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Netopsystems

Commissioners for Trademarks
Attn: TTAB / Andrew P. Baxley
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Your message	Opposition No.	Tel. / Ext.	Date
17 August 2005	91163127	+49 30 726 198- 510	15 September 2005

Answer of Applicant to Notice of Opposition (No.: 91163127)

Dear Sir and Madam,

Enclosed please find the Answer of Netopsystems AG to the Notice of Opposition by DANWARE DATA A/S dated November 23rd 2004, comply with the rule 8 (b) of the Federal Rules of Civil Procedure.

Yours sincerely,

Oliver Wessling
CEO

09-27-2005
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #01

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

In the Matter of Application
Serial No. 78/246517

DANWARE DATA A/S Opposer, v. NETOPSYSTEMS AG Applicant.	Opposition No.: 91163127

Answer of Applicant to Notice of Opposition

(USPTO 08/17/05)

To: Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board (TTAB)
P.O. Box 1451
Alexandria, VA 22313-1451

Netopsystems AG, ("Applicant"), hereby answers each of the allegations of the Notice of Opposition filed by DANWARE DATA A/S on November 23rd 2004.

Applicant admits it is the owner of the Mark NETOPSYSTEMS but not in International Class 009 as alleged in the first unnumbered paragraph. Applicant is the owner of the Mark NETOPSYSTEMS in International Class 042 for the service set forth in Applicant's application with Serial No. 78/246517. Applicant denies that Opposer will be damaged as alleged in the first unnumbered paragraph.

The numbers answers herein correspond to the numbered paragraphs set forth in Opposer's Notice of Opposition.

1. The Applicant admits this allegation in paragraph 1. To clarify, the term "optimization of data volume" refers to data compression.
2. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 2 and therefore denies the allegations.
3. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 3 and therefore denies the allegations.
4. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 4 and therefore denies the allegations.
5. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 5 and therefore denies the allegations.
6. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 6 and therefore denies the allegations.
7. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 7 and therefore denies the allegations.
8. Applicant denies that the Opposer will be damaged. The reasons are as follows: Applicant denies the allegation in paragraph 8 that the Opposer's goods are similar to the service offered by the Applicant. NETOPSYSTEMS is designed for a different field of business and aims at a different group of customers. NETOPSYSTEMS is specialized in electronic software distribution. NETOPSYSTEMS is designed for a service which includes the analysis of downloadable software regarding the data volume reduction which could be achieved with NETOPSYSTEMS technology, the calculation of cost savings by using NETOPSYSTEMS technology, the service of implementation and maintaining technology, and additional consulting service in the field of size-optimized, accelerated, demand-oriented, fully automated,

secure, and efficient electronic software delivery. The field of service is software or hardware technology that optimizes data volumes of software which is later on used in computers or networks. Opposer's field of business is software (Main product: remote control software) for use in personal computers. Their main customers are end users (**B2C sector**). Whereas NETOPSYSTEMS is designed for software vendors in the software, telecommunication, game, and music industry (**B2B sector**). Therefore the Applicant's service won't cause any confusion as to the source, sponsorship or affiliation of the parties' respective goods and services.

9. Applicant denies all of the allegation in paragraph 9. NETOPSYSTEMS is a well known and established trademark. In comparison to Opposer's NETOP, our name includes the additional word SYSTEMS. It is not designed for computer software products for personal computers as alleged in paragraph 9. The term "NET" refers to NETWORK. The term "OP" refers to OPERATING. The term "SYSTEM" stands for SYSTEM. And the term "S" at the end of NETOPSYSTEMS refers to SERVICE and SPEED. The trademark NETOPSYSTEMS conveys the message that the goods and services are intended for use in relation to Network (distribution of optimized/compressed software via internet or network) Operating System (download manager) and Service (development and consulting).

10. Applicant denies all of the allegation in paragraph 10. The main differences between NETOPSYSTEMS and DANWARE are the business field and the target group. Opposer and Applicant don't compete in the same market. NETOP is operating in the field of end customers (**B2C sector**). NETOPSYSTEMS is designed for software producers (**B2B sector**), to facilitate and optimize the distribution of digital goods in a size-optimized, fully automated, efficient, and secure way via Internet, mobile net, and computer networks. NETOPSYSTEMS is not specifically designed for end user. NETOPSYSTEMS can only be visible to end users, if software is distributed by software vendors in the software, telecommunication, game, and music industry via Internet. The software functionality also differs. NETOP deals with end user software, whereas NETOPSYSTEMS is designed for software

technology and service which deals with the compression of software applications. Because of the stated arguments above there is no reason to believe that the Applicant's Mark will cause confusion or mistakes in any way or anyhow.

11. Applicant is without knowledge and information to form a belief as to the truth of the allegations set forth in paragraph 11 and therefore denies the allegations. Additionally, the Mark NETOPSYSTEMS is well known by Applicant's customers and business contacts for many years, like Adobe Systems Inc., American Online Inc., Apple Computer Inc., Hewlett-Packard Company, Intel Corp., Intuit Inc., McAfee Inc., Microsoft Corp., Network Associates Inc., Nokia Corp., Oracle Corp., SAP America Inc., Sun Microsystems Inc., Symantec Corp., Verizon Communications Inc. and Xerox Corp. All of these customers relate the proposed Mark NETOPSYSTEMS to significant size reduction of the original data volume and the facilitation of distributing digital goods.

12. Applicant denies the allegation in paragraph 12 that Applicant's Mark will cause any dilution of the distinctiveness of Opposer's famous registered Mark NETOP. As stated above, Opposer and Applicant operate in different markets and with different target groups. Opposer's Mark NETOP is designed for end users and not for software vendors. The main target groups are enterprises around the world which are using "NetOp remote control software" for remote administration of servers, laptops and desktop machines. Another big target group are schools. "NetOp School" is a highly acclaimed teaching software solution designed to make computerized classroom teaching more effective. NETOPSYSTEMS is designed for software vendors in a high price segment, to facilitate and optimize the distribution of digital goods. One example is the size-optimization or compression of Adobe Reader 6.0 software from Adobe Systems Inc. The service NETOPSYSTEMS made possible a data volume reduction of Adobe Reader 6.0 installers by 50% compared to the original software with common technology.

Furthermore NETOPSYSTEMS and DANWARE'S name and logo are strongly different in font and color. The NETOPSYSTEMS logo is a white triangle in a red square, whereas DANWARE'S logo looks like a flying dragon:

Netopsystems v. NetOp

The Elements of the NETOPSYSTEMS name and logo create an image that is strongly rooted in our history and our customers and business contacts alike relate both our logo and our name with the field we operate in and the technologies we stand for.

We hope that our comments comply with Rule 8 (b) of the Federal Rules of Civil Procedure. Please take our arguments into consideration.

Dated: September 13, 2005

Respectfully submitted,
Netopsystems AG

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Certificate of Service:

The undersigned hereby certify that the above ANSWER was served on the 13th of September to the Opposer by International Certified Mail, addressed to Baker & McKenzie LLP, John C. Filosa, Jeffrey O. Davidson, Attorneys for DANWARE DATA A/S, One Prudential Plaza, Suite 3500, 130 East Randolph Drive, Chicago, Illinois 60601.

Dated: 13th of September

By: _____
Oliver Wessling
Correspondent of Applicant