

TTAB

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

LEO STOLLER d/b/a
CENTRAL MFG.
P.O. Box 35189
Chicago, IL 60707

Opposition No: 91160234

Opposer/Respondent,

vs.

Trademark: AIRFRAME BUSINESS
SOFTWARE, INC.

AIRFRAME BUSINESS SOFTWARE, INC.
800 Southwood Blvd, Suite 105
Incline Village, NV 89451

Applicant/Petitioner.

TTAB/NO FEE

MOTION FOR JUDGMENT AND/OR SUMMARY JUDGMENT

NOW COMES the Opposer/Respondent and moves the Board to grant judgment in favor of the Opposer/Respondent on the Notice of Opposition and on the Counterclaim. Applicant/Petitioner cannot establish that it can be damaged by Opposer's registrations and has no standing to petition to cancel. Applicant's said application should be voided ab initio and judgment should be awarded to the Opposer, sustaining Opposer's Notice of Opposition for the following reasons:

The Applicant has applied for the mark AIRFRAME BUSINESS SOFTWARE, INC., Application SN: 78/233,204, for the following goods: *computer software for database management of business processes and information management* with the following disclaimer: NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BUSINESS SOFTWARE, INC." APART FROM THE MARK AS SHOWN.

The Applicant has also applied for a nearly identical and related trademark Application SN: 78/319,600 for the mark AIRFRAME, for the following identical and/or related goods: *web-based business solution software, namely, computer software for use in management of the business affairs.*



On December 3, 2004, the Applicant received a final refusal from the PTO for Application SN: 78/319,600; which is made a part hereof by reference as if fully copied and attached. The Opposer/Respondent respectfully asserts that the Board should take judicial notice of the said Applicant's final refusal to register Application SN: 78/319,600, dated December 3, 2004; incorporated herein by reference as if fully copied and attached. Such final rejection is directly related to Application SN: 78/233,204, which is the subject of the Notice of Opposition and Applicant's counterclaim.

The Board, as a matter of law, should reject Applicant's said Application SN: 78/233,204 on similar grounds that the PTO has issued its final rejection of Application SN: 78/319,600. In view of the Board's final rejection of the said Applicant's closely related registration, the Applicant clearly does not have standing to bring a counterclaim and/or be entitled to trademark registration of Application SN: 78/233,204.

WHEREFORE, the Opposer/Respondent prays that the Board grant judgment in favor of the Opposer/Respondent, sustaining Opposer's Notice of Opposition and denying registration of the mark sought to be registered in Application SN: 78/233,204. The Opposer/Respondent prays that the Board grant judgment in favor of the Opposer/Respondent on the counterclaim and against the Applicant/Petitioner.

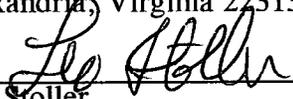
By: 
Leo Stoller
CENTRAL MFG., Opposer/Respondent
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
773-283-3880 FAX 708 453-0083

Date: January 11, 2005

Certificate of Mailing

I hereby certify that the foregoing *Motion* is being deposited with the U.S. Postal Service as First Class Mail in an envelope addressed to:

TTAB / NO FEE
Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

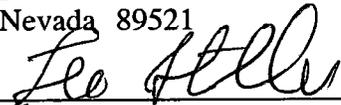


Leo Stoller
Date: January 11, 2005

Certificate of Service

I hereby certify that this *Motion* is being sent by U.S. Mail and deposited with the U.S. Postal Service by First Class Mail, in an envelope addressed to:

Ann Rosevear
WALSH, BAKER & ROSEVEAR, P.C.
9468 Double R. Blvd.
Suite A
Reno, Nevada 89521



Leo Stoller
Date: January 11, 2005



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Typed Drawing

Word Mark AIRFRAME BUSINESS SOFTWARE, INC.

Goods and Services IC 009. US 021 023 026 036 038. G & S: computer software for database management of business processes and information management

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78233204

Filing Date April 2, 2003

Current Filing Basis 1B

Original Filing Basis 1B

Published for Opposition December 16, 2003

Owner (APPLICANT) AIRFRAME BUSINESS SOFTWARE, INC. CORPORATION DELAWARE 800 Southwood Blvd., Suite 105 Incline Village NEVADA 89451

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BUSINESS SOFTWARE, INC." APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Serial Number: 78233204

Registration Number: (NOT AVAILABLE)

Mark (words only): AIRFRAME BUSINESS SOFTWARE, INC.

Standard Character claim: No

Current Status: Application has been published for opposition.

Date of Status: 2003-12-16

Filing Date: 2003-04-02

The Information will be/was published in the Official Gazette on 2003-12-16

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
SAITO KIM TSUKIYO Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2003-11-03

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. AIRFRAME BUSINESS SOFTWARE, INC.

Address:
AIRFRAME BUSINESS SOFTWARE, INC.
800 Southwood Blvd., Suite 105
Incline Village, NV 89451
United States

Legal Entity Type: Corporation
State or Country of Incorporation: Delaware
Phone Number: 775-832-2667
Fax Number: 775-832-9115



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Typed Drawing

Word Mark AIRFRAME

Goods and Services IC 009. US 021 023 026 036 038. G & S: Web-based business solution software, namely, computer software for use in management of the business affairs. FIRST USE: 20030401. FIRST USE IN COMMERCE: 20030401

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78319600

Filing Date October 28, 2003

Current Filing Basis 1A

Original Filing Basis 1A;1B

Owner (APPLICANT) Airframe Business Software Inc. CORPORATION DELAWARE 800 Southwood Blvd.Suite 105 Incline Village NEVADA 89451

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Serial Number: 78319600

Registration Number: (NOT AVAILABLE)

Mark (words only): AIRFRAME

Standard Character claim: No

Current Status: An office action making FINAL a refusal to register the mark has been mailed.

Date of Status: 2004-12-03

Filing Date: 2003-10-28

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
GARTNER JOHN M Employee Location

Current Location: L20 -TMEG Law Office 102

Date In Location: 2004-12-03

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Airframe Business Software Inc.

Address:
Airframe Business Software Inc.
800 Southwood Blvd.Suite 105
Incline Village, NV 89451
United States

Legal Entity Type: Corporation
State or Country of Incorporation: Delaware
Phone Number: 7758329114
Fax Number: 7758329115

GOODS AND/OR SERVICES

International Class: 009

Web-based business solution software, namely, computer software for use in management of the business affairs

First Use Date: 2003-04-01

First Use in Commerce Date: 2003-04-01

Basis: 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

- 2004-12-03 - Final refusal e-mailed
- 2004-12-03 - Final Refusal Written
- 2004-09-30 - Data Modification Completed
- 2004-06-25 - Amendment From Applicant Entered
- 2004-06-25 - Communication received from applicant
- 2004-07-08 - Amendment to use processing complete
- 2004-06-25 - Amendment to Use filed
- 2004-06-25 - PAPER RECEIVED
- 2004-06-21 - ITU claim deleted
- 2004-06-21 - Communication received from applicant
- 2004-05-25 - Non-final action e-mailed
- 2004-05-12 - Case file assigned to examining attorney
- 2003-11-24 - TEAS Preliminary Amendment Received
- 2003-11-21 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent
Airframe Business Software
800 Southwood Blvd.Suite 105
Incline Village, NV 89451