

08/11/2003 TTB

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

In the Matter of Application Serial No. 76/363,532
For the Mark NEUTELLIGENT
Published in the Official Gazette on May 13, 2003



08-11-2003
U.S. Patent & TMO/TM Mail Rcpt Dt. #22

TELIGENT, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. _____
)	
NEUTELLIGENT, INC.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION OF NEUTELLIGENT IN CLASS 38

Opposer, Teligent, Inc., a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 460 Herndon Parkway, Herndon, Virginia 20170, hereby opposes registration of the mark NEUTELLIGENT in International Class 38, that is the subject of Application Serial No. 76/363,532, published in the Official Gazette of May 13, 2003, and requests that registration to Applicant in this class be refused.

Pursuant to Sections 2(a), 2(d) and 13(a) of the Trademark Act of 1946, (as amended, the Lanham Act) 15 U.S.C. §§ 1052 and 1063, and as grounds in support of its opposition, Opposer asserts as follows:

1. Opposer owns five valid federal registrations for the TELIGENT mark:
 - TELIGENT (block letters), Registration No. 1,893,005, for use in connection with "telephone communication system comprising telephones, electronic controllers, adapters and line interfaces for use therefor, and electrical power supplies for use therefor" in International Class 9. This was filed under Section 1(a) of the Lanham Act on January 26, 1994, and has a date of first use in interstate commerce of January 19, 1994;
 - TELIGENT (block letters), Registration No. 2,265,163, for use in connection with "communications services, namely, processing and transmission of voice and data

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signals” in International Class 38. This was filed under Section 1(b) of the Lanham Act on April 7, 1997, providing Opposer with a constructive first use as of that date;

- TELIGENT (stylized), Registration No. 2,265,162, for use in connection with “communications services, namely, processing and transmission of voice and data signals” in International Class 38. This was filed under Section 1(b) of the Lanham Act on April 7, 1997, providing Opposer with a constructive first use as of that date;
- TELIGENT (block letters), Registration No. 2,290,419, for use in connection with “communications services, namely, processing and transmission of video signals” in International Class 38. This was filed under Section 1(b) of the Lanham Act on April 7, 1997, providing Opposer with a constructive first use as of that date; and
- TELIGENT (stylized), Registration No. 2,306392, for use in connection with “communications services, namely, processing and transmission of video signals” in International Class 38. This was filed under Section 1(b) of the Lanham Act on April 7, 1997, providing Opposer with a constructive first use as of that date.

2. Opposer also owns two federal trademark registrations for marks incorporating the word “TELIGENT”:

- TELIGENTCARD (block letters), Registration No. 2,457,763, for use in connection with “telephone calling card services” in International Class 36. This was filed under Section 1(b) of the Lanham Act on June 24, 1998, providing Opposer with a constructive first use as of that date; and
- TELIGENTHOST (block letters), Registration No. 2,398,981, for use in connection with “hosting and maintaining web sites of others on a computer server for a global computer network” in International Class 42. This was filed under Section 1(b) of the Lanham Act on June 24, 1998, providing Opposer with a constructive first use as of that date.

3. In addition, Opposer owns two federal trademark registrations for marks which are derivatives of the word “TELIGENT”:

- TELLIGENCE (block letters), Registration No. 2,254,685, for use in connection with “telecommunications services, namely, long distance and local access transmission of telephone, facsimile, audio, video, and data signals, videoconferencing services and electronic transmission of data” in International Class 38. This was filed under Section 1(a) of the Lanham Act on November 21, 1996, and has a date of first use in interstate commerce of January 5, 1996; and

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- LA FORMA INTELIGENTE DE COMUNICARSE (block letters), Registration No. 2,332,148, for use in connection with “communications services, namely, processing and transmission of voice, data and video signals” in International Class 38. This was filed under Section 1(a) of the Lanham Act on November 21, 1996 and has a date of first use in interstate commerce of January 5, 1999.

(hereinafter all of Opposer’s eight marks will be referred to as “Opposer’s Marks”).

4. Upon information and belief, Applicant, NeuTelligent, Inc. is a Florida corporation, with an address at 412 East Madison, Suite 1000, Tampa, Florida 33602.

5. Notwithstanding Opposer’s prior rights in and to Opposer’s Marks, on January 29, 2002, Applicant filed an application for registration of the trademark NEUTELLIGENT based on a date of first use of January 11, 2001, for use in connection with:

- “communications services, namely, the electronic and optronic transmission of video, voice, and data over a global interactive computer network; providing multiple user access to a global computer interactive network,” in International Class 38;
- “electronic storage of data and documents,” in International Class 39;
- “application service provider (ASP) namely, hosting computer software applications of others; computer services, namely, designing and implementing web sites for others; hosting of digital content on the Internet,” in International Class 42; and
- “collocation services, namely, providing facilities for lease-out space for customers to store their network servers in a secure, environmentally controlled space,” in International Class 36.

6. As demonstrated by Opposer’s registrations, Opposer has used the TELIGENT mark in interstate commerce since at least as early as January 19, 1994, well prior to the Applicant’s filing of its application and its claimed first use date of January 11, 2001.

7. There is no issue as to priority. The date of Applicant’s filing is January 29, 2002, and the claimed date of first use is January 11, 2001, both of which are subsequent to the

constructive use and actual first use dates for each of Opposer's nine marks. Therefore, Opposer has prior and superior rights to the TELIGENT mark.

8. Applicant's NEUTELLIGENT mark, when used in connection with the services set forth in the Applicant's application, which include goods and services related to Opposer's goods and services, is likely to cause confusion, or to cause mistake, or to deceive purchasers and potential purchasers of Applicant's products into erroneously believing that there is some relationship between Opposer and Applicant, or that Opposer has authorized, sponsored or licensed Applicant's use of the mark NEUTELLIGENT, in violation of 15 U.S.C. § 1052(d).

9. Applicant's NEUTELLIGENT mark, when used in connection with the goods and services set forth in the Applicant's application, which include goods and services related to Opposer's goods and services, so closely resembles Opposer's Marks that Applicant's mark will falsely suggest a connection with Opposer, in violation of 15 U.S.C. § 1052(a).

10. Registration of Applicant's mark will damage Opposer, as any concurrent use by Applicant of its mark with inferior goods and services will cause irreparable harm to Opposer's business reputation and erode the value of the goodwill associated with Opposer's Marks.

11. Registration of Applicant's mark will damage Opposer, as such registration will give color of exclusive statutory rights to the mark NEUTELLIGENT to Applicant in derogation and violation of the prior rights of Opposer to Opposer's Marks.

Conclusion

For any or all of the reasons stated above, Opposer avers that it would be seriously damaged and injured if a registration for the NEUTELLIGENT mark is issued to Applicant.

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WHEREFORE, Opposer requests that its Opposition be sustained and that registration of Applicant's NEUTELLIGENT mark for the services specified in International Class 38 of its application be denied.

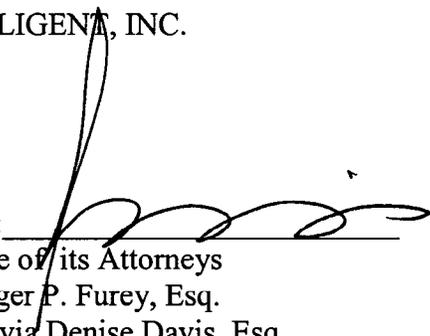
The filing fees in the amount of \$300.00 for the filing of this opposition in International Class 38 only, and any additional fees should be charged to the Deposit Account of Katten Muchin Zavis Rosenman, No. 50-1877.

A duplicate copy of this Notice of Opposition is enclosed herewith.

Please address all communications to Roger P. Furey, Esq., Katten Muchin Zavis Rosenman, 1025 Thomas Jefferson Drive, N.W., Suite 700, East Lobby, Washington, DC 20007.

TELIGENT, INC.

Dated: August 11, 2003

By: 
One of its Attorneys
Roger P. Furey, Esq.
Sylvia Denise Davis, Esq.
KATTEN MUCHIN ZAVIS ROSENMAN
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VIA HAND DELIVERY



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COMMISSIONER FOR TRADEMARKS
2900 Crystal Drive
Arlington, Virginia 22202-3514

MAIL STOP BOX TTAB – FEE

RE: Opposer: Teligent, Inc.
Applicant: NeuTelligent, Inc.
Application No.: 76/363,532 for NEUTELLIGENT
Publication Date: May 13, 2003
Our Reference: 214026.00005

Dear Sir:

Submitted herewith are the following:

1. Notice of Opposition of NEUTELLIGENT in Class 38 (5 Pages);
2. Two copies of Notice of Opposition of NEUTELLIGENT in Class 38 (10 Pages total);
2. Certificate of Hand Delivery (1 Page); and
3. A receipt to be date stamped with the filing date (1 Pink sheet).

The Commissioner is hereby authorized to charge the \$300 fee for filing this Notice of Opposition in International Class 38 and any additional necessary fees to the Deposit Account of Katten Muchin Zavis Rosenman, Account No. 50-1877.

Please direct all inquiries and correspondence in this matter to Roger P. Furey, Esq., at the address on this letterhead or by telephone at (202) 625-3630.

Respectfully submitted,

Valerie A. Purdy
Trademark Paralegal

Date: August 11, 2003

Enclosures

cc: Brian Leventhal, Esq.
Roger P. Furey, Esq.
Sylvia D. Davis, Esq.

Washington, DC New York Los Angeles Chicago Charlotte Palo Alto Newark www.kmzr.com

A Law Partnership including Professional Corporations

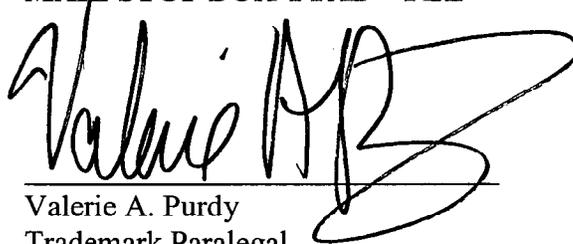
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CERTIFICATE OF HAND-DELIVERY

I hereby certify that the foregoing **Notice of Opposition of NEUTELLIGENT (U.S. Application Serial No. 76/363,532) in Class 38**, filed on behalf of Opposer, Teligent, Inc., was hand-delivered to the following address, this 11th day of August, 2003:

Commissioner for Trademarks
U.S. Patent and Trademark Office
2900 Crystal Drive
Arlington, Virginia 22202-3514
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