

ESTTA Tracking number: **ESTTA172689**

Filing date: **11/02/2007**

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	WiMAX Forum
Granted to Date of previous extension	11/04/2007
Address	2495 Leghorn Street Mountain View, CA 94043 UNITED STATES

Attorney information	D. Peter Harvey Harvey Siskind LLP Four Embarcadero Center San Francisco, CA 94111 UNITED STATES pharvey@harveysiskind.com, dfreitag@harveysiskind.com, mstratton@harveysiskind.com, clee@harveysiskind.com Phone:415-354-0100
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Applicant Information

Application No	78551627	Publication date	05/08/2007
Opposition Filing Date	11/02/2007	Opposition Period Ends	11/04/2007
Applicant	AirTegrity Wireless, Inc. Suite 206 276 Kingsbury Grade Stateline, NV 894495188 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Telecommunications and data, networking hardware, namely an integrated platform with a consistent user interface for transporting and aggregating voice, data, and video communications
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3182504	Application Date	06/02/2004
Registration Date	12/12/2006	Foreign Priority Date	NONE
Word Mark	WIMAX FORUM		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 2001/04/30 First Use In Commerce: 2001/05/21 Association services, namely, promoting the interests of interoperability of global broadband wireless access networking goods and services and promoting a certification program for interoperability of global broadband wireless access networking goods and services

U.S. Application No.	78432688	Application Date	06/09/2004
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WIMAX FORUM CERTIFIED		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class A. First use: First Use: 2004/10/31 First Use In Commerce: 2006/01/24 Broadband Wireless equipment and hardware, namely, networking products		

U.S. Application No.	77135893	Application Date	03/20/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WIMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class A. First use: First Use: 2001/04/30 First Use In Commerce: 2001/08/24 broadband wireless equipment and hardware, namely networking and telecommunications products		

U.S. Application No.	77139787	Application Date	03/26/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WIMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2001/04/21 First Use In Commerce: 2001/08/24 telecommunications consultation		

U.S. Application No.	77139789	Application Date	03/26/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WIMAX		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 041. First use: First Use: 2001/04/21 First Use In Commerce: 2001/08/24 organizing conferences, working groups, research groups and meetings in the field of wireless networking and telecommunications and related technical standards; educational services, namely, conducting conferences, workshops and meetings in the field of wireless networking and telecommunications and related technical standards, and distribution of educational materials in connection therewith

U.S. Application No.	77139792	Application Date	03/26/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WIMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2001/04/21 First Use In Commerce: 2001/08/24 development of voluntary standards and specifications for wireless networking and telecommunications; engineering services, namely, engineering for the wireless networking and telecommunications industries; technical consultation in the field of wireless networking and telecommunications products and services		

U.S. Application No.	77139784	Application Date	03/26/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	WIMAX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/04/30 First Use In Commerce: 2001/05/21 association services, namely, promoting the interests of manufacturers of wireless networking and telecommunications products, wireless network operators and other providers of services using wireless computer and telecommunications networks, and customers of such products and services; providing consumer and business information in the field of wireless networking technology and standards, wireless networking and telecommunications products and services, wireless industry regulation; and providing information about the goods and services of others via the Internet		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WIMAX		
Goods/Services	Additional wireless access networking goods and services.		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/D. Peter Harvey/
Name	D. Peter Harvey
Date	11/02/2007

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4 Attorney for Opposer,
5 WiMAX Forum

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

9 WIMAX FORUM, a California corporation

10 Opposer,

11 v.

12 AIRTEGRITY WIRELESS, INC., a Nevada
13 corporation

14 Applicant.

NOTICE OF OPPOSITION

Opposition No.

Application Serial No. 78551627

Published in the Official Gazette
on May 8, 2007

15 Opposer WIMAX FORUM believes that it will be damaged by registration of the mark shown
16 in Serial No. 78551627 and hereby opposes the same.

17 Description of Applicant's Application: Filed on January 21, 2005. Published for
18 Opposition in the Official Gazette on May 8, 2007. Mark: WIMAX IN A BOX in Class 9 for
19 "Telecommunications and data, networking hardware, namely an integrated platform with a
20 consistent user interface for transporting and aggregating voice, data, and video communications."

21 As grounds of opposition, Opposer alleges that:

22 1. Ownership of Registered Mark. Opposer is the owner of the following U.S.
23 Trademark Registration:

24 •WIMAX FORUM, Reg. No. 3182504, for "Association services, namely, promoting the
25 interests of interoperability of global broadband wireless access networking goods and services and
26 promoting a certification program for interoperability of global broadband wireless access
27

1 networking goods and services” in Class 35; Opposer filed its application to register this mark on
2 June 2, 2004, and the mark was registered on the Principal Register on December 12, 2006.

3 The foregoing registration was based upon an application filed in the United States Patent and
4 Trademark Office on a date prior to the date of filing of Applicant’s application. Said registered
5 mark of Opposer is valid and constitutes prima facie evidence of Opposer’s exclusive right to use
6 said mark in commerce on the goods and services specified in said registration. In view of the
7 similarity of the parties’ respective marks and the very similar nature of the parties’ respective goods
8 and services, Opposer alleges that Applicant’s claimed mark so resembles Opposer’s registered mark
9 as to be likely to cause confusion, or to cause mistake, or to deceive, as to source, sponsorship, or
10 affiliation.

11 2. Ownership of Pending Application with Priority. In addition to the registered mark
12 noted above, Opposer is the owner of the following application, the filing date of which precedes that
13 of Applicant’s application:

14 •WIMAX FORUM CERTIFIED (and design), U.S. Serial No. 78432688, filed on June 9,
15 2004 for “Broadband Wireless equipment and hardware, namely, networking products.”

16 The foregoing application has priority over Applicant’s application. In view of the similarity
17 of the parties’ respective marks and the related nature of the parties’ respective goods and services,
18 Opposer alleges that Applicant’s claimed mark so resembles Opposer’s prior applied-for mark as to
19 be likely to cause confusion, or to cause mistake, or to deceive, as to source, sponsorship, or
20 affiliation.

21 3. Common Law Rights. Opposer established rights in each of the marks noted above,
22 as well as other marks that consist of or include WIMAX, long before the filing date of Applicant’s
23 application. For this additional reason, Applicant’s claimed mark is likely to cause confusion, or to
24 cause mistake, or to deceive, as to source, sponsorship, or affiliation.

25 WHEREFORE, Opposer prays that said application Serial No. 78551627 be rejected, that no
26 registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

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1 Dated: November 2, 2007

Respectfully submitted,

2 HARVEY SISKIND LLP
3 D. PETER HARVEY

4 By /s/ D. Peter Harvey
5 D. Peter Harvey

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