

ESTTA Tracking number: **ESTTA340481**

Filing date: **04/01/2010**

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 parties oppose registration of the indicated application.

Opposers Information

Name	NickLawrence
Granted to Date of previous extension	04/04/2010
Address	2801 San Pablo Avenue Berkeley, CA 94702 UNITED STATES

Name	911 Inc.
Granted to Date of previous extension	04/04/2010
Address	2801 San Pablo Avenue Berkeley, CA 94702 UNITED STATES

Attorney information	Barbara L. Friedman and Arman Javid Hanson Bridgett LLP 425 Market Street; 26th Floor San Francisco, CA 94105 UNITED STATES ajavid@hansonbridgett.com, bfriedman@hansonbridgett.com, ipfilings@hansonbridgett.com Phone:415.995.5891
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Applicant Information

Application No	77566615	Publication date	10/06/2009
Opposition Filing Date	04/01/2010	Opposition Period Ends	04/04/2010
Applicant	APX Alarm Security Solutions, Inc. 5132 North 300 West Provo, UT 84604 UNITED STATES		

Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: power tools, namely, electric screw drivers, distributed primarily in connection with the promotion and installation of alarm systems
Class 008. All goods and services in the class are opposed, namely: hand operated tools, namely, screw drivers, distributed primarily in connection with the promotion and installation of alarm systems

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.	3597021	Application Date	11/15/2006
Registration Date	03/31/2009	Foreign Priority Date	NONE
Word Mark	APEX ALARM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1966/00/00 First Use In Commerce: 1968/00/00 Installation and maintenance of burglar alarms in residential and/or commercial buildings Class 045. First use: First Use: 1966/00/00 First Use In Commerce: 1968/00/00 Monitoring burglar alarms installed in residential and/or commercial buildings		

Related Proceedings	Cancellation No. 92050773, Opposition No. 91190979, Opposition No. 91190505, Opposition No. 91193022; Opposition No. 91175880, Opposition No. 91192970; Opposition No. 91192971; Opposition No. 91192972; Opposition No. 91193458; Opposition No. 91193498
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Attachments	77044533#TMSN.jpeg (1 page)(bytes) Notice of Opposition - Serial No. 77-566,615.pdf (5 pages)(190642 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	/Barbara L. Friedman/
Name	Barbara L. Friedman and Arman Javid
Date	04/01/2010

Barbara L. Friedman, Esq.
Arman Javid, Esq.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105

Attorneys for Opposers NICK LAWRENCE and 911 INC.

In the Matter of Application Serial No. 77/566,615
Mark: APX ALARM
Application Filed: September 10, 2008
Published for Opposition: October 6, 2009.

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

NICK LAWRENCE and 911 INC.,

Opposers,

v.

APX ALARM SECURITY SOLUTIONS, Inc.

Respondent.

Opposition No. _____

NOTICE OF OPPOSITION

Nick Lawrence and 911 Inc. (“Opposers”), by and through their attorneys, file this Notice of Opposition against the intent-to-use application for registration filed by APX Alarm Security Solutions, Inc. (“Respondent”) for the mark APX ALARM in Class 7 for “power tools, namely, electric screw drivers, distributed primarily in connection with the promotion and installation of alarm systems,” and in Class 8 for “hand operated tools, namely, screw drivers, distributed primarily in connection with the promotion and installation of alarm systems,” as follows:

1. Opposer Nick Lawrence, an individual with a business address of 2801 San Pablo Ave, Berkeley CA 94702, owns and does business under the trade name and mark APEX ALARM. Opposer 911 Inc. licenses the mark APEX ALARM from Opposer Nick Lawrence and does business under the trade name and mark APEX ALARM. Opposers have also used, and

thereby have rights in the related marks APEX ALARMS, APEX SYSTEMS, and APEX ALARM & SECURITY SYSTEMS.

2. Applicant Apx Alarm Security Solutions, Inc. filed an application for the mark APX ALARM, in International Class 7 for “power tools, namely, electric screw drivers, distributed primarily in connection with the promotion and installation of alarm systems,” and in International Class 8 for “hand operated tools, namely, screw drivers, distributed primarily in connection with the promotion and installation of alarm systems” on an intent-to-use basis under Section 1(b) of the Lanham Act on September 10, 2008 (the “Application”). The Application was published for opposition in the Official Gazette on October 6, 2009.

3. Opposers believe that they will be damaged by the registration of the mark identified at Application Serial No. 77/566,615 and hereby opposes same. Since before Sept 10, 2008, Opposer Nick Lawrence (and his predecessors in interest and licensees) has long used the mark and trade name APEX ALARM in California and in interstate commerce for the installation and maintenance of burglar and/or fire alarms, for monitoring burglar and security alarms, and for electrical and electronic burglar alarms. Opposer Nick Lawrence continues to use this name and mark for these services through his licensee 911 Inc.

4. Opposer Nick Lawrence is the owner of a valid and subsisting California Service mark registration 052335 for the mark APEX ALARM for security and fire alarms, monitoring services, and burglar alarm services, registered October 22, 1999.

5. Opposer Nick Lawrence is the owner and registrant of USPTO Registration No. 3,597,021 for the mark APEX ALARM, for monitoring burglar alarms installed in residential and/or commercial buildings, and for monitoring burglar alarms installed in residential and/or commercial buildings, with first use in 1966, registered March 31, 2009. Opposer 911 Inc. is the

registrant of record for the domain name <ApexAlarm.com> in 1996, and uses said domain name to advertise its licensed goods and services.

6. The trademark proposed for registration by Applicant is likely to be confused with Opposer's mark. Applicant intends to distribute the goods cited in the application primarily in connection with the promotion and installation of alarm systems to consumers of intrusion, fire and trouble alert systems. These customers and marketing channels are identical to Opposers'.

7. Applicant's mark so resembles the mark and trade name previously used in the United States by Opposer, and not abandoned, as to be likely, when used on or in connection with the goods and services of Applicant, to cause confusion, or to cause mistake, or to deceive.

8. Upon information and belief, Applicant has no genuine intent to use the mark, as a trademark, on the goods described in its application.

9. Applicant's use of the mark APX ALARM, in the applied for Classes, would tend to falsely suggest a connection between Applicant's business, goods, and services and Opposer's business, goods, and services.

10. Applicant's present use of marks containing the term "ApX" is likely to cause and is causing consumer confusion in the marketplace, as to the source and quality of Opposer's APEX ALARM goods and services.

11. Applicant's present use of marks containing the term "Apex" is likely to cause and is causing consumer confusion in the marketplace, as to the source and quality of Opposer's APEX ALARM goods and services.

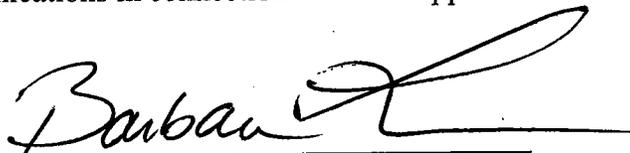
12. The terms "APX" and "APEX" have virtually the same appearance, sound, connotation, association, and meaning.

13. Applicant had knowledge of Opposers' prior and continuous use of its mark and trade name before it filed the subject application to register a confusingly similar mark.

WHEREFORE, Opposers pray that Applicant's Application Serial No. 77/566,615 be rejected, that no registration be issued thereon to Applicant Apx Alarm Security Solutions, Inc., and that this opposition be sustained in favor of Opposers Nick Lawrence and 911 Inc.

Opposers Nick Lawrence and 911 Inc. hereby appoint Arman Javid and Barbara Friedman, of the law firm of Hanson Bridgett LLP, and members of the bar of the State of California, to act as attorneys for Opposers herein, with full power to prosecute said opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

Dated: April 1, 2010

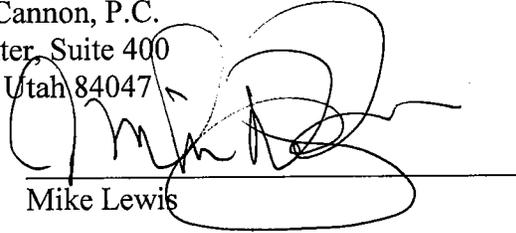


Barbara L. Friedman, Esq.
Arman Javid, Esq.
Attorneys for Opposers NICK LAWRENCE and
911 INC.
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94111

CERTIFICATE OF SERVICE

I hereby certify that the foregoing NOTICE OF OPPOSITION was mailed on April 1, 2010 by first class mail, postage prepaid, in an envelope addressed to Applicant's counsel as follows:

Grant R. Clayton
David N. Preece
Clayton, Howarth & Cannon, P.C.
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Cottonwood Heights, Utah 84047



Mike Lewis