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Interesting decisions by BOIP

Coffee break webinar



6 October 2026 – Yvonne Noorlander
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UNDER CONSTRUCTION
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15
NIET PARKEREN!
SCHADE VOOR EIGEN RISICO

Agenda

1. **Ortelius**
   Opposition (likelihood of confusion)

2. **habitat & humanisme (fig.)**
   Cancellation (likelihood of confusion and reputation)

3. **ATOMIUM**
   Cancellation (non-use)

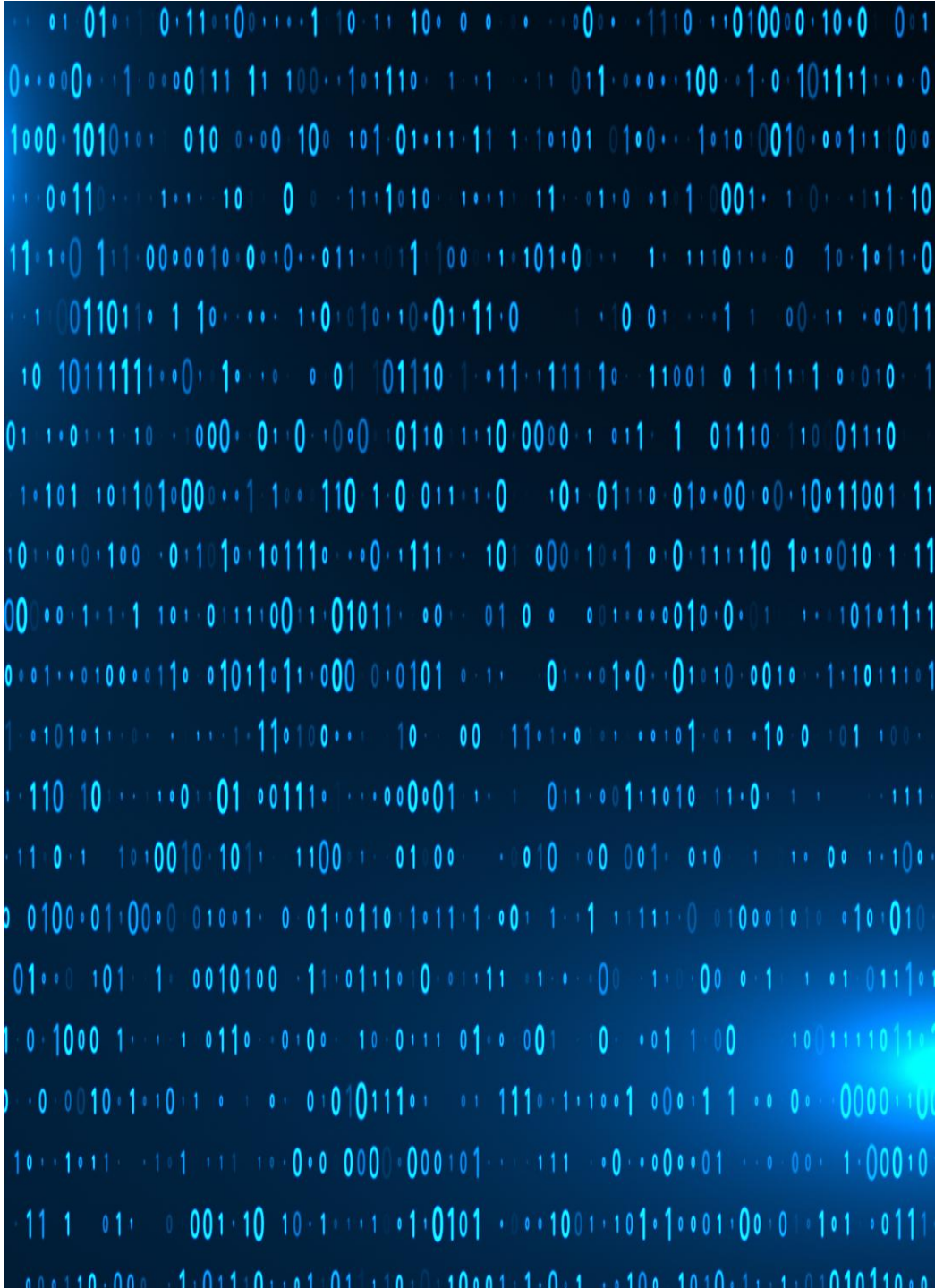


Ortelius, 26 June 2026 (2020533)

Opposition based on: Likelihood of confusion.

ORTELIUS	Ortelius

- Use of uppercase and lowercase letters does not affect the visual comparison of wordmarks.
- Signs are **identical.**

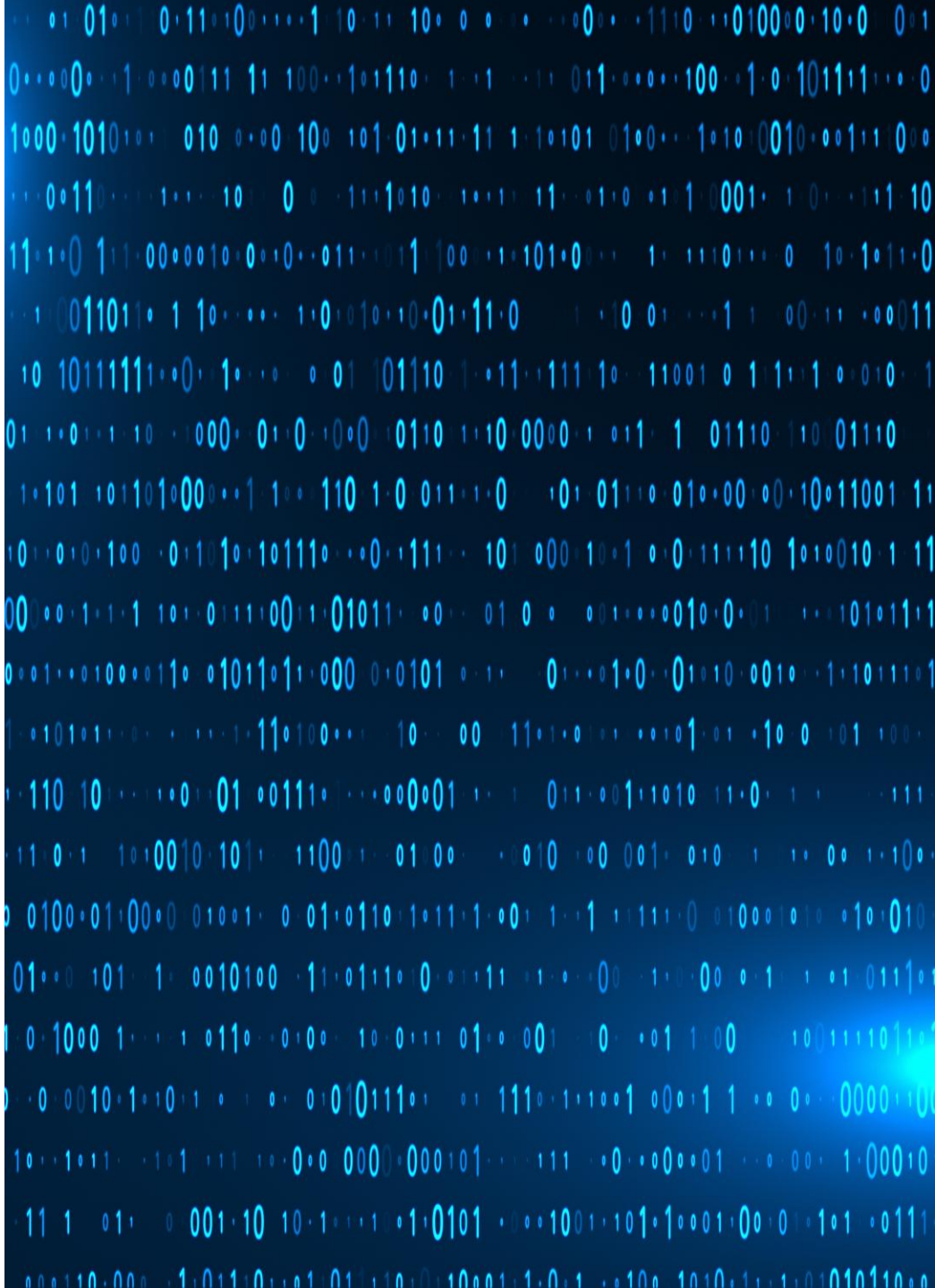


Ortelius, 26 June 2026 (2020533)

	Class 9: i.a. Software; AI software; Logistics software; Supply chain management software.
Class 35: i.a. Business management consultancy; market research; economic forecasting.	
Class 36: i.a. Financial analysis.	

<u>Opponent</u>

- Opponent argues **complementarity** between contested goods and the invoked services – essential tool.

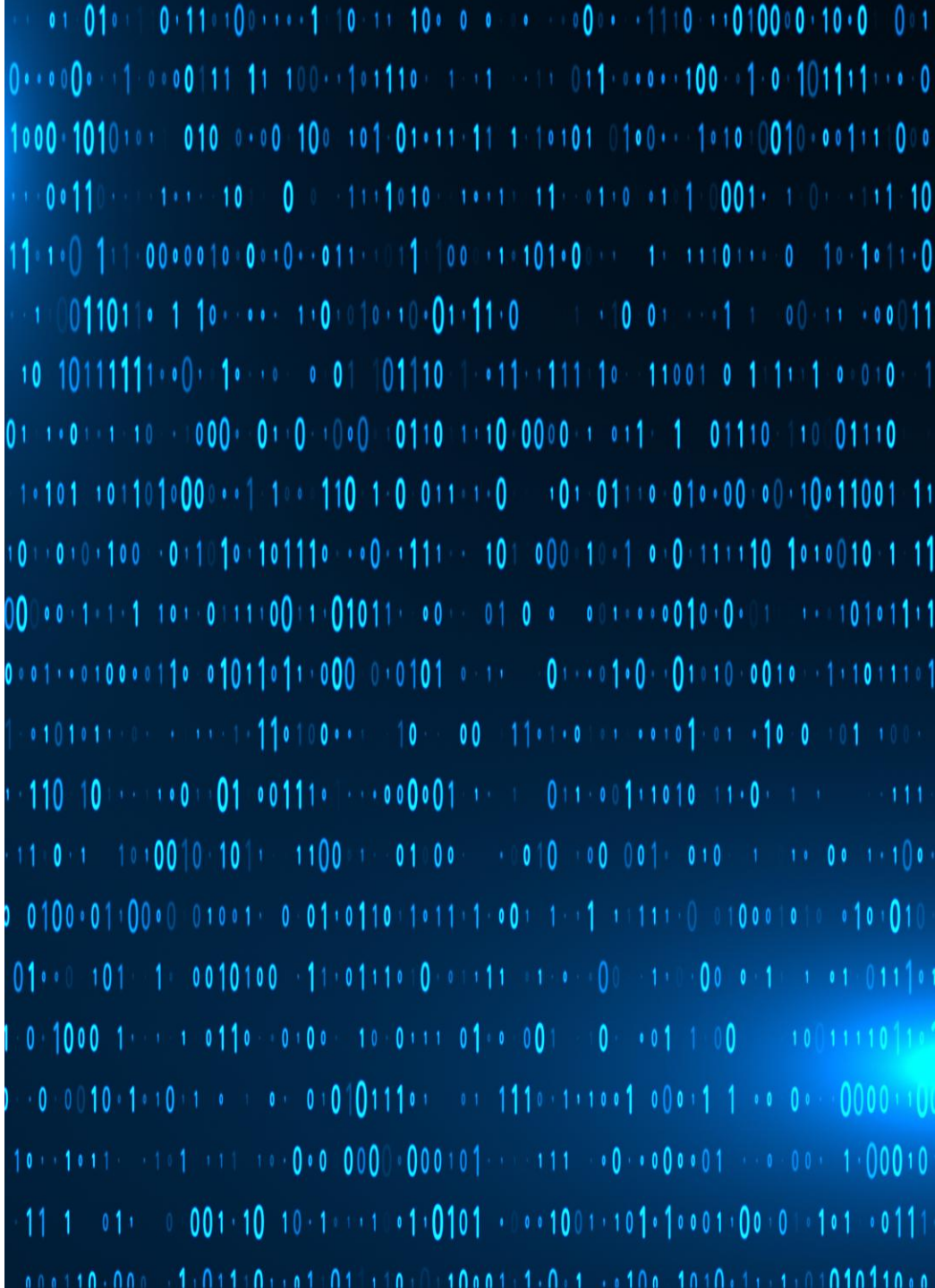


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- Although software differs in nature and use from the services invoked, **software** is a broad term and can have many different applications, such as **economic forecasting** or **financial analysis.**
- The goods and services support one another. There is an overlap in purpose and users.



Ortelius, 26 June 2026 (2020533)

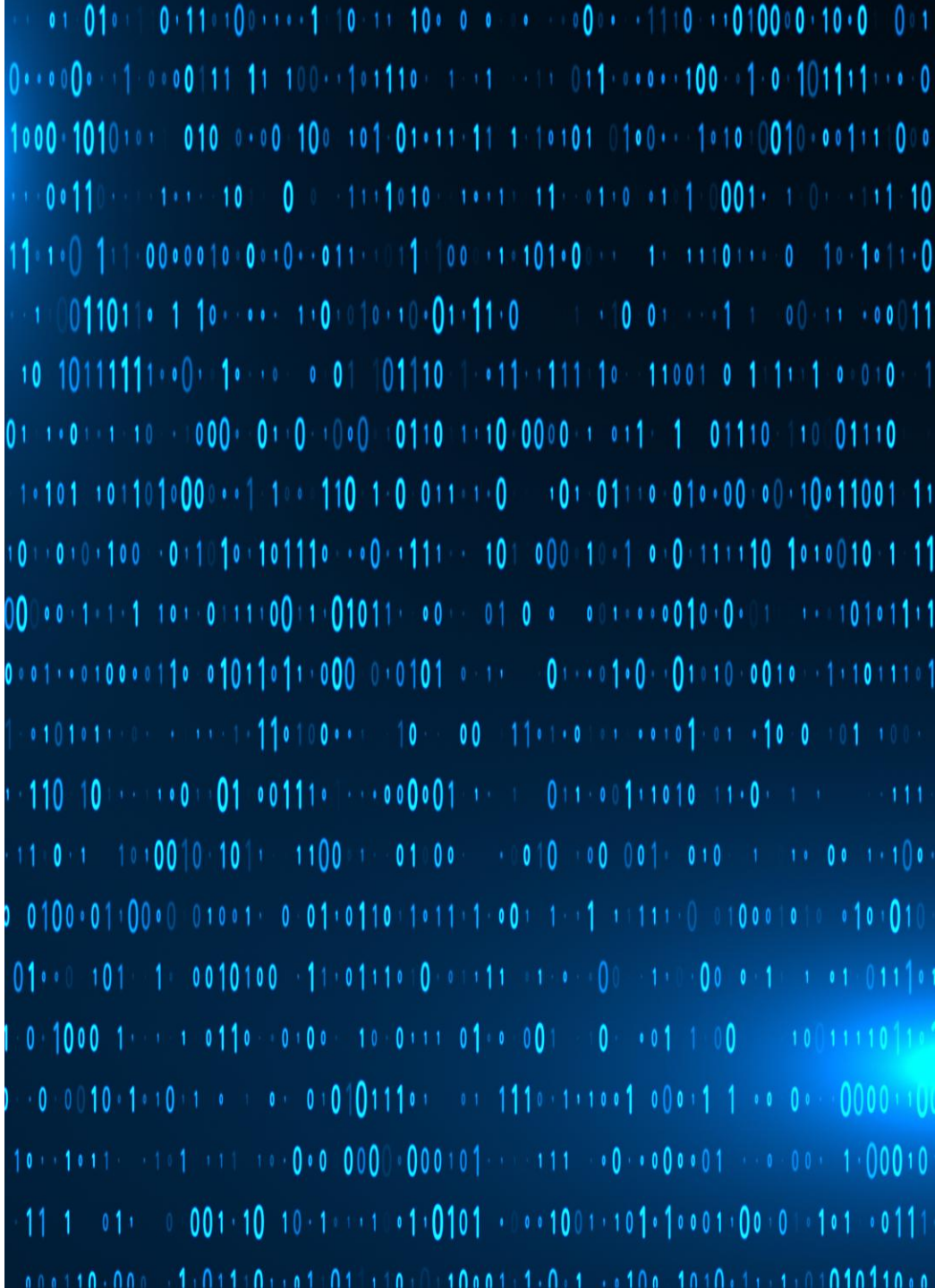
Conclusion

- ‘Software; AI software’: **similar** to a limited degree.

- ‘Logistics software; supply chain management software’: **dissimilar.**

Likelihood of confusion, part of the goods.

Opposition is **partly justified.**



Ortelius, 26 June 2026 (2020533)

- Software clear and precise?

- Referral by the EUIPO's First Board of Appeal to the Grand Board of appeal - Case R 1989/2025-1, KIRA (fig.) / QIRA.



habitat & humanisme (fig.), 30 June 2026 (3000685)



Cancellation based on: Likelihood of confusion + reputation.

Invoked trademark 1	Invoked trademark 2
HABITAT FOR HUMANITY	habitat & humanisme
	Class 35: i.a. Advertising; business management services.
Class 36: i.a. Fundrasing and mortgage services	
Class 37: i.a. Renovation and construction of residential housing.	
	Class 41: Education; training; entertainment; sporting and cultural activities.

- Dissimilar services, **no likelihood of confusion**.

habitat & humanisme (fig.), 30 June 2026 (3000685)



Reputation-ground

- The defendant argues that claimant's addition of the 'reputation-ground' in his argument is too late.

- Claimant may **amend or extend the grounds** at the latest when submitting its arguments or response (Rule 1.30(1)(d) IR).

habitat & humanisme (fig.), 30 June 2026 (3000685)



Conditions (art. 2.2ter (3)(a) BCIP)

- Signs similar / identical;
- Reputation invoked trademark;
- Relevant public makes link between signs;
- Unfair advantage of, or detrimental to, distinctive character / repute;
- No due cause.

habitat & humanisme (fig.), 30 June 2026 (3000685)



Invoked trademarks reputed?

- Invoked EU trademarks: relevant territory EU.
- No concrete information market share, intensity of use or public recognition EU.
- Limited probative value.

habitat & humanisme (fig.), 30 June 2026 (3000685)



Link?

- Even if reputed, no link.
- Contested Benelux trademark: relevant territory BX.
- No evidence concerning BX.

CJEU 3 September 2015, C-125/14, ECLI:EU:C :2016 :539 (Be Impulsive).

Conclusion: cancellation **rejected.**

ATOMIUM, 20 July 2026 (3000833)
Atomium (fig.), 20 July 2026 (3000834)

Cancellation based on: non-use.

Wordmark: ATOMIUM

(classes 21, 29, 30, 32, 33)

Device mark:



(classes 21, 32, 35, 40, 43)

<u>Defendant:</u>

- No proof of use.
- Proper reasons for non-use.

ATOMIUM, 20 July 2026 (3000833)
Atomium (fig.), 20 July 2026 (3000834)

Proper reasons for non-use, obstacles:

- Having a sufficiently direct relationship with the trademark;
- Making use of the trademark impossible / unreasonable;
- Independent of the will of owner.

CJEU 14 June 2007, C-246/05, ECLI:EU:C:2007:340 (Häupl).

Conclusion: cancellation **justified.**

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Other interesting decisions



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Save the date!

Annual webinar - overview 2026





- 🗓️ **26 NOVEMBER** | 2026
- 🕛 **11:00** | 12:00
- 🏅 **1 BMM** | POINT

See you there!

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Thank you for watching our webinar!

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