

Michael J. Andelson, SBN 050009  
BEST BEST & KRIEGER LLP  
74-760 Highway 111, Suite 200  
Indian Wells, CA 92210  
(760) 568-2611

Attorneys for Opposer  
SUMMIT INVESTMENTS, LLC

  
05-27-2003  
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

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

**In the matter of trademark application Serial No. 75/931238  
For the mark GENIDAQ  
Published in the Official Gazette on May 6, 2003**

CG 2003 19 PM 09:01  
U.S. PATENT & TRADEMARK OFFICE

SUMMIT INVESTMENTS, LLC )  
a Nevada limited liability company )  
Opposer )  
v. )  
ADVANTECH CO., )  
a Taiwan corporation )  
Applicant )  
06/11/2003 KGIBBONS 00000025 75931238 )  
01 FC:6402 300.00 OP )

**NOTICE OF OPPOSITION**

Opposer is SUMMIT INVESTMENTS, LLC, a Nevada limited liability company, whose address is 1890 Ord Way, Oceanside, CA 92056.

To the best of Opposer's knowledge, the name and address of Applicant is Advantech Limited Co., a Taiwan corporation, whose address is 4F, No. 103-3, Ming Chuan Road, Hsin-Tien, Taiwan.

///

Opposer believes that it will be damaged by registration of the mark shown in the above-identification application, and hereby opposes same.

The grounds for opposition are as follows:

1. Applicant's mark GENIDQA is unregistrable on the Principal Register because it so resembles Opposer's registered trademark, GENICA, as to be likely, when used in connection with Applicant's goods, to cause confusion, or to cause mistake, or to deceive. Trademark Act § 2(d)(1), 15 U.S.C. § 1052(d); On-Line Careline, Inc. v. America Online, Inc., 56 U.S.P.Q.2d 1471 (Fed.Cir. 2000) (where likelihood of confusion found to exist between two marks where the marks are similar in appearance, sound and connotation; and the owners of the two marks target similar consumers).

2. The registered trademark GENICA was in use in the United States by Opposer previous to Applicant's first use of GENIDQA.

3. Opposer is the adopter, first user, and owner since September 21, 1999 of the registered trademark GENICA, Registration No. 2,279,101, for "*computer hardware, computer software for making computer hardware, namely, drivers, mouseports, printer drivers compatible with computer applications,*" in International Class 9. The registered trademark GENICA is currently used by Opposer to identify such goods.

4. Applicant's mark GENIDQA is for "*computer hardware and utility software*", in International Class 9.

5. A likelihood of confusion exists between Opposer's registered trademark GENICA and the conflicting mark GENIDQA due to the similarity in appearance between the two marks and from the similarity of the goods, Hewlett-Packard Co. Packard Press Inc., 62 U.S.P.Q.2d 1001, 1003 (C.A. Fed. Cir. 2002) (likelihood of confusion analysis may focus on dispositive factors, such

as similarity of the marks and relatedness of the goods).

6. **Opposer's first use of the registered trademark GENICA, on April 11, 1998, is prior to the February 29, 2000 filing date of Applicant's application for the conflicting mark GENIDAQ.** Accordingly, Opposer possesses the superior right as between the two marks. Omega Nutrition U.S.A., Inc. v. Spectrum Marketing, Inc., 756 F.Supp. 435, 438 (N.D. Cal. 1991) ("It is a well-settled principle of trademark law that ownership of a trademark is founded upon actual use of the mark . . . As between actual users of the marks, it is the first user who possesses the superior right").

7. **Opposer's first use in commerce of the trademark GENICA, on April 11, 1998, is prior to the applicant's first use dates of April 4, 2002 of the conflicting mark GENIDAQ.** Accordingly, Opposer possesses the superior right as between the two marks. Omega Nutrition U.S.A., Inc. v. Spectrum Marketing, Inc., 756 F.Supp. at 438.

8. Applicant's §1(a) application, is invalid as the conflicting mark GENIDAQ, **was not in use in commerce at the time of Applicant's filing of the application.** Trademark Act § 1(a)(3), 15 U.S.C. § 1051(a)(3); Soule-Gibbs & Co. v. Hearn Bros. Super Food Markets, Inc., 118 U.S.P.Q. (BNA) 383.

9. The Application was published for opposition in the Official Gazette on May 6, 2003 and all oppositions to registration must be filed accordingly, on or before June 5, 2003. Trademark Act § 13, 15 U.S.C. § 1063. As reflected in the Certificate of Mailing attached hereto, this Opposition is timely filed.

///

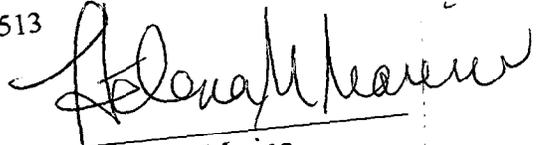
///

///

RMLITHMM217113

I hereby certify that two (2) originals of the foregoing **Notice of Opposition**, regarding **Serial No. 75/931238** for the Mark, **GENIDAQ** is being deposited with the United States Postal Service with sufficient postage as **Express Mail**, tracking label **EU315380396US** in an envelope addressed as follows:

Box TTAB Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

  
\_\_\_\_\_  
Helena M. Marino

On May 27, 2003

RMLITHMM217113

TTAB

**BEST BEST & KRIEGER LLP**

A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

RIVERSIDE  
(909) 686-1450  
ONTARIO  
(909) 989-8584

LAWYERS  
74-760 HIGHWAY 111, SUITE 200  
INDIAN WELLS, CALIFORNIA 92210  
(760) 568-2611  
(760) 340-6698 FAX  
BBKLAW.COM

SAN DIEGO  
(619) 525-1300  
ORANGE COUNTY  
(949) 263-2600  
SACRAMENTO  
(916) 325-4000

MICHAEL J. ANDELSON  
MJANDELSON@BBKLAW.COM

FILE No. 60190.00001

May 27, 2003

**VIA EXPRESS MAIL,  
Tracking # EU315380396US**

EU 315380396 US

Box TTAB Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513



05-27-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

**Re: Notice of Opposition to Registration of Serial No. 75/931238  
for the mark GENIDAQ**

**Opposer: Summit Investments**

Dear Sir or Madam:

1. Check payable to Commissioner for Trademarks, in the amount of \$300.00;
2. Two (2) executed originals, of Notice of Opposition to registration of above-referenced Serial No.
3. Self-addressed stamped postcard for your return to the undersigned upon your receipt of the enclosed items.

Very truly yours,

*Michael J. Andelson*  
Michael J. Andelson  
of BEST BEST & KRIEGER LLP

hmm

Enclosures

cc: Summit Investments