

ESTTA Tracking number: **ESTTA309058**

Filing date: **09/30/2009**

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	Wyse Technology Inc.
Granted to Date of previous extension	09/30/2009
Address	3471 N. First Street San Jose, CA 95134 UNITED STATES

Attorney information	Lynne M.J. Boisineau, and all others McDermott Will & Emery LLP 18191 Von Karman Avenue Suite 500 Irvine, CA 92612 UNITED STATES ocipdocketing@mwe.com, lboisineau@mwe.com, aespinoza@mwe.com Phone:949-851-0633
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**Applicant Information**

Application No	77681376	Publication date	06/02/2009
Opposition Filing Date	09/30/2009	Opposition Period Ends	09/30/2009
Applicant	The PowerWise Group, Inc. Suite A13 21000 Boca Rio Road Boca Raton, FL 33433 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. All goods and services in the class are opposed, namely: electronic controllers and microprocessor-based hardware systems used to reduce power consumption
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**Applicant Information**

Application No	77681370	Publication date	06/02/2009
Opposition Filing Date	09/30/2009	Opposition Period Ends	
Applicant	The PowerWise Group, Inc. Suite A13 21000 Boca Rio Road Boca Raton, FL 33433 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009.
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All goods and services in the class are opposed, namely: electronic controllers and microprocessor-based hardware systems used to reduce power consumption

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3688162	Application Date	06/12/2008
Registration Date	09/29/2009	Foreign Priority Date	NONE
Word Mark	WYSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 1981/11/03 First Use In Commerce: 1982/01/29            Computer hardware and computer peripherals, namely, computers and computer peripherals in the nature of desktop computers, thin and zero clients, notebook computers, notebook thin and zero clients, video display terminals, monitors, keyboards, cathode ray displays, adapters, cables and memory; Computer operating system software; Computer operating system software, namely, thin and zero client operating system software; Computer application system for the aforementioned goods consisting of an operating system which manages networking, security, and user interface functions of a thin client or similar device, and includes support for integrated software designed to display application functionality from a data center utilizing third party terminal services, virtualization systems, terminals, network appliances and servers; device management software for use in operating computer hardware and computer peripherals; downloadable multimedia software and multimedia software recorded on CD-ROM for providing television, entertainment, news and information programming via a wireless network</p> <p>Class 042. First use: First Use: 1981/11/03 First Use In Commerce: 1982/01/29            Computer hardware and software consulting services, namely, consulting services with respect to computer equipment and software for businesses and individuals; Technical support services, namely, troubleshooting of computer hardware and software problems for businesses and individuals; support services with respect to computer software, namely, repair of computer software for businesses and individuals</p>		

U.S. Registration No.	3685036	Application Date	06/12/2008
Registration Date	09/22/2009	Foreign Priority	NONE

		Date	
Word Mark	WYSE		
Design Mark			
Description of Mark	The mark consists of the letters "WYSE" with the four (4) short lines underneath.		
Goods/Services	<p>Class 009. First use: First Use: 1983/00/00 First Use In Commerce: 1983/00/00  Computer hardware and computer peripherals, namely, computers and computer peripherals in the nature of desktop computers, thin and zero clients, notebook computers, notebook thin and zero clients, video display terminals, monitors, keyboards, cathode ray displays, adapters, cables and memory; Computer operating system software; Computer operating system software, namely, thin and zero client operating system software; Computer application system for the aforementioned goods consisting of an operating system which manages networking, security, and user interface functions of a thin client or similar device, and includes support for integrated software designed to display application functionality from a data center utilizing third party terminal services, virtualization systems, terminals, network appliances and servers; device management software for use in operating computer hardware and computer peripherals; downloadable multimedia software and multimedia software recorded on CD-ROM for providing television, entertainment, news and information programming via a wireless network</p> <p>Class 042. First use: First Use: 1983/00/00 First Use In Commerce: 1983/00/00  Computer hardware and software consulting services, namely, consulting services with respect to computer equipment and software for businesses and individuals; Technical support services, namely, troubleshooting of computer hardware and software problems for businesses and individuals; support services with respect to computer software, namely, repair of computer software for businesses and individuals</p>		

U.S. Registration No.	1461695	Application Date	10/23/1985
Registration Date	10/20/1987	Foreign Priority Date	NONE
Word Mark	WYSE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1981/11/03 First Use In Commerce: 1982/01/29 COMPUTERS AND COMPUTER PERIPHERIALS, NAMELY; MICROPROCESSOR-BASED COMPUTING UNITS AND VIDEO DISPLAY TERMINALS, COMPRISING OF KEYBOARDS AND CATHODE RAY TUBE DISPLAYS, SOLD TO ORIGINAL EQUIPMENT MANUFACTURERS AND AUTHORIZED RESELLERS OF HARDWARE AND RELATED GOODS		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WYSE TECHNOLOGY		
Goods/Services	<p>Computer hardware and computer peripherals, namely, computers and computer peripherals in the nature of desktop computers, thin and zero clients, notebook computers, notebook thin and zero clients, video display terminals, monitors, keyboards, cathode ray displays, adapters, cables and memory; Computer operating system software; Computer operating system software, namely, thin and zero client operating system software; Computer application system for the aforementioned goods consisting of an operating system which manages networking, security, and user interface functions of a thin client or similar device, and includes support for integrated software designed to display application functionality from a data center utilizing third party terminal services, virtualization systems, terminals, network appliances and servers; device management software for use in operating computer hardware and computer peripherals; downloadable multimedia software and multimedia software recorded on CD-ROM for providing television, entertainment, news and information programming via a wireless network; computers and computer peripherals, namely; microprocessor-based computing units and video display terminals, comprising of keyboards and cathode ray tube displays, sold to original equipment manufacturers and authorized resellers of hardware and related goods; Computer hardware and software consulting services, namely, consulting services with respect to computer equipment and software for businesses and individuals; Technical support services, namely, troubleshooting of computer hardware and software problems for businesses and individuals; support services with respect to computer software, namely, repair of computer software for businesses and individuals</p>		

Attachments	77497827#TMSN.jpeg ( 1 page )( bytes ) 77497847#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition_TECHNOWISE.pdf ( 6 pages )(64656 bytes )
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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	/Lynne M.J. Boisineau/
Name	Lynne M.J. Boisineau
Date	09/30/2009

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

_____	)	
Wyse Technology Inc.,	)	
	)	Opposition No. _____
Opposer,	)	Serial No.    77/681,376
	)	
v.	)	Mark: TECHNOWISE
	)	
The PowerWise Group, Inc.	)	
	)	
Applicant.	)	
_____	)	

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Re:    Application No.: 77/681,376  
      Mark: TECHNOWISE  
      Applicant: The PowerWise Group, Inc.  
      Filed: March 02, 2009  
      Published: June 02, 2009  
      International Classes: 009  
      For: Electronic controllers and microprocessor-based hardware systems used to reduce  
          power consumption.

**NOTICE OF OPPOSITION**

Dear Sir:

Wyse Technology Inc., a corporation organized and existing under the laws of Delaware, having its principal place of business at 3471 North First Street, San Jose, California 95134 (“Opposer”), by and through its attorneys, hereby states that it will be damaged by registration of the mark “TECHNOWISE,” covered by U.S. Application Serial No. 77/681,376 owned by The PowerWise Group, Inc. (“Applicant”), and hereby opposes registration of the same.

The grounds for the notice are as follows:

1. Opposer provides, *inter alia*, computers and computer peripherals; microprocessor-based computing units and video display terminals, comprising of keyboards and cathode ray tube displays, sold to original equipment manufacturers and authorized resellers of hardware and related goods; thin and zero clients, notebook computers, notebook thin and zero clients, video display terminals, monitors, keyboards, cathode ray displays, adapters, cables and memory; computer operating system software; thin and zero client operating system software; computer application system consisting of an operating system which manages networking, security, and user interface functions of a thin client or similar device, and includes support for integrated software designed to display application functionality from a data center utilizing third party terminal services, virtualization systems, terminals, network appliances and servers; device management software for use in operating computer hardware and computer peripherals; downloadable multimedia software and multimedia software recorded on CD-ROM for providing television, entertainment, news and information programming via a wireless network (“Opposer’s Goods”).

2. Since long prior to Applicant’s filing of its application to register the mark “TECHNOWISE,” Opposer has used, advertised and promoted in commerce, and continues to use, advertise and promote in commerce, Opposer’s WYSE and WYSE TECHNOLOGY marks in connection with Opposer’s Goods.

3. Opposer owns extensive common law rights to its WYSE and WYSE TECHNOLOGY marks that pre-date Applicant’s rights, if any. In addition, Opposer owns U.S. Trademark Registration Nos. 1,461,695; 3,688,162; and, 3,685,036 for the goods identified in Paragraph 1, *supra*, in Class 9.

4. Opposer has expended substantial resources to advertise and promote Opposer’s Goods, all under Opposer’s WYSE and WYSE TECHNOLOGY marks.

5. By reason of Opposer’s advertisement, sale, offering for sale, promotion and use, and the world-wide distribution of Opposer’s products, Opposer’s WYSE and WYSE TECHNOLOGY marks have come to be recognized as signifying Opposer. Opposer has built up extensive goodwill in its WYSE and WYSE TECHNOLOGY marks.

6. Prior to Applicant's filing of its application to register the mark "TECHNOWISE," purchasers had come to recognize Opposer's WYSE and WYSE TECHNOLOGY marks as identifying goods emanating exclusively from Opposer.

7. On March 02, 2009, Applicant filed an application to register "TECHNOWISE" for goods identified as "electronic controllers and microprocessor-based hardware systems used to reduce power consumption," in Class 9 (Application No. 77/681,376). The subject application was published for opposition on June 02, 2009 in the Official Gazette (Trademarks) of the United States Patent and Trademark Office ("USPTO") .

8. On August 03, 2009, Opposer filed a request for extension of time to file a Notice of Opposition in order to pursue ongoing settlement discussions with Applicant, and the extension of time was granted by the USPTO Trademark Trial and Appeal Board ("TTAB") the same day.

9. Pursuant to the TTAB's grant of the extension of time to oppose, a Notice of Opposition to the application must be filed by September 30, 2009. Therefore, this Notice of Opposition is being timely filed.

10. The goods "electronic controllers and microprocessor-based hardware systems used to reduce power consumption," in Applicant's herein-opposed application are similar and related to Opposer's Goods, with which Opposer uses the WYSE and WYSE TECHNOLOGY marks.

11. Applicant's Mark, "TECHNOWISE" is phonetically similar to Opposer's WYSE and WYSE TECHNOLOGY marks. Specifically, "WISE" and WYSE are phonetically identical and confusingly similar, and the term "TECHNO" can easily be deemed an abbreviation of the term TECHNOLOGY which is a prominent feature of Opposer's trade name and registered trademarks.

12. Applicant's use and registration of "TECHNOWISE" with the goods specified in its trademark application Serial No. 77/681,376, are likely to cause confusion, deception and/or mistake among the relevant public.

13. Applicant's use and registration of the mark "TECHNOWISE" is likely to falsely suggest a connection with Opposer and Opposer's WYSE and WYSE TECHNOLOGY marks.

14. Applicant's use and registration of the mark "TECHNOWISE" interferes with Opposer's WYSE and WYSE TECHNOLOGY marks and will damage Opposer, its business and its goodwill.

15. Opposer's WYSE and WYSE TECHNOLOGY trademarks are famous because they are widely recognized by actual and potential customers as a designation of Opposer's goods, particularly goods relating to computers, computer peripherals, and microprocessor-based computing units. Thus, Opposer's WYSE and WYSE TECHNOLOGY trademarks are famous and distinctive within the meaning of § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

16. Additionally, Opposer's WYSE and WYSE TECHNOLOGY marks are famous, and were famous among Applicant's actual and potential customers prior to Applicant's filing of a trademark application for "TECHNOWISE."

17. Registration of Applicant's mark likely will cause some of Opposer's actual and potential customers to think of Applicant, and no longer solely of Opposer, when they encounter the term "TECHNOWISE" in connection with advertising and the offering of electronic controllers and micro-processor based hardware systems.

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's mark and prays that it be denied.

\* \* \* \* \*

The requisite filing fee prescribed by 37 C.F.R. §2.6(a)(17), in the amount of \$300.00, should be charged to Deposit Account No. 502203. If there are any additional fees due in connection with this Notice of Opposition, they should also be charged to Deposit Account No.



**CERTIFICATE OF SERVICE**

Opposer, Wyse Technology Inc., hereby certifies that a copy of this NOTICE OF OPPOSITION has been served upon counsel for Applicant, The PowerWise Group, Inc., on this 30th day of September, by First Class U.S. Mail, postage prepaid, at the following address:

John A. Tang  
STRASBURGER & PRICE, LLP  
1401 McKinney Street, Suite 2200  
Houston, Texas 77010-4035

/Lynne M.J. Boisineau/

Lynne M.J. Boisineau  
Attorney for Opposer

ORC 468723-1.073320.0099