

ESTTA Tracking number: **ESTTA460064**

Filing date: **03/05/2012**

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	Google Inc.
Granted to Date of previous extension	03/04/2012
Address	1600 Ampitheatre Parkway Mountain View, CA 94043 UNITED STATES

Attorney information	Lori F Mayall Cooley LLP 777 6th Street, NW, Suite 1100 Washington, DC 20001 UNITED STATES jnorberg@cooley.com, trademarks@cooley.com, mweiand@cooley.com, lmayall@cooley.com Phone:650-843-5000
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**Applicant Information**

Application No	85297230	Publication date	09/06/2011
Opposition Filing Date	03/05/2012	Opposition Period Ends	03/04/2012
Applicant	Williams, Alan R 920 Randolph Avenue Milton, MA 02186 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 035. All goods and services in the class are opposed, namely: Matching consumers with real estate professionals in the field of real estate services via computer network
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**Grounds for Opposition**

Geographic indication which, if used on or in connection with wine or spirits, identifies a place other than the origin of the goods	Uruguay Round Agreements Act section 2(9)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Application No.	77318565	Application Date	10/31/2007
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Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ANDROID		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use:  mobile phones; operating system software; software for use in developing, executing, and running other software on mobile devices, computers, computer networks, and global communication networks; computer software development tools; computer software for use in transmitting and receiving data over computer networks and global communication networks; computer software for managing communications and data exchange among and between mobile devices and desktop computers; computer middleware, namely, software that mediates between the operating system of a mobile device and the application software of a mobile device; computer application software for mobile phones</p>		

Attachments	77318565#TMSN.jpeg ( 1 page )( bytes ) Notice of Opp. (APARTMENT ANDROID) [filed&served].pdf ( 14 pages )(165941 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	/lfm/
Name	Lori F Mayall
Date	03/05/2012

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

In the matter of application Serial No. 85/297,230  
For the Trademark APARTMENT ANROID  
Published in the Official Gazette on September 6, 2011

GOOGLE INC.,	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
ALAN R. WILLIAMS,	)	
	)	
	)	
Applicant.	)	
<hr style="border: 0.5px solid black;"/>		
	)	

**NOTICE OF OPPOSITION**

Opposer Google Inc. (“Google”), a Delaware corporation having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California, 94043, believes that it will be damaged by the issuance of a registration for the mark APARTMENT ANDROID, in Application Serial No. 85/297,230, filed April 17, 2011 by Alan R. Williams, an individual, residing at 920 Randolph Avenue, Milton, Massachusetts 02186 (“Applicant”). Google hereby opposes Applicant’s application pursuant to Section 13 of the United States Trademark Act, as amended, 15 U.S.C. §1063.

As grounds for opposition, Google alleges that:

1. Founded in 1998 with the introduction of breakthrough technology to search and organize the vast quantities of information available on the internet, Google operates the world’s

most popular search engine. Since its inception, Google has grown rapidly to become a leading technology company which now offers a wide variety of products and services. Among its innovative products, Google offers a software platform under the mark ANDROID (the “ANDROID Mark”). The Android platform is open source software and may be installed on a diverse range of devices from many different manufacturers, including mobile devices. Third-party developers have created applications for the Android platform for a variety of computing environments, including mobile environments.

2. Development of the Android platform began several years before Google acquired the original developer, Android, Inc., in 2005. Google continued to develop the software, ultimately announcing the Android platform in 2007. Since launching the Android platform, Google has introduced successive updates to the software, continually improving its performance and adding new features. The Android platform has enjoyed resounding success in the marketplace, and the Android platform has quickly increased its share of the mobile and other device markets. In February 2010, there were approximately 60,000 daily activations of Android devices. Today, now two years later, that number has grown exponentially to more than 850,000 daily Android activations. Furthermore, there are over 300 million Android devices around the world, as of February 2012. According to comScore, as of October 2011, the Android platform is installed on 46.3% of all active smartphones in the United States, more than any other mobile operating system. (Exhibit A.)

3. As the popularity of the Android platform has grown among device manufacturers, the number of applications available on the Android platform has increased dramatically. As of February 2012, more than 450,000 applications are available in the Android Market, an online store offered by Google, which allows users to browse and download

applications for use on the Android platform. These applications offer users a vast array of functionality and enhance the utility and value to users of their mobile devices.

4. Google is the owner of U.S. trademark application No. 77/318,565, filed October 31, 2007 for the ANDROID Mark. The application covers “mobile phones; operating system software, software for use in developing, executing and running other software on mobile devices, computers, computer networks, and global communication networks; computer software development tools; computer software for use in transmitting and receiving data over computer networks and global communication networks; computer software for managing communications and data exchange among and between mobile devices and desktop computers; computer middleware, namely, software that mediates between the operating systems and a mobile device and the application software of a mobile device; computer application software for mobile phones” (the “ANDROID Application”). Google also has common law rights in the ANDROID Mark based on its use of the mark in commerce.

5. Google has expended enormous effort and devoted substantial resources, both in the United States and internationally, promoting the ANDROID Mark and its software platform offered in connection with the ANDROID Mark. The ANDROID Mark embodies the substantial and valuable reputation and goodwill that Google has earned in the marketplace for its high quality software and related services.

6. In addition to Google’s own advertising efforts, the Android software has been the subject of thousands of unsolicited stories in the media, highlighting Google’s innovative and successful open source software platform.

7. As a result of Google’s widespread use of the ANDROID Mark worldwide, extensive advertising and promotion and continuous and unsolicited media coverage, as well as

the high degree of consumer recognition of the ANDROID Mark, and the strong and loyal base of Android customers, among other factors, the ANDROID Mark is famous within the meaning of Section 43(c) of the United States Trademark Act, 15 U.S.C. §1125(c).

**APPLICANT AND ITS PENDING APPLICATION**

8. Applicant seeks to register the word mark APARTMENT ANDROID in connection with “Matching consumers with real estate professionals in the field of real estate services via computer network” in International Class 35. Applicant filed claiming intent to use the APARTMENT ANDROID Mark in commerce. Applicant describes the service provided under the APARTMENT ANDROID mark as a specialty software that “provides virtual landlord services”:

Apartment Android landlords (and if desired, their residents) simply click their mouse a few times or make one call to our automated phone system to place a request for any of our virtual landlord services. Once your service request is placed, Apartment Android reviews our established network of service providers in your local area and selects the one who can best address your specific property management needs.

(Exhibit B.) The “apartment” component is therefore merely descriptive of the type of services provided under Applicant’s mark.

9. Upon information and belief, Applicant selected the APARTMENT ANDROID Mark with knowledge of the ANDROID Mark.

10. On information and belief, Applicant selected the ANDROID portion of the APARTMENT ANDROID Mark with intent to call to mind Opposer’s ANDROID Mark. Google is not the source of Applicant’s services, nor has Google endorsed or sponsored Applicant or its services.

11. Google has priority over Applicant based on Google's use of the ANDROID Mark in commerce and based on the filing dates of its trademark application, well prior to the April 17, 2011 filing date of the application for the APARTMENT ANDROID Mark.

**FIRST GROUND FOR OPPOSITION  
LIKELIHOOD OF CONFUSION**

12. Google incorporates by reference paragraphs 1 through 11, inclusive, as if fully set forth here.

13. The APARTMENT ANDROID Mark is substantially similar to the ANDROID Mark, and incorporates Google's ANDROID Mark in its entirety.

14. The high degree of similarity between Google's ANDROID Mark and Applicant's APARTMENT ANDROID Mark and the use and planned use of the respective marks is likely to cause confusion, mistake, or deception as to the source, origin, sponsorship or approval of Applicant's services, and is likely to suggest an affiliation, connection or association between Google and Applicant and their respective goods and services.

15. Registration of Applicant's Mark will injure Google by causing the public to be confused or misled into believing that the services provided by Applicant are endorsed or sponsored by Google. Google has no control over the nature and quality of the services offered by Applicant under the APARTMENT ANDROID Mark, and Google's reputation and goodwill will be damaged and the value of the ANDROID Mark jeopardized, all to Google's detriment. Any defect, objection or fault found with Applicant's services marketed under the APARTMENT ANDROID name would necessarily reflect upon and injure the reputation that Google has established in connection with the ANDROID Mark.

16. Registration of the mark herein opposed will damage Google because Applicant's mark is likely, when used on or in connection with the services described in the opposed

application, to cause confusion, or to cause mistake or to deceive. Thus, Applicant's APARTMENT ANDROID Mark is unregistrable under 15 U.S.C. §§1052 and 1125, and should be refused registration.

**SECOND GROUND FOR OPPOSITION  
DILUTION OF A FAMOUS MARK**

17. Google incorporates by reference paragraphs 1 through 11, inclusive, as if fully set forth here.

18. The ANDROID Mark is highly distinctive of Google's products.

19. Google has broadly promoted the ANDROID Mark, and Google's products and services offered under the ANDROID Mark have enjoyed extensive media attention.

20. As a result of the considerable publicity afforded the ANDROID Mark, and the strong and loyal base of customers that Google enjoys for the ANDROID platform, the ANDROID Mark has a high degree of consumer recognition.

21. Google enjoys substantially exclusive use of the ANDROID Mark.

22. The ANDROID Mark is famous.

23. The ANDROID Mark became famous before Applicant filed his application for the APARTMENT ANDROID Mark.

24. The APARTMENT ANDROID Mark is similar to and likely to cause dilution of the famous ANDROID Mark, all to Google's damage.

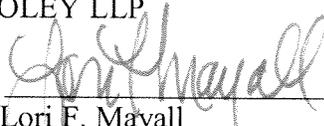
25. Registration of the mark herein opposed is likely to dilute Google's famous ANDROID Mark by creating an association between the marks that impairs the distinctiveness of the ANDROID Mark. Thus, Applicant's APARTMENT ANDROID Mark is unregistrable under 15 U.S.C. §§1052 and 1125.

26. Wherefore, Google prays that this Opposition be sustained, and that Application Serial No. 85/297,230 be refused.

Respectfully submitted,

COOLEY LLP

Date: March 5, 2012

By: 

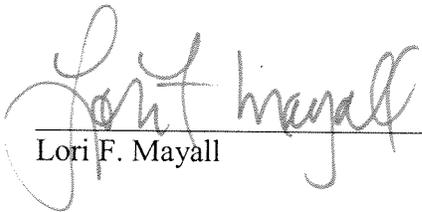
\_\_\_\_\_  
Lori F. Mayall  
Attorneys for the Opposer  
777 6<sup>th</sup> Street, NW, Suite 1100  
Washington, DC 20001  
(650) 843-5000

**CERTIFICATE OF SERVICE**

I hereby certify that on **March 5, 2012**, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served by mailing said copy on March 5, 2012, via U.S. Mail, postage prepaid, addressed to Correspondent for the Applicant and the Applicant, being one in the same, at the following address of record with the USPTO:

Alan R Williams  
920 Randolph Avenue  
Milton, MA 02186

Date: March 5, 2012

  
\_\_\_\_\_  
Lori F. Mayall

# **EXHIBIT A**



You are here: [Home](#) > [Press & Events](#) > [Press Releases](#) > [2011](#) > [December](#) > comScore Reports October 2011 U.S. Mobile Subscriber Market Share

## Press Release

### comScore Reports October 2011 U.S. Mobile Subscriber Market Share

**1 in 10 Mobile Subscribers Now Using iPhone**

105

15

29

41

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**RESTON, VA, December 2, 2011** – comScore, Inc. (NASDAQ: SCOR), a leader in measuring the digital world, today released data from the [comScore MobiLens](#) service, reporting key trends in the U.S. mobile phone industry during the three month average period ending October 2011. The study surveyed more than 30,000 U.S. mobile subscribers and found Samsung to be the top handset manufacturer overall with 25.5 percent market share. Google Android continued to gain ground in the smartphone market reaching 46.3 percent market share.

#### OEM Market Share

For the three-month average period ending in October, 234 million Americans age 13 and older used mobile devices. Device manufacturer Samsung ranked as the top OEM with 25.5 percent of U.S. mobile subscribers, followed by LG with 20.6 percent share and Motorola with 13.6 percent share. Apple strengthened its position at #4 with 10.8 percent share of mobile subscribers (up 1.3 percentage points), while RIM rounded out the top five with 6.6 percent share.

<b>Top Mobile OEMs</b>			
<b>3 Month Avg. Ending Oct. 2011 vs. 3 Month Avg. Ending Jul. 2011</b>			
<b>Total U.S. Mobile Subscribers (Smartphone &amp; Non-Smartphone) Ages 13+</b>			
<b>Source: comScore MobiLens</b>			
	<b>Share (%) of Mobile Subscribers</b>		
	<b>Jul-11</b>	<b>Oct-11</b>	<b>Point Change</b>
<i>Total Mobile Subscribers</i>	100.0%	100.0%	N/A
Samsung	25.5%	25.5%	0.0
LG	20.9%	20.6%	-0.3
Motorola	14.1%	13.6%	-0.5
Apple	9.5%	10.8%	1.3
RIM	7.6%	6.6%	-1.0

#### Smartphone Platform Market Share

90 million people in the U.S. owned smartphones during the three months ending in October, up 10 percent from the preceding three month period. Google Android ranked as the top smartphone platform with 46.3 percent market share, up 4.4 percentage points from the prior three-month period. Apple maintained its #2 position, growing 1.0 percentage point to 28.1 percent of the smartphone market. RIM ranked third with 17.2 percent share, followed by Microsoft (5.4 percent) and Symbian (1.6 percent).

<b>Top Smartphone Platforms</b>
<b>3 Month Avg. Ending Oct. 2011 vs. 3 Month Avg. Ending Jul. 2011</b>

**Total U.S. Smartphone Subscribers Ages 13+**

Source: comScore MobiLens

	Share (%) of Smartphone Subscribers		
	Jul-11	Oct-11	Point Change
<i>Total Smartphone Subscribers</i>	100.0%	100.0%	N/A
Google	41.9%	46.3%	4.4
Apple	27.1%	28.1%	1.0
RIM	21.7%	17.2%	-4.5
Microsoft	5.7%	5.4%	-0.3
Symbian	1.9%	1.6%	-0.3

**Mobile Content Usage**

In October, 71.8 percent of U.S. mobile subscribers used text messaging on their mobile device, up 1.8 percentage points. Browsers were used by 44.0 percent of subscribers (up 2.9 percentage points), while downloaded applications were used by 43.8 percent (up 3.2 percentage points). Accessing of social networking sites or blogs increased 2.2 percentage points to 32.3 percent of mobile subscribers. Game-playing was done by 29.2 percent of the mobile audience (up 1.4 percentage points), while 21.2 percent listened to music on their phones (up 0.9 percentage points).

**Mobile Content Usage**

3 Month Avg. Ending Oct. 2011 vs. 3 Month Avg. Ending Jul. 2011

Total U.S. Mobile Subscribers (Smartphone &amp; Non-Smartphone) Ages 13+

Source: comScore MobiLens

	Share (%) of Mobile Subscribers		
	Jul-11	Oct-11	Point Change
<i>Total Mobile Subscribers</i>	100.0%	100.0%	N/A
Sent text message to another phone	70.0%	71.8%	1.8
Used browser	41.1%	44.0%	2.9
Used downloaded apps	40.6%	43.8%	3.2
Accessed social networking site or blog	30.1%	32.3%	2.2
Played Games	27.8%	29.2%	1.4
Listened to music on mobile phone	20.3%	21.2%	0.9

**About MobiLens**

MobiLens data is derived from an intelligent online survey of a nationally representative sample of mobile subscribers age 13 and above. Data on mobile phone usage refers to a respondent's primary mobile phone and does not include data related to a respondent's secondary device.

**About comScore**

comScore, Inc. (NASDAQ: SCOR) is a global leader in measuring the digital world and preferred source of digital business analytics. For more information, please visit [www.comscore.com/companyinfo](http://www.comscore.com/companyinfo).

**Contact:**

Stephanie Flosi

Senior Marketing Communications Analyst

comScore, Inc.

+1 312 777 8801

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# **EXHIBIT B**

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Lori Mayall Home



# Apartment Android Like

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Consulting/Business Services · Cincinnati, Ohio

## Basic Information

**Location** 8044 Montgomery Rd; Suite 700, Cincinnati, OH 45236

**About** Apartment Android provides virtual landlord services

**Description** Simplifying Life for Landlords  
Apartment AndroidSM takes the hassle out of being a landlord! Using cutting edge technology, Apartment Android provides top-notch virtual landlord services in the major areas of property management: leasing, maintenance and groundskeeping, and accounting.  
Apartment Android eliminates your need to find and manage leasing agents, bookkeepers, plumbers, electricians, handymen, and other contractors – we become your personal landlord concierge. In addition, once you become an Apartment Android landlord, you can request our virtual landlord services from anywhere at anytime.  
Apartment Android landlords (and if desired, their residents) simply click their mouse a few times or make one call to our automated phone system to place a request for any of our virtual landlord services. Once your service request is placed, Apartment Android reviews our established network of service providers in your local area and selects the one who can best address your specific property management needs.  
JOIN TODAY and allow Apartment Android to make your life easier!!

**Mission** To fundamentally change the management paradigm for multi-family properties

**Products** Leasing, Maintenance and Groundskeeping and Accounting Services

**Phone** 1 5132854000855

**Email** customerservice@apartmentandroid.com

**Website** <http://www.apartmentandroid.com>

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## About

Apartment Android provides virtual landlord services

**53**

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