

04-04-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #34

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

MERCATOR SOFTWARE INC.

Opposition No.: 150,113

Opposer,

v.

MERCATA, INC.

Applicant.

**POST-PUBLICATION AMENDMENT OF APPLICATION  
AND CONDITIONAL STIPULATION OF DISMISSAL**

Applicant, Vulcan Portals, Inc, on assignment from Mercata, Inc., hereby submits the following post-publication amendment to the recitation of services contained in Application Serial No. 75/789,999 for the mark MERCATA & Design, published for opposition in the Official Gazette on June 12, 2001.<sup>1</sup> In accordance with Rule 2.133 of the Trademark Rules of Practice, 37 C.F.R. § 2.133, Applicant has obtained Opposer's consent to these amendments.

<sup>1</sup> See Reel/Frame No. 2398/0938 (recorded on November 21, 2001) assigning application Serial No. 75/789,999 from Mercata, Inc. to Vulcan Portals, Inc.

1 Applicant hereby requests that the original recitation of services be amended so that the  
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3 recitation of services reads, in its entirety, as follows:  
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6 Retail store services via a global computer network in the field of consumer  
7 electronics, hand and power tools, home and kitchen supplies, lawn and garden  
8 care equipment, gifts, sporting goods, fitness equipment and watches, excluding  
9 computer software and manuals for use therewith bearing the MERCATA mark;  
10 advertising the goods and services of others (excluding computer software and  
11 manuals for use therewith bearing the MERCATA mark and computer consulting  
12 services in the field of computer hardware, software, programming, and  
13 installation under the MERCATA mark) via a global computer network and  
14 television  
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18 The amended recitation of services is more specific and narrower than, and is clearly  
19 encompassed by, the original recitation of services in the application. Any party who might be  
20 damaged by the registration of Applicant's mark as applied to the amended and narrower  
21 recitation of services would have made that belief known as a result of the original publication of  
22 Applicant's mark, which encompassed a broader recitation of services. Pursuant to Section  
23 1503.02 of the Trademark Manual of Examining Procedures, this amendment may be entered  
24 since it merely narrows the nature of the services listed and, as such, does not require either an  
25 additional search or the republication of the mark.  
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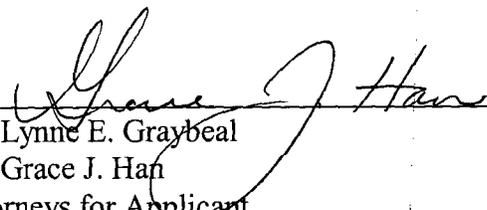
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1 Upon the submission to and approval by the Board of the post-publication amendment, the  
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3 parties jointly stipulate that the Opposition No. 150,113 shall be dismissed.  
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5 DATED: March 31, 2003  
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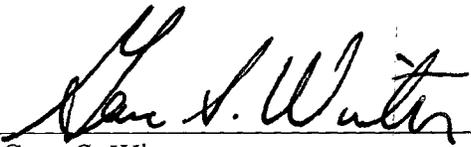
8 Respectfully submitted,  
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11 **PERKINS COIE LLP**  
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15 By:   
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17 Grace J. Han  
18 Attorneys for Applicant  
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April 4, 2003

**VIA EXPRESS MAIL**

Commissioner of Trademarks  
U.S. Patent and Trademark Office  
BOX TTAB NO FEE  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**Re: *Mercator Software, Inc. v. Mercata, Inc.***  
**Opposition No. 150,113**  
**Mark: MERCATA & DESIGN**  
**Class: 35**  
**Serial No.: 75/789,999**  
**Our Ref.: 37178-7001.0/CX003**

Dear Board Members:

Enclosed for filing is an executed Post Publication Amendment of Application and Conditional Stipulation of Dismissal in connection with the above-referenced opposition proceeding.

Enclosed is a self-addressed stamped postcard that we would appreciate your date stamping and returning a confirmation of receipt of this filing.

Very truly yours,

PERKINS COIE LLP

  
Grace J. Han

GJH/sc

Enclosure

cc: Gene S. Winter, Esq., Attorney for Opposer, (w/encl.)  
Vulcan Portals, Inc.

[37178-7001/SL030940.131]

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Perkins Coie LLP (Perkins Coie LLC in Illinois)

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COMM-FEDERAL

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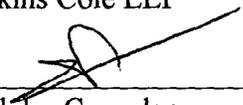
**CERTIFICATE OF MAILING UNDER 37 CFR 1.10**

"EXPRESS MAIL" mailing label number **EL 745507825US**

I hereby certify that the Post Publication Amendment of Application and Conditional Stipulation of Dismissal is being deposited with the United States Postal Service under 37 CFR 1.10 on April 4, 2003, and is addressed to the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, BOX TTAB NO FEE.

Very truly yours,

Perkins Coie LLP

  
\_\_\_\_\_  
Sachiko Crowder  
April 4, 2003

**CERTIFICATE OF SERVICE BY FIRST-CLASS MAIL**

On April 4, 2003, I deposited in the United States Mail a properly addressed, postage prepaid envelope containing a true copy of this document served on:

Gene S. Winter, Esq.  
St. Onge Steward Johnston & Reens LLC  
986 Bedford Street  
Stamford Connecticut 06905-5619

I declare under the penalty of perjury of the State of Washington that the foregoing is true and correct.

Very truly yours,

PERKINS COIE LLP

  
\_\_\_\_\_  
Sachiko H. Crowder  
April 4, 2003