health, and wellness information related to the provision of wound care services to patients, in Class 9; and

Software as a service (SAAS) featuring software for providing healthcare professionals with medical, health, and wellness information related to the provision of wound care services to patients, in Class 9; and
care services to patients accessible through mobile applications, in Class 42.¹

Applicant included the following description of its mark:

The mark consists of the stylized design of a camera lens formed by concentric circles and surrounded by a pattern of concentric circles, with right-angles cut out of the outer circles at the four corners of the design, so that the parts of the outer circles form the shape of a cross with even sides, all appearing above the term ION HEALING.

The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the registered mark ION (standard characters) for the services set forth below as to be likely to cause confusion:

Application service provider (ASP) featuring software for use in originating, collecting, organizing, storing, analyzing, and communicating medical records, patient information, clinical histories, and laboratory test results; application service provider (ASP) featuring software for use in facilitating health information exchange by

¹ Application Serial No. 86757066 was filed on September 15, 2015, under Section 1(a) of the Trademark Act, 15 U.S.C. § 1052(a), based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as February 16, 2105 in connection with the goods and services in both classes.
originating, collecting, organizing, storing, analyzing and communicating health information; application service provider (ASP) featuring software for use in providing access to electronic medical records and electronic health records; application service provider (ASP) featuring software for use in providing remote access to the aforementioned records and information and transmission of such records between users, and for use in system integration and interoperability among software applications in the field of medical records, health records, and patient information, where such applications are used within a local network or across networks, including the internet, in Class 42.2

When the refusal was made final, Applicant appealed and requested reconsideration. After the Examining Attorney denied the request for reconsideration, the appeal was resumed. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. In re E. I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“du Pont”) (cited in B&B Hardware, Inc. v. Hargis Ind., Inc., 135 S. Ct. 1293, 113 USPQ2d 2045, 2049 (2015)); see also In re Majestic Distilling Co., 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each du Pont factor that is relevant and for which there is evidence of record. See M2 Software, Inc. v. M2 Commc’ns, Inc., 450 F.3d 1378, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006); ProMark Brands Inc. v. GFA Brands, Inc., 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). In any likelihood of confusion

2 Registration No. 4195266, registered on August 21, 2012.
analysis, two key considerations are the similarities between the marks and the similarities between the goods or services. See In re Chatam Int’l Inc., 380 F.2d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”); see also In re i.am.symbolic, llc, 116 USPQ2d 1406, 1409 (TTAB 2015).

A. The similarity or dissimilarity and nature of the goods and services and established, likely-to-continue channels of trade.

Applicant is seeking to register its mark ION HEALING and design for downloadable software and software as a service in connection with “providing healthcare professionals with medical, health, and wellness information related to the provision of wound care services to patients” through mobile applications. The cited mark, ION, has been registered for, inter alia, application service provider featuring software for use in facilitating health information exchange by originating, collecting, organizing, storing, analyzing and communicating health information and providing access to electronic medical records and electronic health records.

An “application service provider” supplies computer applications over the Internet.\(^3\) Thus, Registrant provides access to software for communicating health

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information and records while Applicant provides medical and health information regarding wound care through its software in the form of a mobile application or as a service through mobile applications. Because Registrant’s identification of services is not limited or restricted in any way, it is broad enough to include health information and records including wound care accessible through mobile applications. See In re Hughes Furniture Indus., Inc., 114 USPQ2d 1134, 1137 (TTAB 2015) (“Applicant’s broadly worded identification of ‘furniture’ necessarily encompasses Registrant’s narrowly identified ‘residential and commercial furniture.’”).

Registrant’s “application service provider (ASP) featuring software featuring software for use in … communicating health information” and “providing access to electronic medical records and electronic health records” is essentially the same as Applicant’s “software as a service (SAAS) featuring software for providing healthcare professionals with medical, health, and wellness information related to the provision of wound care services to patients accessible through mobile applications.” Thus, the services are, in essence, the same; the only difference is that Registrant is providing

that provides software (as for e-mail or payroll accounting) that is accessible over the Internet instead of being stored on individual computers.”); Dictionary of Computer and Internet Terms, p. 30 (11th ed. 2013) (“a network service provider that also provides application software, such as networked database programs.”). The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. In re Cordua Rests. LP, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), aff’d, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); Threshold.TV Inc. v. Metronome Enters. Inc., 96 USPQ2d 1031, 1038 n.14 (TTAB 2010).
access to the software of others while Applicant is providing access to its own software.

Because the services described in the application and the cited registration are essentially identical, we must presume that the channels of trade and classes of purchasers are the same. See In re Viterra Inc., 671 F.3d 1358, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (legally identical goods are presumed to travel in same channels of trade to same class of purchasers); In re Yawata Iron & Steel Co., 403 F.2d 752, 159 USPQ 721, 723 (CCPA 1968) (where there are legally identical goods, the channels of trade and classes of purchasers are considered to be the same); United Global Media Grp., Inc. v. Tseng, 112 USPQ2d 1039, 1049 (TTAB 2014); American Lebanese Syrian Associated Charities Inc. v. Child Health Research Institute, 101 USPQ2d 1022, 1028 (TTAB 2011).

Finally, because Registrant is providing access to medical information and records through the software of others, Registrant could provide access to Applicant’s downloadable software. It is well established that, “absent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers.” In re Viterra Inc., 101 USPQ2d at 1908 (quoting Hewlett-Packard Co. v. Packard Press, Inc., 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)); CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983).
B. The number and nature of similar marks in use on similar goods.

Applicant argues that Registrant’s mark ION is a weak mark because of the numerous “ION” marks in the medical field.\(^4\) In its November 21, 2016 Request for Reconsideration, Applicant submitted copies of numerous third-party registrations incorporating the word “Ion.” However, in its brief, Applicant referred to the five registrations listed below which we presume are the closest to Registrant’s services inasmuch as Applicant included many third-party registrations in extraneous fields:\(^5\)

- Registration No. 4710314 for the mark ION REPORTER for “providing temporary use of on-line non-loadable software used to collect, analyze, integrate, process, manage, communicate and archive information in the field of bioinformatics”;\(^6\)

- Registration No. 4195701 for the mark ION ONETOUCH “computer software used for the collection, organization, analysis, integration and communication of scientific data; computer software used to operate laboratory instruments”;

- Registration No. 3998869 for the mark ION for “medical stents and stent delivery systems; stent delivery apparatus, namely, catheters and balloons”;

\(^4\) Applicant’s Brief, p. 4 (8 TTABVUE 9).

\(^5\) See e.g., Registration No. 1431699 for the mark EQUION for “nutrient supplement for horses” (4 TTABVUE 118), Registration No. 1723320 for the mark IONSCAN for “spectrometers” (4 TTABVUE 120), and Registration 1892018 for the mark IE ION ENERGY for “rechargeable batteries (4 TTABVUE 123).

\(^6\) “Bioinformatics” is defined as “the use of computer science, mathematics, and information theory to organize and analyze complex biological data, especially genetic data.” American Heritage Dictionary of Medicine (2011) attached to the Trademark Examining Attorney’s Brief (10 TTABVUE 20).
• Registration No. 3995474 for the mark ION for “downloadable electronic publications in the field of oncology,” in Class 9 and “healthcare containment cost services in the field of oncology,” in Class 35; and

• Registration No. 4740446 for the mark ION CANNON for “x-ray source, namely, x-ray tubes used in x-ray fluorescence, x-ray electrostatic dissipation, and x-ray electrostatic precipitation not for medical purposes.”

In addition, to the above-noted five registrations, Applicant submitted additional third-party registrations in the medical field including the following:7

• Registration No. 2713401 for the mark IP-2 ION PUMP for “medical devices, namely, electrical impulse direction modifier for use in acupuncture therapy”;8

• Registration No. 4874856 for the mark ION ESPS for “medical devices, namely, a preoperative positioning device”;9 and

• Registration No. 3017925 for the mark ION for “clinical laboratory testing services, namely, testing for nutrition and metabolism-related status and conditions.”10

The word “Ion” is defined as “an electrically charged atom or group of atoms formed by the loss or gain of one or more electrons.”11 While third-party registrations

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7 Because we did not reconcile the duplicate registrations Applicant submitted (see e.g., 4 TTABVUE 141 and 5 TTABVUE 267), we do not confirm the number of relevant third-party registrations that Applicant submitted. Suffice it to say that we reviewed the entire record.
8 5 TTABVUE 267.
9 5 TTABVUE 94.
10 4 TTABVUE 155.
may be used in the manner of a dictionary to show that a mark or a portion of a mark is descriptive or suggestive of goods and services, *Institut National Des Appellations D’Origine v. Vintners International Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992) *In re Box Solutions Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006); *In re Melville Corp.*, 18 USPQ2d 1386, 1388-89 (TTAB 1991), it is not clear what meaning or commercial impression the word “Ion” is supposed to convey when used in connection with medical devices or services in general and software for communicating health information and records in particular.\(^\text{12}\) *Compare Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015) (properly-introduced third-party registrations of marks that contained elements of the parties’ marks and that were used in connection with the parties’ services and related goods were “relevant to prove that some segment of the composite marks which both contesting parties use has a normally understood and well recognized descriptive or suggestive meaning, leading to the conclusion that that segment is relatively weak.”); *Jack Wolfskin Ausrustung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015) (same).

Nevertheless, assuming *arguendo* that the word “Ion” has a specific meaning and engenders a specific commercial impression in the medical field, none of the third-

\(^{12}\) Applicant’s contention that “‘Ion’ is used extensively to suggest to potential purchasers that the goods or services may contain IONS” is not applicable to Registrant’s application service provider featuring software for providing access to medical information and records. Applicant’s Brief, p. 6 (8 TTABVUE 11).
party registrations submitted by Applicant are as close to Registrant’s services as Applicant’s goods and services. For example, Registration No. 4710314 for the mark ION REPORTER is in the field of bioinformatics or genetic data, Registration No. 4710314 for the mark ION REPORTER is for cost containment in the field of oncology, and Registration No. 4740446 for the mark ION CANNON specifically exclude the medical field.

Finally, Applicant's citation of third-party registrations as evidence of market weakness is unavailing because third-party registrations standing alone, are not evidence that the registered marks are in use on a commercial scale, let alone that consumers have become so accustomed to seeing them in the marketplace that they have learned to distinguish among them by minor differences. Smith Bros. Mfg. Co. v. Stone Mfg. Co., 476 F.2d 1004, 177 USPQ 462 (CCPA 1973); AMF Inc. v. Am. Leisure Prods., Inc., 474 F.2d 1407, 177 USPQ 268 (CCPA 1973); Richardson-Vicks, Inc. v. Franklin Mint Corp., 216 USPQ 989 (TTAB 1982). While the registrations show that multiple parties have registered ION marks, “[t]he purchasing public is not aware of registrations reposing in the Patent [and Trademark] Office.” Smith Bros., 177 USPQ 462-63. Referring to this type of strength, precedent dictates that “registration evidence may not be given any weight.” E.g., Olde Tyme Foods Inc. v. Roundy's Inc., 961 F.2d 200, 22 USPQ2d 1542, 1545 (Fed. Cir. 1992) (citing AMF Inc., 177 USPQ at 269). In any event, “the existence of confusingly similar marks already on the register will not aid an applicant to register another confusingly similar mark.”

We find that the purported conceptual weakness of Registrant’s ION mark established by the third-party registrations is outweighed by the lack of evidence regarding meaning and commercial impression the word “Ion” is supposed to have in connection with the medical field and specifically in connection with providing access to medical information and records, the lack of evidence regarding any actual use of the marks in the third-party registrations, as well as the fact that Registrant’s and Applicant’s identification of goods and services are closer to each other than any descriptions of goods and services identified in the third-party registrations. Accordingly, this du Pont factor is neutral.

C. The similarity or dissimilarity of the marks.

We now turn to the du Pont likelihood of confusion factor focusing on the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression. du Pont, 177 USPQ at 567. “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” In re Davia, 110 USPQ2d 1810, 1812 (TTAB 2014). In comparing the marks, we are mindful that where, as here, Applicant’s goods are closely related to Registrant’s services and Applicant’s services are identical to Registrant’s services, the degree of similarity necessary to find likelihood of confusion need not be as great as where there is a recognizable disparity between the goods and services. Coach Servs., Inc. v. Triumph Learning LLC, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012); Century 21
Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992); Jansen Enterprises Inc. v. Rind, 85 USPQ2d 1104, 1108 (TTAB 2007); Schering-Plough Healthcare Prod. Inc. v. Ing-Jing Huang, 84 USPQ2d 1323, 1325 (TTAB 2007).

“The proper test is not a side-by-side comparison of the marks, but instead ‘whether the marks are sufficiently similar in terms of their commercial impression’ such that persons who encounter the marks would be likely to assume a connection between the parties.” Coach Servs. Inc. v. Triumph Learning LLC, 101 USPQ2d at 1721 (quoting Leading Jewelers Guild Inc. v. LJOW Holdings LLC, 82 USPQ2d 1901, 1905 (TTAB 2007); see also San Fernando Elec. Mfg. Co. v. JFD Elec. Components Corp., 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); Spoons Rests. Inc. v. Morrison Inc., 23 USPQ2d 1735, 1741 (TTAB 1991), aff’d mem., 972 F.2d 1353 (Fed. Cir. 1992).

Applicant is seeking to register the mark ION HEALING and design, shown below,
for downloadable software through a mobile application and software as a service through a mobile application in connection with “providing healthcare professionals with medical, health, and wellness information related to the provision of wound care services to patients.” The mark in the cited registration is ION (standard characters) for registered for, *inter alia*, application service provider featuring software for use in facilitating health information exchange by originating, collecting, organizing, storing, analyzing and communicating health information and providing access to electronic medical records and electronic health records.

In the case of marks consisting of words and a design, such as Applicant’s mark, the words are normally accorded greater weight because the words are likely to make an impression upon purchasers, would be remembered by them, and would be used by them to request the services. *See In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908, 1911 (Fed. Cir. 2012) (citing *CBS Inc. v. Morrow*, 708 F. 2d 1579, 1581-82, 218 USPQ 198, 200 (Fed. Cir 1983)); *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1798 (Fed. Cir. 1987). There is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, such as a common dominant element, provided the ultimate conclusion rests on a consideration of the marks in their entireties. *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). Thus, we find that the words ION HEALING are the dominant part of Applicant’s mark.

Because Registrant’s ION mark is registered in standard characters, the rights associated with a mark in standard characters reside in the wording, and not in any
particular display. Thus, Registrant is entitled to all depictions of its standard character mark regardless of the font style, size, or color. Registrant’s mark could at any time in the future be displayed in a manner similar to Applicant’s mark; that is, the word ION may displayed in the same font style and size as the word ION in Applicant’s mark. *In re Viterra Inc.*, 101 USPQ2d at 1909-11; *Citigroup Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1259 (Fed. Cir. 2011); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) (rejecting argument that for purposes of determining whether two marks are similar, a mark in a typed drawing (equivalent to modern standard character format) is distinct from such mark in a logo format; “[b]y presenting its mark in a typed drawing, a difference cannot legally be asserted by that party” (emphasis in original)).\(^\text{13}\)

ION HEALING is similar in appearance and sound to the mark ION. When used in connection with the access to medical information and records, the word “Healing” is highly suggestive, if not descriptive, and, thus, carries less weight in our analysis.\(^\text{14}\)

See *Sure-Fit Prods. Co. v. Saltzson Drapery Co.*, 254 F.2d 158, 117 USPQ 295, 296 (CCPA 1958); *In re Lar Mor Int'l, Inc.*, 221 USPQ 180, 181-82 (TTAB 1983);

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\(^{13}\) Prior to November 2, 2003, “standard character” drawings were known as “typed” drawings. Effective November 2, 2002, Trademark Rule 2.52, 37 C.F.R § 2.52, was amended to replace the term “typed” drawing with “standard character” drawing. A typed mark is the legal equivalent of a standard character mark. *See In re Viterra Inc.*, 101 USPQ2d at 1909 n.2 (“until 2003, ‘standard character’ marks formerly were known as ‘typed’ marks.”).

\(^{14}\) The word “healing” is defined as “curing or curative; prescribed or helping to heal,” “the act or process of regaining health.” *Dictionary.com* based on the *Random House Dictionary* (2017).

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With respect to the meaning and commercial impression engendered by Applicant’s mark, the term ION HEALING creates a double entendre. ION HEALING literally means electrically charged atomic or electron healing. In the alternative, ION HEALING, as displayed in Applicant’s mark, creates the commercial impression EYE ON HEALING.

Nevertheless, a client or potential client familiar with Registrant’s ION application service provider in the field of providing access to medical information and records encountering Applicant’s ION HEALING and design for the same services specifically targeted to wound care and closely related software, could mistakenly believe that the goods and services emanate from the same source because of they share the word “Ion.” In other words, clients may mistakenly believe that Applicant’s software and software-as-a-service is the ION information services for wound care distributed through a mobile application.

Overall, and considering the marks as a whole, we find that the similarities between Applicant’s mark and the cited mark clearly outweigh any differences.

This du Pont factor thus supports a finding that confusion is likely.

D. Analyzing the factors.

Because the marks are similar, the goods and services are identical and closely related and there is a presumption that the goods and services move in the same channels of trade, we find that Applicant’s mark ION HEALING and design for the
goods and services set forth in the application is likely to cause confusion with the
registered mark ION for the services set forth in the registration.

**Decision:** The refusal to register Applicant’s mark ION HEALING and design is
affirmed.