

ESTTA Tracking number: **ESTTA311182**

Filing date: **10/13/2009**

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	SOLARWINDS WORLDWIDE, LLC
Granted to Date of previous extension	10/11/2009
Address	3711 South MoPac Expressway Building Two Austin, TX 78746 UNITED STATES

Attorney information	Alisa C. Key, Esq. Squire, Sanders & Dempsey L.L.P. 8000 Towers Crescent Drive, 14th Floor Vienna, VA 22182 UNITED STATES ipgeneraltyc@ssd.com, akey@ssd.com, cgunderson@ssd.com, aldavis@ssd.com Phone:703.720.7800
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**Applicant Information**

Application No	77548828	Publication date	04/14/2009
Opposition Filing Date	10/13/2009	Opposition Period Ends	10/11/2009
Applicant	RMI Corporation Legal Department 18920 Forge Drive Cupertino, CA 95014 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 2005/10/01 First Use In Commerce: 2005/10/01 All goods and services in the class are opposed, namely: semiconductor chips; semiconductor devices; semiconductors
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**Grounds for Opposition**

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

U.S. Registration No.	3259711	Application Date	11/24/2003
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	ORION		

Design Mark	<b>ORION</b>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2001/10/00 First Use In Commerce: 2001/10/00 Computer software for use in monitoring computer networking equipment and network traffic

Attachments	76563595#TMSN.gif ( 1 page )( bytes ) ORION Notice of Opposition.PDF ( 5 pages )(161299 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	/alisa c. key/
Name	Alisa C. Key, Esq.
Date	10/13/2009

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

In the matter of Application:

Serial No. 77/548,828  
Filed: August 17, 2008  
Applicant: RMI Corporation  
Mark: ORION  
For: semiconductor chips; semiconductor devices; semiconductors  
  
Class: 9

Published in the *Official Gazette* of April 14, 2009.

SOLARWINDS WORLDWIDE, LLC )  
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Opposer )  
 )  
v. )  
 )  
RMI CORPORATION )  
 )  
Applicant )

Opposition No. \_\_\_\_\_

NOTICE OF OPPOSITION

SolarWinds Worldwide, LLC, a Delaware limited liability company, having its principal place of business at 3711 South MoPac Expressway, Building Two, Austin, Texas 78746 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark shown in Application Serial No. 77/548,828, filed on August 17, 2008 and hereby opposes same.

The grounds for the opposition are as follows:

(1) Opposer obtained an extension of time until October 11, 2009 to file an opposition to the above-referenced mark.

(2) Opposer believes that it will be damaged by the registration of the above-referenced mark to Applicant RMI Corporation (hereinafter "Applicant").

(3) Application Serial No. 77/548,828 seeks registration of the mark ORION for semiconductor chips, semiconductor devices and semiconductors (hereinafter "Applicant's goods").

(4) Application Serial No. 77/548,828 was filed based on Applicant's use of the mark ORION for Applicant's goods in interstate commerce since October 1, 2005.

(5) Long prior to the October 1, 2005 date of first use in interstate commerce of the opposed mark, Opposer's predecessors adopted, used and Opposer still is using the trademark ORION in connection with a wide variety of computer software for use in monitoring computer networking equipment and network traffic.

(6) Opposer is the owner of the trademark ORION as alleged more fully below.

(7) Opposer and its predecessors have continuously used the trademark ORION for computer software for use in monitoring computer networking equipment and network traffic in interstate commerce since well prior to the first use of the mark of Application Serial No. 77/548,828.

(8) By virtue of the prior and continuous advertising and sales of computer software for use in monitoring computer networking equipment and network traffic under the mark ORION and the maintenance of high quality standards relating thereto, purchasers and users of such goods and

others have come to recognize the mark ORION as a singular indication of origin, as a consequence of which Opposer has established valuable goodwill and exclusive rights in this mark.

(9) Opposer's predecessor duly registered ORION as a trademark for computer software for use in monitoring computer networking equipment and network traffic under Registration No. 3,259,711 which issued July 10, 2007. Opposer is the record owner of Registration No. 3,259,711 by virtue of an Assignment recorded in the Assignment Branch on December 9, 2008 at Reel 3899, Frame 0882.

(10) Registration No. 3,259,711 is *prima facie* evidence of the validity thereof and Opposer's ownership and exclusive right to use the mark ORION in commerce, and is constructive notice of Opposer's ownership thereof, all provided by §§ 7(b) and 22 of the Federal Trademark Act of 1946, as amended.

(11) The mark ORION which is the subject of Registration No. 3,259,711 and the mark ORION which is the subject of Application Serial No. 77/548,828 are visually and phonetically identical.

(12) The computer software for use in monitoring computer networking equipment and network traffic described in Opposer's Registration no. 3,259,711 and the semiconductor chips, semiconductor devices and semiconductors described in Application Serial No. 77/548,828 are commercially related and are likely to be sold to, or used by, the same or overlapping classes of purchasers and users. Therefore, purchasers, prospective purchasers and others are likely to be confused, mistaken or deceived into the belief, contrary to fact, that the semiconductor chips, semiconductor devices and semiconductors sold by Applicant under the mark ORION emanate

from the same and/or are in some way sponsored or approved by Opposer and/or that Applicant is somehow affiliated with Opposer, thereby damaging Opposer.

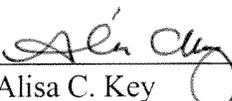
(15) Applicant is not lawfully entitled to the registration which it seeks for the reason, *inter alia*, that Applicant's mark ORION, as used in connection with the goods described in Application Serial No. 77/548,828, so resembles Opposer's mark ORION as to be likely to cause confusion, to cause mistake or to deceive within the meaning of § 2(d) of The Federal Trademark Act, thereby damaging Opposer.

WHEREFORE, Opposer believes that the present opposition should be sustained and the registration of Applicant's mark refused.

The requisite filing fee for this Notice of Opposition is submitted herewith.

SOLARWINDS WORLDWIDE, LLC

Dated: October 13, 2009

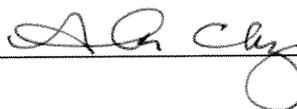
By:   
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Attorneys for Opposer

Certificate of Service

In accordance with Rule 2.105(a) of the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing Notice of Opposition was served on Applicant as identified below, by depositing same in the U.S. Mail, first class postage pre-paid, this 13th day of October 2009:

RMI Corporation  
Legal Department  
Attn: L. William Caraccio, Esq.  
18920 Forge Drive  
Cupertino, California 95014

A handwritten signature in cursive script, appearing to read "L. William Caraccio", is written over a horizontal line. The signature is positioned to the left of the line's end, with a large loop at the bottom right.