

ESTTA Tracking number: **ESTTA156268**

Filing date: **08/12/2007**

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	VVI		
Entity	Corporation	Citizenship	PA
Address	311 Adams Avenue State College, PA 16803 UNITED STATES		

Correspondence information	Ed VanVliet President VVI 311 Adams Avenue State College, PA 16803 UNITED STATES ed@vvi.com Phone:814-441-0165
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Applicant Information

Application No	78743112	Publication date	07/24/2007
Opposition Filing Date	08/12/2007	Opposition Period Ends	08/23/2007
Applicant	Siemens Medical Solutions USA, Inc. 51 Valley Stream Parkway Malvern, PA 19355 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. All goods and services in the class are opposed, namely: COMPUTER SOFTWARE FOR USE IN IMAGING SYSTEMS IN THE MEDICAL FIELD, NAMELY, COMPUTER SOFTWARE SOLD AS A COMPONENT OF ULTRASOUND EQUIPMENT TO ENABLE THE DISPLAY, MEASUREMENT AND VISUALIZATION OF MYOCARDIAL MECHANICS, INCLUDING, DIRECTION AND RELATIVE VELOCITY OF CARDIAC TISSUE MOTION

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2524590	Application Date	07/28/2000
Registration Date	01/01/2002	Foreign Priority	NONE

		Date	
Word Mark	VVI		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1992/06/03 First Use In Commerce: 1992/11/30 Computer software for data visualization by creating graphics and text-oriented documents, real-time custom displays and graphics and control interfaces with user interface tools and programming libraries; computer software that manages the process of making software and which uses visual interfaces and code parsing and analysis algorithms for an interactive development environment (IDE); computer software compiler, database server and web server programs that are used in connection with data visualization and software development</p> <p>Class 042. First use: First Use: 1992/06/03 First Use In Commerce: 1992/11/30 Computer software consultation services; computer software programming and design for others</p>		

Attachments	76097647#TMSN.gif (1 page)(bytes) vvi_opposition_text.pdf (2 pages)(24172 bytes)
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Signature	/ed vanvliet/
Name	Ed VanVliet
Date	08/12/2007

This is a letter of opposition opposing registration pertaining to application with Serial Number 78743112 (Application) for the following reasons:

Claims:

The Application, if allowed to proceed, shall:

(A) Cause harm to me by creating confusion as to what the mark VVI represents, which entity it applies to and reduce the distinction of the VVI mark.

(B) Cause my exclusive rights to the trademark VVI, within the scope of descriptions of goods, to be infringed upon and reduce its distinction.

(C) Cause harm to the USPTO application process by permitting inaccurate, false, misleading, conflicting and partial information to be submitted to the USPTO.

Because of claims A through C I respectfully request that application with serial number 78743112 be terminated.

Explanation:

The following briefly explains the claims above:

(A.1) Applicant is using the mark VVI for computer software to visualize data. That conflicts with my trademark's definition of goods and services (Serial Number 76097647). My previous prima facie correspondence goes into some detail regarding this issue. In particular, I am already using the mark VVI in commerce with medical device in conjunction with visualization. Please refer to my previous prima facie correspondence (filed as documents at the USPTO in conjunction with Serial Number 78743112) for further information and evidence.

(B.1) Applicant is presently using mark, and has filed mark, in a confusing manner which causes market confusion, confusion at the USPTO, and confusion to me. As near as I can tell, all of the DuPont factors for judging the likelihood of confusion are satisfied to varying degrees. If needed, I hope I am given a future opportunity to discuss each of the factors in detail. Some of those issues are indicated and discussed in my previous prima facie correspondence to the USPTO.

(C.1) Applicant is trying to trademark the phrase "Velocity Vector Imaging" (Serial Number 78743123) in classification 009, however is trying to get a trademark for its abbreviation (VVI) under classification 010. Applicant is using both phrase and abbreviation together in the form: "Velocity Vector Imaging (VVI)" and separate to mean, and refer to, the same thing. It seems to me that one or the other classification is true and accurate while the other is untrue and inaccurate and that using the two marks together and apart interchangeably as applicant does in commerce presents a problem from a registration perspective as one trademark registration is true, but the other is either true when meaning something different or is false when referring to the same thing and that because applicant is using the marks now in commerce to mean the same thing that would make one or the other applications false. As this is a paradox to me I would like a through explanation as a result of this opposition to explain in no uncertain terms this issue.

(C.2) Applicant is providing its VVI branded product for free download as software-only, is recommending to customers that it can be used in standalone mode without medical equipment and only with a computer, shows pictures of the VVI branded product literature with people using VVI on notebook computers without medical device and is sponsoring researchers that use VVI branded product without medical device and testify as such. I downloaded the Applicant's VVI branded software and used it on my notebook computer, as they advertise, just to see if what they recommend is actually true. Sure enough, I needed no medical device to use VVI software and could use the software in my backyard with no electronic connections. In addition, the original developers of the VVI software (AMID, Advanced Medical Imaging Development) advertise "VVI" as software without reference to hardware.

(C.3) Applicant's description of goods and services states: "COMPUTER SOFTWARE SOLD AS A COMPONENT OF ULTRASOUND EQUIPMENT". I fail to understand how they can sell computer software that they provide for free and how it is a component of ultrasound equipment when anyone can download it from the Internet and when Applicant states it can be used without ultrasonic equipment. I suppose one could suggest that in addition to giving it out for free to anyone with a computer and Internet connection, Applicant also sells it with ultrasound equipment; and that would make their description of goods and services true, but I believe a description of goods and services should fully and accurately reflect the way an Applicant is using the mark in commerce, not just how they want to register a limited use of the mark in the USPTO database.

(C.4) I can determine what happened by looking at Applicant's prosecution history. Applicant initially correctly identified their use of the mark VVI as computer software. Examining Attorney correctly stated that such use was incompatible and conflicted with my trademark. Then Applicant changed description of goods and services to narrow it down as part of a medical device, hence the change in classification. Unfortunately, Applicant did not coincidentally or subsequently change its market literature, use in commerce, software or any other thing so that their use would be consistent with the changed description of goods and services. As a result, the application was correctly altered to not conflict with my mark, however in doing so it also made the application inaccurate, false and misleading. Whereas the original application was accurate, true and lead right to the conclusion that it also conflicted with my trademark.

(C.5) It is apparent to me, at least, that Applicant violated 18 U.S.C. §1001. They made a description of goods and services that was right but when that did not work then they made one that was wrong and they did so knowing full well that the original description was right and the new one was wrong. That is why the same exact person filed SN 78743123 under class 009 and also filed SN 78743112 with a goods and description that the USPTO correctly identified as class 010 but for which both marks are used for the same thing. Applicants misleading, false, and concealing statements threw a spanner into the works of the USPTO paperwork which caused the USPTO attorneys to insert entries into the USPTO database in a conflicting way. I commend the way the USPTO handled the two applications. The USPTO correctly identified the issues and reacted logically and consistently to the input provided by Applicant. Unfortunately, the Applicant provided false information which caused the incongruent data entries between SN 78743123 and SN 78743112. Only someone such as myself or Applicant could have known that Applicant's use of VVI and "Velocity Vector Imaging" referred to the same thing and the onus is on the Applicant, or the Opposer, to connect the dots for the USPTO. That is what I am now doing. However, it should be noted that only the Applicant has the legal obligation to make applications which are not false and not misleading and it is my belief that Applicant has done the opposite and hence has violated statute 18 U.S.C. §1001 and should be held accountable.

Summary

(S.1) In my opinion, and with respect to the opposition process, Applicant has not shown good faith in filing under filing basis 1B application as is a requirement of the statutes for that filing basis and thus the Application should be summarily dismissed and Applicant should be held accountable to 18 U.S.C. §1001. In addition, the Application should be dismissed on grounds that it is confusing with my existing mark and violates my right to exclusive use of the mark VVI within the description of goods and services.

(S.2) It should also be noted that I have previously protected the VVI mark, that the VVI mark is recognized as a mark of distinction in the marketplace and that distinction is highly valuable. In addition, it has been demonstrated to me that the mark VVI is recognized by professionals as a mark of distinction when it comes to "Visualization" of all and any type of which one type is the type Applicant is using.

(S.3) In my opinion, this issue is too important to leave to chance or interpretation. Applicant has asked for a Extension of Time to File SOU for the related mark SN 78743123 and has filed on a filing basis 1B for the application in opposition even though the Applicant is using the marks in commerce now. It seems to me that the USPTO should be informed by actual evidence and facts as to the nature of Applicant's goods and services to determine the good or bad faith aspects of the filing. In my opinion, we (Applicant, USPTO and myself) should have a meeting in person at the USPTO and present specimens and evidence to figure out what applicant means by the abbreviation "VVI" and that what it means should be what the description of goods and services describes. It sounds all to reasonable and straightforward to me and I am wondering what I have missed and why Applicant would be filing for extension, delaying correspondence up to statutory limit, not giving specimens and such other things when specimens and evidence are so readily available and have been for a long time. I would enjoy a meeting with the USPTO and Applicant to speak with Applicant's engineers, marketing and business people about their use of VVI in order to clarify any issues. I will also bring my laptop with Applicant's VVI software on it and if Applicant should try to sell me their Ultrasonic Equipment (per Applicant's description of goods and services) to go with it I shall kindly say no thank you.