

ESTTA Tracking number: **ESTTA401135**

Filing date: **04/01/2011**

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	Joel S. Milinsky, d/b/a Vidtel
Granted to Date of previous extension	04/30/2011
Address	30193 Rock Creek Drive Southfield, MI 48076 UNITED STATES
Party who filed Extension of time to oppose	VIDTEL
Relationship to party who filed Extension of time to oppose	Vidtel is the d/b/a of Joel S. Milinsky, the individual who filed the request for extension of time to oppose.

Attorney information	Mark A. Cantor Brooks Kushman P.C. 1000 Town Center 22nd Floor Southfield, MI 48075 UNITED STATES mcantor@brookskushman.com, lsavage@brookskushman.com, sdavis@brookskushman.com Phone:(248) 358-4400
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Applicant Information

Application No	77660077	Publication date	03/01/2011
Opposition Filing Date	04/01/2011	Opposition Period Ends	04/30/2011
Applicant	Vidtel, Inc. 825 E. Middlefield Road Mountain View, CA 94043 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 2008/12/02 First Use In Commerce: 2008/12/02 All goods and services in the class are opposed, namely: Video telephones
Class 038. First Use: 2008/12/02 First Use In Commerce: 2008/12/02 All goods and services in the class are opposed, namely: Telecommunication services, namely, local and long distance telephone services; local and long distance video telephone services; voicemail, video mail and video messaging services; electronic transmission of voice and video by means of video telephone

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. Application No.	77901233	Application Date	12/28/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	VIDTEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1983/03/31 First Use In Commerce: 1983/03/31 Computer consulting services in the use of hardware and software systems for telecommunications, media applications and the like, and computer software and hardware design in the field of telecommunications, for others		

Attachments	77901233#TMSN.jpeg (1 page)(bytes) notice of opposition.pdf (6 pages)(114899 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	/mark a cantor/
Name	Mark A. Cantor
Date	04/01/2011

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

In re Trademark Application

Serial No.: 77/660,077

Filed: January 30, 2009

Trademark: **VIDTEL**

Atty. Docket No.:

Published in the Official Gazette on March 1, 2011

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)	
JOEL S. MILINSKY,)	
d/b/a VIDTEL)	
)	Serial No. 77/660,077
Opposer,)	
)	Opposition No. _____
v.)	
)	
VIDTEL, INC.,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Sir/Madam:

Joel S. Milinsky, d/b/a Vidtel ("Opposer) believes that he will be damaged by registration of Application Serial No. 77/660,077 for the word mark VIDTEL published for purposes of opposition in the Official Gazette on March 1, 2011 against which Opposer filed a Request for Extension of Time to Oppose that extended the date by which Opposer could oppose the application to April 30, 2011, and hereby opposes that application.

As grounds for opposition, Opposer alleges as follows:

1. Opposer is an individual residing at 30193 Rock Creek Drive, Southfield, Michigan 48076.

2. Upon information and belief, Applicant Vidtel, Inc. is a Delaware corporation having a principal location at 825 E. Middlefield Road, Mountain View, California 94043.

3. Applicant seeks to register the word mark VIDTEL for video telephones and telecommunication services, namely local and long distance telephone services; local and long distance video telephone services; voicemail, video mail and video messaging services; electronic transmission of voice and video by means of video telephone, in International Classes 9 and 38, respectively, as evidenced by the publication of the subject mark in the Official Gazette of March 1, 2011 (“Applicant’s Mark”).

4. Opposer is the owner of all right, title and interest in and to the mark VIDTEL for computer consulting services in the use of hardware and software systems for telecommunications, media applications and the like, and computer software and hardware design in the field of telecommunications, for others.

5. Opposer, individually and through its predecessors in interest, has been using the Mark VIDTEL in interstate commerce since at least as early as March 31, 1983.

6. By virtue of its efforts, provision of services, and promotional activities, consumers have come to recognize Opposer’s mark as being associated with Opposer, and Opposer has gained and enjoys substantial goodwill and common law rights in connection with Opposer’s Mark.

7. Opposer is also the owner of currently pending U.S. Trademark Application Serial No. 77/901,233 for VIDTEL for the above-described services in International Class 42.

Also, Opposer was the owner of two registrations (now cancelled) for a stylized form of the Mark VIDTEL, Registration Nos. 1,331,363 and 1,808,180. Despite cancellation of these earlier registrations, Opposer did not cease use of the VIDTEL Mark.

8. Applicant's Mark is identical in sound, appearance and overall commercial impression as compared to Opposer's Mark.

9. The services for which Applicant seeks to register its Mark are related to the services to which Opposer has used its identical Mark.

10. Opposer will be irreparably injured and damaged if Applicant is permitted to use and register its Mark for the services identified in the subject application or for any services encompassed by those described services, because the purchasing public is likely to be confused, misled, or deceived as to affiliation, connection, sponsorship, or association of Applicant's services with Opposer's services within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

11. There is no issue as to priority as Opposer's use predates Applicant's use by over 25 years.

12. Opposer has no control over the nature and quality of the services provided by Applicant under its Mark and thus will be damaged and harmed by reason of the loss of control over its reputation and the erosion of goodwill in Opposer's Mark.

WHEREFORE, for the reasons set forth above, Opposer prays that Applicant's U.S. Trademark Application Serial No. 77/660,077 be rejected, that no registration be issued thereon to Applicant and that this Notice of Opposition be sustained in favor of Opposer.

This Notice of Opposition is being filed electronically, so no duplicate copy is in order. The fee required under 37 C.F.R. § 2.6(a)(17) is being paid electronically concurrently with the filing of this Notice of Opposition.

Respectfully submitted,

By: s/Mark A. Cantor/
Mark A. Cantor
Attorney/Agent for Opposer

Date: April 1, 2011

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351

CERTIFICATE OF TRANSMITTAL

I hereby certify that this Notice of Opposition is being electronically transmitted in PDF format to the Trademark Trial and Appeal Board through the Electronic System for Trademark Trials and Appeals (ESTTA) on the following date:

Date: April 1, 2011 s/Mark A. Cantor /

CERTIFICATE OF SERVICE

I certify that I served:

NOTICE OF OPPOSITION

on April 1, 2011 by:

_____ delivering

 X mailing (via First Class Mail)

a copy to:

Lynn M. Humphreys
Morrison Foerster
425 Market Street
San Francisco, CA 94105-2482

s/Mark A. Cantor/