

ESTTA Tracking number: **ESTTA69623**

Filing date: **03/07/2006**

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	ScottElliot
Granted to Date of previous extension	03/08/2006
Address	31 Pheasant Run New Hope, PA 18938 UNITED STATES

Correspondence information	Paul Goodman Cyruli, Shanks & Zizmor, LLP 420 Lexington Avenue Suite 2020 New York, NY 10170 UNITED STATES lawyny@aol.com Phone:212 661 6800
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Applicant Information

Application No	78396033	Publication date	11/08/2005
Opposition Filing Date	03/07/2006	Opposition Period Ends	03/08/2006
Applicant	Vantage Technologies Knowledge Assessment, L.L.C. 110 Terry Drive Newtown, PA 18940 UNITED STATES		

Goods/Services Affected by Opposition

Class 042. First Use: 1998/01/15 First Use In Commerce: 1998/01/15 All goods and services in the class are opposed, namely: Providing temporary use of on-line non-downloadable computer-based instructional and assessment software for enabling automated essay scoring and producing resultant relative scores and varied user feedback across multi-dimensional domains
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Attachments	NoticeofOpposition.pdf (4 pages)
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Signature	/Paul Goodman/
Name	Paul Goodman
Date	03/07/2006

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

In the matter of the Trademark application Serial No. 78396033

For the mark: INTELLIMETRIC

Published in the Official Gazette on November 8, 2005

SCOTT ELLIOT, PLAINTIFF

v.

VANTAGE TECHNOLOGIES KNOWLEDGE ASSESSMENT, LLC, DEFENDANT

OPPOSITION NO. _____

NOTICE OF OPPOSITION

The above-referenced opposer, Scott Elliot, with an address at 31 Pheasant Run New Hope, PA 18938 (the “Plaintiff”), believes that he will be damaged by registration of the mark shown in the above-identified application (the “Application”), by Vantage Technologies Knowledge Assessment, LLC (“Defendant/Applicant”) and hereby opposes the same.

STANDING

1. The Plaintiff, Scott Elliot, brings this opposition on the basis that the Plaintiff is the rightful owner of the trademark “INTELLIMETRIC” (the “Mark”), for the same class of goods and services that the Defendant/Applicant claims in its application for registration, Serial No. 78396033.

2. Thus, Plaintiff has sufficient interest in the Mark to bring this action.

GROUND FOR OPPOSITION

3. Plaintiff is the sole and rightful owner of the Mark.

4. During 1994, Plaintiff, as a principal of a company known as “Tria Systems”, started development of a software product for automated test scoring which was known by the mark “IntelliMetric”.

5. Development of the IntelliMetric product by Tria Systems continued until September 30, 1997, when Plaintiff purchased all right, title and interest to the software and the appurtenant “IntelliMetric” mark and software from Tria Systems.

6. As of September 30, 1997, Plaintiff was the sole owner of the IntelliMetric software and the IntelliMetric mark.

7. On or about February 17, 1997, Plaintiff entered into a business relationship with Defendant/Applicant and entered into a Sales Representative Agreement which incorporated and had attached to it, a Confidentiality Agreement.

8. Neither the Sales Representative Agreement nor the attached Confidentiality Agreement transferred any rights to the IntelliMetric software or the IntelliMetric Mark to Defendant/Applicant.

9. At the time that the parties executed the Sales Representative Agreement and the Confidentiality Agreement on February 17, 1997, Plaintiff continued, independently from Defendant/Applicant, to develop and market the IntelliMetric software under the IntelliMetric mark.

10. No rights to either the IntelliMetric software or the IntelliMetric mark were transferred to Defendant/Applicant pursuant to Sales Representative Agreement, the

Confidentiality Agreement or any other agreement between the Plaintiff and the Defendant/Applicant.

11. Defendant/Applicant was aware of the existence of the IntelliMetric software and was aware that Plaintiff was engaged in licensing of the IntelliMetric software (under the IntelliMetric mark) in a business venture unrelated to his relationship with Defendant/Applicant.

12. In fact, Defendant/Applicant was provided, and specifically reviewed in the presence of the Plaintiff, a copy of agreement pursuant to which Plaintiff acquired the IntelliMetric software and the appurtenant IntelliMetric Mark from Tria Systems.

13. In 2000, Plaintiff became an employee of Defendant/Applicant and Defendant/Applicant was granted certain limited marketing rights to the IntelliMetric software as it existed at such time. In addition, Defendant/Applicant was granted certain rights to certain derivatives of the IntelliMetric software.

14. No rights to the IntelliMetric software, as it existed in 2000, or the IntelliMetric mark, were transferred to Defendant/Applicant by virtue of any agreement.

15. From 1997 through the present, Plaintiff, was and is, the owner of the IntelliMetric mark.

16. Thus, the Defendant/Applicant is not now, and was not at the time of the filing of its application for registration, the rightful owner of the Mark and has no right to seek registration of the Mark.

17. By virtue of the foregoing, Plaintiff will be damaged by registration of the Mark.

WHEREFORE, Plaintiff respectfully requests that the registration of the Mark should be denied, together with such other and further relief which is just and proper.

Dated : New York, New York
 March 6, 2006

CYRULI, SHANKS & ZIZMOR LLP

By: /s/ Paul Goodman

Paul Goodman

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