

ESTTA Tracking number: **ESTTA64819**

Filing date: **02/02/2006**

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

Proceeding	91168271
Party	Defendant Surgistar, Inc. Surgistar, Inc. 2310 La Mirada Dr. Vista, CA 92081
Correspondence Address	SURGISTAR, INC. 2310 LA MIRADA DR VISTA, CA 92081-7862
Submission	Withdrawal Of Application
Filer's Name	Manish Chaudhary
Filer's e-mail	mchaudhary@surgistar.com
Signature	/manishchaudhary/
Date	02/02/2006
Attachments	Surgistar Application NexGen.pdf (2 pages) Notice of Opposition.pdf (3 pages)

----- Original Message -----

From: ECom114

To: mchaudhary@surgistar.com

Sent: Thursday, September 01, 2005 12:45 PM

Subject: TRADEMARK APPLICATION NO. 78558667 - NEXGEN - N/A

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/558667

APPLICANT: Surgistar, Inc.

78558667

CORRESPONDENT ADDRESS:

SURGISTAR, INC.

2310 LA MIRADA DR

VISTA, CA 92081-7862

RETURN ADDRESS:

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words "Box Responses - No Fee."

MARK: NEXGEN

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

mchaudhary@surgistar.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.

4. Your telephone number and email address.

Serial Number 78558667

EXAMINER'S AMENDMENT

AMENDMENTS AUTHORIZED: As authorized by Manish Chaudhary, on August 31, 2005, the application is amended as noted below. If Applicant disagrees with or objects to any of the amendments below, please notify the undersigned attorney immediately; otherwise, no response is necessary. See TMEP § 707.

ADVISORY—AMENDMENTS TO GOODS: If the goods have been amended below, any future amendments must be in accordance with 37 C.F.R. § 2.71(a) and TMEP § 1402.07(e).

no conflicting marks

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d) (2003). TMEP § 704.02.

COLOR CLAIM AND DESCRIPTION IN MARK

The following statement claiming and describing location of color in the mark is amended in the record:

The colors BLACK and PURPLE are claimed as a feature of the mark.

The mark consists of the stylized lettering "NEXGEN," with the letters "NE" and "GEN" appearing in the color BLACK and the letter "X" appearing in the color PURPLE.

37 C.F.R. § 2.52(b)(1); TMEP § 807.07(a)(ii).

E-MAIL authorized & e-mail address added

Per his request via telephone, Applicant has authorized correspondence by e-mail, and the record has been amended to include the following e-mail address:
mchaudhary@surgistar.com.

Thank you for your cooperation and time in resolving the foregoing issues.

Sincerely,

/Judy Helfman/
Judith M. Helfman
USPTO - Trademarks
Law Office 114
(571) 272-5892 direct line

----- Original Message -----

From: <ESTTA@USPTO.GOV>
To: <mchaudhary@surgistar.com>
Sent: Wednesday, December 28, 2005 12:16 PM
Subject: Notice of Opposition

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: December 28, 2005

Opposition No 91168271
Serial No. 78558667

SURGISTAR, INC.

2310 LA MIRADA DR
VISTA, CA 92081-7862

Zimmer Technology, Inc.

v.

Surgistar, Inc.

Zimmer Technology, Inc.

150 South Wacker Drive, Suite 1200
Chicago, IL 60606

ESTTA59223

A notice of opposition to the registration sought in the above-identified application has been filed. The notice of opposition can be viewed and printed at <http://ttabvue.uspto.gov/>

ANSWER IS DUE FORTY DAYS after the transmission date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB.

See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the Trademark Trial and Appeal Board Manual of Procedure (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: January 17, 2006

Discovery period to close: July 16, 2006

30-day testimony period for party
in position of plaintiff to close: October 14, 2006

30-day testimony period for party
in position of defendant to close: December 13, 2006

15-day rebuttal testimony period
for plaintiff to close: January 27, 2007

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the Official Gazette notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>.

Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://esta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.