

ESTTA Tracking number: **ESTTA19671**

Filing date: **11/19/2004**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	EPLAN Software & Service GmbH & Co. KG
Granted to Date of previous extension	11/21/2004
Address	AN DER ALTEN ZIEGELEI 2 MOHNHEIM AM RHEIN, 40789 GERMANY

Attorney information	Fred Carl III Cantor Colburn LLP 55 Griffin Road South Bloomfield, CT 06002 UNITED STATES tm@cantorcolburn.com Phone:860 286 2929
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Applicant Information

Application No	78252199	Publication date	05/25/2004
Opposition Filing Date	11/19/2004	Opposition Period Ends	11/21/2004
Applicant	Board of Regents, The University of Texas System 201 West 7th Street Austin, TX 78701		

UNITED STATES

Goods/Services Affected by Opposition

Class 042. First Use: 20021001 First Use In Commerce: 20021001

All goods and services in the class are opposed, namely: Computer services, namely, integrating emergency response contingency plans; tracking the filing and maintenance of emergency response plans; compiling, handling, filing, updating, distributing and maintaining hazardous material information; and providing reliable, rapid facility information to emergency responders in the event of an emergency via a global telecommunications network

Attachments	EPLAN 11-19.pdf (4 pages)
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Signature	/fred carl iii/
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Name	Fred Carl III
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Date	11/19/2004
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1. Opposer and its predecessor(s) have for many years been engaged in the creation, manufacture, distribution, provision, advertising and sale of Computer programs, Training services in the use and operation of computers and computer programs, and Computer programming services.
2. Since long prior to the date of first use alleged in the application at issue, Opposer and its predecessors have used the trademark EPLAN in connection with the advertising and sale of its goods and services, identified herein.
3. Opposer through its predecessor has registered the aforesaid EPLAN trademark in the United States Patent and Trademark Office, U.S. Registration Number 1485111, for “Computer programs,” in class 9, “Training services in the use and operation of computers and computer programs,” in class 41, and “Computer programming services,” in class 42. This registration is valid and subsisting. Opposer owns this registration.
4. Opposer and its predecessor(s) have sold goods under Opposer’s EPLAN trademark in the United States and throughout the world.
5. By virtue of the aforesaid sales and promotion, Opposer and its predecessor(s) have built up and Opposer now owns valuable goodwill symbolized by its EPLAN trademark.

6. On May 20, 2003, Applicant filed a use-based application to register EPLAN and design:



- for use on “Computer services, namely, integrating emergency response contingency plans; tracking the filing and maintenance of emergency response plans; compiling, handling, filing, updating, distributing and maintaining hazardous material information; and providing reliable, rapid facility information to emergency responders in the event of an emergency via a global telecommunications,” in International Class 42, Application Serial No. 78 252199.
7. Applicant's use and registration of the mark EPLAN and design for the goods stated in the opposed application is likely to result in confusion, mistake or deception with Opposer's EPLAN trademark, or in the belief that applicant or its EPLAN and design services are in some way legitimately connected with, licensed or approved by Opposer.
 8. Upon information and belief, neither applicant nor any predecessor or related company of applicant has a claim of right in the mark EPLAN prior to October 1, 2002, the claimed first use date found in the opposed application, long after Opposer began using and developed goodwill in its EPLAN trademark.

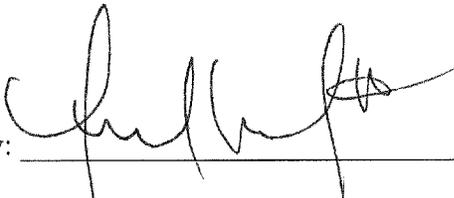
9. Applicant's use of the trademark EPLAN and design is without Opposer's consent or permission.

WHEREFORE, registration by applicant of the aforesaid trademark for the aforesaid goods would be damaging to Opposer, Opposer prays that application Serial No. 78 252199 be rejected, and that registration of the mark therein sought for the services specified in International Class 42 be denied and refused.

Opposer herein submits the requisite filing fee in the amount of \$600. Please debit any deficiency or credit any overpayment to, Deposit Account No. 061130.

Please address all correspondence to Fred Carl III, Cantor Colburn LLP, 55 Griffin Road South, Bloomfield, Connecticut 06002.

CANTOR COLBURN LLP

By: 

Fred Carl III
Attorneys for Opposer
EPLAN GmbH & Co. KG

Date: November 19, 2004

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