

ESTTA Tracking number: **ESTTA738222**

Filing date: **04/06/2016**

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

Proceeding	91207333
Party	Plaintiff RxD Media, LLC
Correspondence Address	CECIL E KEY DIMUROGINSBERG PC 1101 KING ST, STE 610 ALEXANDRIA, VA 22314 UNITED STATES ckey@dimuro.com, ssakagami@dimuro.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Sara M Sakagami
Filer's e-mail	ssakagami@dimuro.com, ckey@dimuro.com
Signature	/Sara M. Sakagami/
Date	04/06/2016
Attachments	RxD's Mot to Amend Not Opp_Redacted.pdf(275440 bytes) Appendix 1_Am Not Opp_Redacted.pdf(1022453 bytes)

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

RXD MEDIA, LLC, :
 :
 Opposer, :
 :
 v. : **Opposition No. 91207333**
 : **91207598**
 IP APPLICATION DEVELOPMENT LLC, :
 :
 Applicant. :
 _____ :
 :

**OPPOSER RXD MEDIA, LLC’S MOTION FOR LEAVE
TO AMEND NOTICE OF OPPOSITION**

Opposer RxD Media, LLC (“RxD”), pursuant to TBMP § 507 and Fed. R. Civ. P. 15, moves for leave to amend its Notices of Opposition to add claims, in addition to the likelihood of confusion claim originally asserted, that (1) Applicant IP Application Development LLC (“Applicant”) lacked an objectively verifiable *bona fide* intent to use the IPAD mark for services; (2) Applicant’s mark is not distinctive and thus not protectable as a service mark; and (3) in the event Applicant has used the IPAD mark for services, Applicant’s use is likely to confuse, deceive or mislead as to source, sponsorship or affiliation with RxD or its IPAD services, and thus constitutes unfair competition. The proposed Consolidated Amended Notice of Opposition is attached hereto as Appendix 1. In support of its motion, RxD states as follows.

I. BACKGROUND

This opposition proceeding began with RxD’s Notices of Opposition against two of Applicant’s applications, Serial Nos. 77/927,446 (“466 Application”) and 77/913,563 (“563 Application”). The Applicant filed both applications based on its professed *bona fide* intent to use the mark in commerce pursuant to Lanham Act § 1(b). In its original Notices of Opposition, RxD asserted one claim, likelihood of confusion, based on Applicant’s claim to rights to the

identical mark, IPAD, for services described in its applications that overlap with those rendered by RxD.

One area of discovery that Opposer appropriately sought was Applicant's actual and planned use of the IPAD mark for the services identified in the '466 and '563 Applications. In particular, RxD served discovery requests to Applicant and Apple directed to:

Every service in connection with which Applicant has used or is using its purported mark, and all facts and circumstances that support the exact date upon which Applicant intends to rely as the date of first use of its mark in connection with such service, *see* Ex. A, Interrog. Nos. 11 & 13¹;

All plans for the expansion of use of the IPAD mark by Applicant, *see* Ex. D, Interrog. No. 26;

Documents sufficient to reflect, identify or describe the classes of current and/or targeted customers for services identified in Applicant's Applications, *see* Ex. F, Request for Production of Documents ("RPD") No. 24;

All documents relating to the marketing of any services offered in connection with the iPad, *see* Ex. F, RPD No. 25;

All documents relating to the marketing of any services offered in connection with the iPad, *see* Ex. F, RPD No. 26;

All documents and correspondence to and/or from Steve Jobs, [REDACTED], regarding the use of the IPAD mark for the services described in Applicant's Applications, *see* Ex. F, RPD No.39; and

Any plans or efforts by Apple to market and advertise services offered or intended to be offered under the IPAD mark, including the classes of consumers, channels of trade, and locations through which the services are to be offered, *see* Ex. I, Subpoena *duces Tecum* to Apple, RPD No. 2.

In response, Applicant and Apple asserted that [REDACTED] and produced print outs of the Apple website. *See* Ex. C, Applicant's First Am. Answer to RxD's First Set of Interrog., at 5; Ex. Y, Printout of Apple Website. No further information that might be used to verify the allegations of

¹ All alphabetical exhibits referenced herein are Exhibits to Declaration of Sara M. Sakagami ("Sakagami Decl."), filed concurrently herewith in support of RxD Media, LLC's Opposition to IPAD LLC's Motion for Summary.

such use, such as the date of first manner of use, etc., was or has been produced. Moreover, no documents reflecting any plans for intended use of the IPAD mark were produced. Sakagami Decl., ¶ 33.

On January 28, 2016, RxD's counsel further followed up with Applicant's counsel to verify that all documents responsive to RxD's discovery requests have been produced, including any product roadmaps or similar documents showing Apple's actual or intended use of the IPAD mark for services. Exhibit AA, C. Key Jan. 28, 2016 email to A. Buchner. In response, Applicant and Apple's counsel confirmed that they had no additional documents to produce, and instead referenced certain documents previously produced. Exhibit AA, A. Buchner Feb. 3, 2016 email to C. Key. The 3,000 pages of documents that the counsel referenced in her responsive email consist primarily of [REDACTED] and did not reflect any [REDACTED].

RxD also sought, and ultimately deposed two individuals, Thomas LaPerle and Douglas Vetter, the two individuals who [REDACTED]. [REDACTED] Applicant filed its '563 Application. Mr. LaPerle, who was represented to RxD and the Board as [REDACTED], see Ex. C, at 6., is also the individual who verified Applicant's *bona fide* intent to use IPAD as a service mark in commerce in both the '466 and '563 Applications. See App. No. 77/927446, Prelim. Am. (March 10, 2010); App. No. 77/913563, Prelim. Am. (March 10, 2010). At the December 10, 2015, deposition of Mr. LaPerle, in his capacity as an individual and as the 30(b)(6) designee of both Applicant and Apple, Mr. LaPerle testified:

[REDACTED]

[REDACTED]

Ex. N, Thomas LaPerle Dep. (“La Perle Dep.”) at 57:20 – 58:12.

At the deposition of Mr. Vetter, Mr. Vetter similarly testified:

[REDACTED]

Exhibit O, Douglas Vetter Dep. (“Vetter Dep.”) at 27:14-18.

As the Board is aware, RxD has had substantial difficulty with Applicant and [REDACTED] [REDACTED] Apple, the true party in interest in this opposition, forestalling its reasonable discovery efforts. Applicant’s failure to properly respond to RxD’s discovery requests, including forcing RxD to file a motion to compel discovery responses with the Board and petitioning the U.S. District Court for the Northern District of California for a futile protective order, has caused substantial delay in this Opposition. In fact, Applicant’s lack of cooperation in this proceeding has caused the deposition of Douglas Vetter, one of only two deponents that RxD was able to depose, to occur on February 10, 2016, more than one month after the January 6, 2016 close of discovery in this proceeding and more than one year after RxD first served its notice of deposition.

On March 7, 2016, Applicant filed its Motion for Summary Judgment, asserting that (1) RxD’s mark is merely descriptive; and (2) that RxD has no protectable rights. *See* Applicant’s Mot. for Summ. J. (“Motion”) at 22.

II. FACTS RELEVANT TO RxD’s AMENDMENTS

Discovery has revealed the following facts that are relevant to RxD's amendments:

1. RxD has priority of use of IPAD as a mark. Applicant admits that RxD began offering its services as of September 1, 2007. (Paper 53, at 3). RxD has used the mark continuously and without interruption in offering its services since that date. Ex. 2, Supp.

Response to Int. 1.² RxD's use has been substantially exclusive. [REDACTED]

[REDACTED] over two years after RxD adopted and began using its IPAD service mark, and neither RxD, [REDACTED]

[REDACTED] Motion at 8; Ex. W, Apple Trademark Clearance Search Result.

2. [REDACTED] Ex. N, LaPerle Dep. at 118:3-119:2. The only uses of the mark have been [REDACTED]

[REDACTED]

[REDACTED] *Id.*; see also Ex. R, Apple Trademark List, at 4. Neither Applicant nor Apple [REDACTED]

[REDACTED] Ex. AA; Ex. O, Vetter Dep. at 62:24-63:2; 67:15-19.

3. Apple is not merely [REDACTED] Applicant; it is [REDACTED]

[REDACTED]. For example, Apple [REDACTED]

[REDACTED]

[REDACTED]. Ex. V, Applicant Written Consent of Member, at 1. [REDACTED]

[REDACTED].

Ex. N, LaPerle Dep. at 50:17-21, 139:7-19. [REDACTED]

[REDACTED]. *Id.* at 104:9-14. It was never

² All numerical exhibits referenced herein are Exhibits to Declaration of Brian Clements filed concurrently herewith in support of RxD Media, LLC's Opposition to IPAD LLC's Motion for Summary Judgement.

intended that [REDACTED].
[REDACTED]. *Id.*, at 69:12-70:5.
[REDACTED]
[REDACTED]. *Id.*, at 34:2-6; 55:19-59:2. Apple is therefore
a separate entity in name, but in substance is the same as Applicant.

4. The person primarily responsible for choosing the IPAD mark for Applicant was
[REDACTED] Ex. C, at 6. [REDACTED]
[REDACTED] Ex. S, S. Jobs Jul. 24, 2006 email to P. Schiller. Mr. LaPerle, who
was [REDACTED]
[REDACTED]. Ex. N, LaPerle Dep. at 57:20-58:12. Rather, [REDACTED]
[REDACTED] very broad group of services in Classes 35, 38, 41 and 42.
See App. No. 77/927446, Application (Feb. 3, 2010); App. No. 77/913563, Application (Jan. 16,
2010). Likewise, the person who signed [REDACTED]
[REDACTED]
[REDACTED] Ex. O, Vetter Dep. at 28:11-19. Apple does [REDACTED]
[REDACTED]
[REDACTED] Ex. N, LaPerle Dep. at 57:20-58:12; Ex. O, Vetter Dep. at 27:14-18.

5. [REDACTED]. Prior to that time, it was only [REDACTED]
[REDACTED] Ex. N, LaPerle Dep. at 56:25-57:9.
Apple knew that [REDACTED]
[REDACTED], such as RxD. *Id.* at 101:4-104:7. [REDACTED]
[REDACTED]
[REDACTED]. Ex. T, Common Law Trademark Search and

Website Printouts of Trademark Users. And, [REDACTED]

[REDACTED]. Ex. N, LaPerle Dep. at 105:23-107:2.

III. ARGUMENT

Amendment of the pleadings in a trademark opposition is governed by the Federal Rules of Civil Procedure, which provide that after responsive pleadings have been filed, a party may amend its pleadings by leave of court. The “court should freely give leave when justice so requires.” TMBP § 507.02; Fed. R. Civ. P. 15(a)(2). The Board has embraced the U.S. Supreme Court’s liberal reading of Federal Rule 15(a) that motions to amend should be granted at any stage of a proceeding absent violation of settled law or prejudice to the rights to the opposing parties. TMBP § 507.02. The Board will only deny the motion when the proposed pleading “is legally insufficient, or would serve no useful purpose.” *Id.*

Applicant and Apple’s discovery responses and the deposition testimony of Mr. LaPerle and Mr. Vetter provided the new information which forms the basis of the additional claims. Discovery was completed when the last deposition, that of Mr. Vetter, was taken on February 10, 2016, after the close of discovery and by the agreement of the parties. There was no undue delay by RxD. Any delay in the taking of Mr. Vetter’s deposition, or in discovery in general, was the result of Applicant’s refusal to produce the requested discovery, which necessitated motion practice both before the Board and in the Northern District of California. This motion comes less than two months after Mr. Vetter’s deposition and before the trial period has begun, and is therefore timely. *See e.g., Railrunner N.A., Inc. v. New Mexico Dept. of Transp.*, 2008 WL 8973295, at *1 (TTAB Jul. 17, 2008) (finding that the motion to amend comes after the close of discovery is not dispositive of timeliness); *TBC Brands, LLC v. Sullivan*, 2008 WL 1741919 at

*2 (TTAB Mar. 31, 2008)(nonprecedential)(finding no prejudice when motion to amend was brought four months after the Board's order granting motion to compel).

Applicant will not be prejudiced by the requested amendments. RxD is bringing its motion after the completion of discovery based solely on information produced by Applicant and Apple. This information, which was not available until the completion of discovery, provides the basis for RxD's assertion of Applicant's lack of *bona fide* intent to use and lack of actual usage of IPAD as a service mark. Applicant's recently asserted position in its Motion for Summary Judgment that the opposition should be dismissed because RxD has no cognizable service mark rights, and that Applicant/Apple should have the prima facie exclusive right to use IPAD for services that RxD has been offering since 2007 provides further support for the assertion of unfair competition as grounds for opposing Applicant's applications.

Because the evidence in support of the additional claims resides with Applicant and Apple, and each has been given ample opportunity to disclose the relevant information requested by RxD, Applicant cannot be prejudiced by the amendment. *See American University v. Nico Van Niekerk*, 2003 WL 22970623, at *2 (TTAB Dec. 15, 2003) (finding no prejudice to respondent where the information regarding the new claims reside with respondent).

Likewise, amending the notice of opposition to include the claim of unfair competition will not prejudice the Applicant. This claim is asserted in response to the Applicant's position advanced in its Motion for Summary Judgment, and pled in the alternative, should this Board conclude that RxD does not have cognizable service mark rights and that Applicant/Apple has actually used its mark for the described services. Applicant is asking that the oppositions be dismissed based on this assertion and that it be allowed registration that will give it a prima facie exclusive right to use the IPAD mark for services that are identical or confusingly similar to

those RxD has been offering since 2007. Such use is still likely to cause confusion, to cause mistake, or to deceive as to source, sponsorship or affiliation as to RxD or its services. As a result, Applicant's use constitutes unfair competition that is grounds for opposing Applicant's applications, even if RxD does not have cognizable service mark rights. *See Balmora LLC v. Bayer Consumer Care AG*, -- F.3d --, 2016 WL 1135518, at *7 (4th Cir. Mar. 23, 2016). The relevant evidence in support of this claim is substantially the same as the likelihood of confusion claim previously pled, and thus no further discovery will be required.

RxD's motion is supported by existing law and is not futile. "Futility" means that the complaint, as amended, would fail to state a claim upon which relief can be granted." *Glassman v. Computervision Corp.*, 90 F.3d 617,623 (1st Cir. 1996). "[W]hether or not the moving party can actually prove the allegation(s) sought to be added to a pleading is a matter to be determined after the introduction of evidence" and should not be the basis for determining whether the asserted claims would be futile. TBMP § 507.02.

Based on the facts adduced during discovery, RxD's amendment states a plausible claim for relief that Applicant did not have a *bona fide* intent to use IPAD as a service mark. Whether an applicant has a *bona fide* intent to use the mark in commerce is "an objective determination based on all the circumstances." *Research in Motion Ltd. v. NBOR Corp.* 92 U.S.P.Q. 1926, 2009 WL 464941 at *4 (TTAB Dec. 2, 2009). "The absence of documentary evidence on the part of the applicant regarding such intent constitutes objective proof that is sufficient to prove that the applicant lacks a bona fide intention to use its mark in commerce." *Id.* Here, years after purportedly adopting the mark to use with services, Applicant has [REDACTED]. Moreover, after multiple discovery requests, and an order compelling production of information regarding such plans, Applicant has

[REDACTED]

[REDACTED]. The two individuals who [REDACTED]
[REDACTED] See Part II(4), *supra*. Thus, the
claim of lack of *bona fide* intent to use is not futile.

The facts adduced during discovery also provide sufficient support for a plausible claim that Applicant's mark is not sufficiently distinctive to support registration. Applicant claims that [REDACTED] identified in the '466 Application and '563 Application in connection [REDACTED]

[REDACTED] However, such peripheral use of the mark in connection with services specifically intended to promote the goods is insufficient to constitute "use" for services. *In re Dr Pepper Co.*, 836 F.2d 508, 510 (Fed. Cir. 1987). The '466 Application and '563 Application have been filed based on an intent-to-use, and for what Applicant has admitted is a descriptive mark to be registered before it is used, Applicant must show "a strong likelihood of transference of the trademark function" of the iPad device to services at issue in this case. *In re Rogers*, 53 U.S.P.Q.2d 1741, 1999 WL 1427726 at *5 (TTAB 1999).

The facts indicate only that Apple has achieved secondary meaning for its tablet computer, and that services offered in connection with that tablet computer are offered using other marks. RxD's claim that Applicant has not obtained acquired distinctiveness in the mark IPAD for services is therefore not futile.

Lastly, the facts adduced during discovery amply support a plausible claim that to the extent Applicant/Apple have used IPAD for the services described in Applicant's applications, such use constitutes unfair competition. Applicant has taken the position that RxD does not have

any protectable rights in its mark, and Applicant should therefore be granted registration that will give it presumptive exclusive rights to use IPAD as a service mark. (Paper 53, at 1-2.) RxD, however, has used IPAD as a mark for its services since 2007, and is continuing to use the mark. Part II(1), *supra*. RxD has already encountered instances of the mistaken belief that it does not have rights to use IPAD for its services, and that mistaken belief is inhibiting RxD's ability to grow its IPAD service business. Ex. P, Keith Clements Dep. at 96:7-21. In addition, Applicant is an undisputed junior user, and has asserted that all uses of IPAD are uniquely associated with it. *See* App. No. 77/927446, Req. for Reconsideration (Feb. 21, 2012); App. No. 77/913563, Req. for Reconsideration (Apr. 18, 2012). Moreover, there is evidence that Applicant/Apple filed [REDACTED] [REDACTED] Part II(3)-(5), *supra*. Such evidence supports a finding of unfair competition. *Belmora LLC*, 2016 WL 1135518, at *7-*8; *Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068-69 (2011). Such unfair competition, in turn, is a recognized basis for opposing a service mark application, even if the opposer has not cognizable service mark rights. *Belmora*, 2016 WL 1135518, at *7-*8. As a result, RxD's unfair competition claim is not futile.

CONCLUSION

In light of the foregoing, RxD respectfully request that the Board grant it leave to amend its notice of opposition, and deem filed the proposed Consolidated Amended Notice of Opposition.

Dated: April 6, 2016

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

_____/s/ Cecil E. Key_____
Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)

Counsel for RxD Media, LLC.

DIMUROGINSBERG, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314
(703) 684-4333 (telephone)
(703) 548-3181 (facsimile)
e-mail: ckey@dimuro.com
e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2016 a true copy of the foregoing was electronically mailed to the following:

Dale M. Cendali
Claudia Ray
Phil Hill
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-6460
Dale.cendali@kirkland.com
Claudia.ray@kirkland.com
Phil.hill@kirkland.com

Allison Worthy Buchner
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, CA 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500
abuckner@kirkland.com
Attorneys for IP Application Development LLC

 /s/ Cecil E. Key
Cecil E. Key, Esq. (VSB #41018)

APPENDIX 1

REDACTED

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

In the Matter of Application Serial No.: 77/927,446
Publication Date: April 10, 2012

In the Matter of Application Serial No. 77/913, 563
Publication Date: June 26, 2012

<p>RxD Media, LLC, <i>Opposer,</i> vs. IP Application Development LLC, <i>Applicant.</i></p>	<p>Opposition Nos.: 91207333 91207598 Mark: IPAD</p>
--	---

CONSOLIDATED AMENDED NOTICE OF OPPOSITION

RxD Media, LLC (“Opposer”) is a Pennsylvania limited liability company with a principal place of business at 234 Bradley Court, Holland, Pennsylvania 18966.

Opposer believes it will be damaged by the registration of the mark IPAD shown in the applications of IP Application Development LLC (“Applicant”), Serial Nos. 77/927,446 and 77/913,563 (“446 Application” and “563 Application”, respectively), and hereby opposes registration of such mark.

As grounds in support of this opposition, Opposer states the following:

1. Since at least as early as September 1, 2007, Opposer has continuously engaged in providing temporary use of a web-based software application for mobile-access database management whereby users can store and access their personal information (“Opposer’s services”).

2. Since at least as early as September 1, 2007, Opposer has used its distinctive IPAD mark in connection with Opposer's services in interstate commerce to identify its services to consumers.

3. Opposer is the owner of Federal Trademark Application Serial No. 77/958,000 ("000 Application") for the IPAD mark for use in connection with "providing temporary use of a web-based software application for mobile-access database management whereby users can store and access their personal information" in Class 42. Applicant's '000 Application was filed on March 12, 2010. A true and correct copy of the United States Patent and Trademark Office's ("USPTO") TESS Records identifying Opposer's '000 Application is attached hereto as Exhibit A.

4. Applicant's '466 Application was filed on February 6, 2010 claiming a priority filing date of January 25, 2010 based upon Canadian application No. 1466862. A true and correct copy of the USPTO TESS Records identifying Applicant's '446 Application is attached hereto as Exhibit B. The Applicant has filed a verified statement that it has a *bona fide* intent to use the mark in commerce under § 1(b) of the Lanham Act, 15 U.S.C. § 1501(b). The Applicant has never alleged a date of first use in the United States.

5. Applicant seeks to register IPAD as a mark for the following services described and claimed in the '466 Application:

"Business management; business administration; business consulting services; providing office functions; advertising and marketing services; sales promotion services; advertising and marketing services, namely, promoting the goods and services of others; conducting market research; analysis of advertising response and market research; dissemination of advertisements and advertising material; consumer loyalty services for promotion of digital electronic devices and software; arranging and conducting incentive rewards programs to promote the sale of digital electronic devices; computerized database and file management; data processing services; providing business and commercial information over computer networks and global communication networks; business services, namely, providing computer databases regarding the purchase and sale

of a wide variety of products and services of others; business services, namely, dissemination of advertising for others via computer networks and global communication networks; compilations of business directories for publishing on the Internet and other electronic, computer and communications networks; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest; retail store services in the field of downloadable entertainment programs featuring movies, television programs, sporting events, musical works, and audio and audiovisual works; retail store services in the field of computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest, provided via the Internet and other computer, electronic and communications networks; retail store services in the field of entertainment featuring movies, television programs, sporting events, musical works, and audio and audiovisual works, via the Internet and other computer, electronic and communications networks; retail store services featuring computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products, via the Internet and other computer, electronic and communications networks; product demonstrations provided in-store and via global communications networks and other electronic and communications networks; subscription services, namely, providing subscriptions to text, data, image, audio, video, and multimedia content, provided via the Internet and other electronic and communications networks; online retail store services featuring downloadable pre-recorded text, data, image, audio, video, and multimedia content for a fee or pre-paid subscription, provided via the Internet and other electronic and communications networks; arranging and conducting of commercial, trade and business conferences, shows, and exhibitions for commercial purposes; information, advisory and consultancy services relating to all the aforesaid business services” in Class 35;

“Storage of electronic media, namely, images, text, video, and audio data” in Class 39; and

“Computer services, namely, creating indexes of information, sites and other resources available on computer networks; Searching and retrieving information, sites, and other resources available on computer networks for others; Recording data for others on optical, digital and magnetic media for electronic storage; Computer service, namely, acting as an application service provider in the field of knowledge management to host computer application software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information according to user preferences; providing an online searchable database of text, data, image, audio, video, and multimedia content featuring information in the fields of computer hardware and software development, technology development, and consumer electronics” in Class 42.

6. Applicant's '563 Application was filed on January 16, 2010 claiming a priority filing date of July 16, 2009 based upon Application No. 41168 in Trinidad and Tobago. A true and correct copy of the USPTO TESS Records identifying Applicant's '563 Application is attached hereto as Exhibit C. The Applicant has filed a verified statement that it has a *bona fide* intent to use the mark in commerce under § 1(b) of Lanham Act, 15 U.S.C. § 1501(b). The Applicant has never alleged a date of first use in the United States.

7. Applicant seeks to register IPAD as a mark for the following services described and claimed in the '563 Application:

“Telecommunication access services; communications by computer terminals; communication services between computers, namely, electronic transmission of data and documents among users of computers; electronic sending of data and documentation via the Internet or other databases; electronic transmission of news and data; providing telecommunication access to websites and electronic news services online allowing the download of information and data; providing telecommunication access to web sites on the Internet; delivery of digital music by telecommunications; providing wireless telecommunications, namely, transmission of voice, audio, visual images, and data, via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; one-way and two-way paging services; teletext, telegram transmission, and telephone services; broadcasting or transmission of radio and television programs; provision of telecommunications access and the Internet electronic transmission of streamed and downloadable audio and video files for others via computer and other communications networks; webcasting services (transmission); delivery of messages by electronic transmission; provision of telecommunication connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; provision of telecommunications connections to electronic communication networks, for transmission or reception of audio, video or multimedia content; providing telecommunication access to digital music web sites on the Internet; providing telecommunication access to MP3 web sites on the Internet; delivery of digital music by telecommunications, namely, by electronic transmission; provision of telecommunications connections to the Internet or computer databases. electronic mail services; telecommunication of information, namely, computer aided transmission of information and images, including webpages; video broadcasting, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via a global computer network; streaming of video content via a global computer network; subscription audio broadcasting via a global computer network; audio broadcasting; audio broadcasting of spoken word, music, concerts, and radio programs,

broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via computer and other communications networks; streaming of audio content via a global computer network; electronic transmission of audio and video files via communications networks; peer-to-peer network computer services, namely, electronic transmission of music, video, and audio recordings among computers via communication networks; providing on-line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental of telecommunication apparatus; providing email services; news agency services for electronic transmission; telecommunications consultation; facsimile, message collection and transmission services; transmission of data and of information by electronic means, namely, by computer, cable, radio, teleprinter, teletype, electronic mail, telecopier, television, microwave, laser beam, communications satellite or electronic communication means; electronic transmission of data, namely, transmission of data by digital audiovisual apparatus controlled by electronic data processing apparatus or computers; information, advisory and consultancy services relating to all the aforesaid. provision of telecommunication access to web-sites featuring multimedia materials; providing telecommunication access to databases and directories via communications networks for obtaining data in the fields of music, video, film, books, television, games and sports; providing users with telecommunication access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users; Internet access provider services” in Class 38; and

“Providing web-sites, via a global computer network, to enable users to program the scheduling of audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs as they will be aired; design and development of computer hardware and software; computer hardware and software consulting services; rental of computer hardware and software apparatus and equipment; multimedia software and audio-visual software consulting services; computer programming; support and consultation services for developing computer systems, databases and software applications; graphic design for the compilation of web pages on the Internet; providing a website that features information on computer technology and programming; creating and maintaining websites; hosting the web-sites of others; providing search engines for obtaining data via communications networks; application service provider (ASP) services featuring software for use in connection with online music subscription service, software that enables users to play and program music and entertainment-related audio, video, text and multimedia content, and software featuring musical sound recordings, entertainment-related audio, video, text and multimedia content; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; providing search engines for obtaining data on a global computer network; information, advisory and consultancy services relating to all the aforesaid; provision of Internet search engines; creating

indexes of online information, sites and other resources available on global computer networks for others; providing websites, via a global computer network, featuring technology that enables users to program the scheduling of audio, video, text, and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs as they will be aired” in Class 42.

8. Applicant has entered [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9. The ‘466 and ‘563 Applications were initially rejected by the Office as merely descriptive. In each application, Applicant filed a Request for Reconsideration in which it asserted that the IPAD mark has acquired secondary meaning through the wide-spread recognition of Apple’s iPad device, and its affiliation with Apple’s other “i”-prefix family of products, such as iPhones and iPods. However, Applicant did not make any showing of use of the IPAD mark in the rendering of services.

10. During the discovery stage of this Opposition, Opposer sought production of any business plans identifying Applicant’s and/or Apple’s planned use of the IPAD mark in the services identified in the ‘446 and ‘563 Applications. The Board ordered production of the requested information. None of the requested information was produced by Applicant or Apple.

11. In response to Opposer’s request that Applicant “identify every service in connection with Applicant has used or is using [the IPAD mark]”, Applicant responded:

[REDACTED]

[REDACTED]

12. Upon information and belief, Apple's [REDACTED] [REDACTED] are offered and marketed as "AppleCare" and "AppleCare Plus", and not under the IPAD mark. (<http://www.apple.com/support/products/>).

13. Upon information and belief, the [REDACTED] is offered through communication companies and internet providers such as Verizon and Comcast. Those companies, however, do not provide [REDACTED] services under the IPAD mark. See e.g. <http://www.verizonwireless.com/landingpages/data-only-plan/> (data plan allowing connection of any "tablet device").

14. Neither Applicant nor Apple produced information to specify how the IPAD mark is allegedly being used by Apple for services, nor information that would establish use that predates RxD's use.

15. During the deposition of Thomas LaPerle, Applicant and Apple's 30(b)(6) witness and the signatory of the verified statement in the '466 and '563 Applications as to the Applicant's *bona fide* intent to use the mark in commerce, Mr. LaPerle, who identified himself as

[REDACTED]

[REDACTED] testified that [REDACTED]

[REDACTED]. Mr. LaPerle further testified that

[REDACTED]

[REDACTED].

16. During the deposition of Douglas Vetter, Mr. Vetter testified that [REDACTED]

[REDACTED] in

connection with the services identified in its Applications. Mr. Vetter, who [REDACTED]
[REDACTED]
[REDACTED]

17. Upon information and belief, the Applicant has taken no steps, and produced no documentary evidence, that, viewed objectively, demonstrate that Applicant had a *bona fide* intent to use the IPAD mark for services identified in the '466 and '563 Applications within the meaning of Section 1(b) of the Lanham Act, 15 U.S.C. § 1051(b), at the time it filed the Applications.

18. Upon information and belief, neither the Applicant nor [REDACTED], Apple, has ever used the IPAD mark in commerce for the services identified in the '466 and '563 Applications.

19. Opposer has priority with respect to the mark in issue. Opposer has been using its IPAD mark since at least as early as September 1, 2007 in connection with Opposer's services, many years prior to Applicant's '446 and '563 Applications.

20. Upon information and belief, Applicant's services as set forth in the '446 and '563 Applications will be offered through channels of distribution that are common to those of Opposer.

21. The person responsible for Applicant's adoption of the IPAD mark was [REDACTED]
[REDACTED]
[REDACTED].

22. [REDACTED] RxD's use of IPAD for its services. No other uses of IPAD for services was [REDACTED].

23. Upon the launch of the iPad product by Apple in 2010, RxD received a significant spike in hits to its IPAD website located at ipad.mobi. Subsequently, RxD received rejections of its advertising by online advertising agencies that mistakenly believed RxD did not have rights to use the IPAD mark for its services.

Count I: Lack of Bona Fide Intent to Use the Mark in Commerce

24. Opposer repeats and re-avers each and every allegation contained in Paragraphs 1-23, as if fully set forth herein.

25. Applicant has produced no objective evidence of its intent to use the IPAD mark in connection with the rendering of the services identified in its applications, and its witnesses have testified that they are aware of [REDACTED]

[REDACTED].

26. The lack of a *bona fide* intent to use renders Applicant's Applications void.

27. Applicant's IPAD mark so resembles Opposer's IPAD mark (as they are identical) that, when used in connection with Applicant's services listed in the '446 and '563 Applications, it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d); and more particularly, Applicant's registration and use thereof is likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that Applicant's services and Opposer's services originate with or otherwise are authorized, licensed, or sponsored by the same source. Any such confusion may result in loss of customers and sales by Opposer. Further, any defect, objection or fault found by the trade or public with goods marketed under the mark IPAD would negatively impact and injure the reputation that Opposer has established for services under its IPAD mark.

28. Given Opposer's longstanding and prior trademark rights in and to its IPAD mark, any federal trademark registration for IPAD for services, particularly computer services, conferring exclusive, nationwide rights in Applicant, would be improper and would interfere with Opposer's prior rights.

29. Opposer will therefore be harmed by the registration of the IPAD service mark to Applicant, and because Applicant cannot objectively demonstrate that it had an *bona fide* intent to use, registration of Applicant's Applications should be rejected.

Count II: Mark is Merely Descriptive

30. Opposer repeats and re-avers each and every allegation contained in Paragraphs 1-29, as if fully set forth herein.

31. Applicant has not used the IPAD mark in connection with the rendering of services, including those described in the '466 and '563 Applications. The only association of the mark with Applicant is in regard to the iPad tablet computer sold by Apple. The only use of the mark in connection with services that Applicant has identified is in regard to services that are incidental to the sale and advertising of the iPad tablet computer, and for which other marks are used.

32. Applicant has admitted that its mark is descriptive, but the mark has not acquired distinctiveness.

33. Applicant's IPAD mark so resembles Opposer's IPAD mark (as they are identical) that, when used in connection with Applicant's services listed in the '446 and '563 Applications, it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d); and more particularly, Applicant's registration and use thereof is likely to cause confusion in, or to cause mistake by, or to deceive

the trade and purchasing public into believing that Applicant's services and Opposer's services originate with or otherwise are authorized, licensed, or sponsored by the same source. Any such confusion may result in loss of customers and sales by Opposer. Further, any defect, objection or fault found by the trade or public with goods marketed under the mark IPAD would negatively impact and injure the reputation that Opposer has established for services under its IPAD mark.

34. Given Opposer's longstanding and prior trademark rights in and to its IPAD mark, any federal trademark registration for IPAD for services, particularly computer services, conferring exclusive, nationwide rights in Applicant, would be improper and would interfere with Opposer's prior rights.

35. Opposer will therefore be harmed by the registration of the IPAD service mark to Applicant, and because Applicant cannot objectively demonstrate that its mark has acquired distinctiveness, and thus that it has priority over Opposer's use, registration of Applicant's Applications should be rejected.

Count III: Likelihood of Confusion

36. Opposer repeats and re-avers each and every allegation contained in Paragraphs 1-35, as if fully set forth herein.

37. Applicant's IPAD mark so resembles Opposer's IPAD mark (as they are identical) that, when used in connection with Applicant's services listed in the '446 and '563 Applications, it is likely to cause confusion, or to cause mistake or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d); and more particularly, Applicant's registration and use thereof is likely to cause confusion in, or to cause mistake by, or to deceive the trade and purchasing public into believing that Applicant's services and Opposer's services originate with or otherwise are authorized, licensed, or sponsored by the same source. Any such

confusion may result in loss of customers and sales by Opposer. Further, any defect, objection or fault found by the trade or public with goods marketed under the mark IPAD would negatively impact and injure the reputation that Opposer has established for services under its IPAD mark.

38. Moreover, Opposer believes it will be damaged in that any subsequent applications by Opposer for federal trademark registration of its IPAD mark in connection with computer services, or related goods, will be denied registration.

39. Finally, given Opposer's longstanding and prior trademark rights in and to its IPAD mark, any federal trademark registration for IPAD for services, particularly computer services, conferring exclusive, nationwide rights in Applicant, would be improper and would interfere with Opposer's prior rights.

Count IV: Unfair Competition

40. Opposer repeats and re-avers each and every allegation contained in Paragraphs 1-39, as if fully set forth herein.

41. Applicant takes the position that because of the size, economic capacity and notoriety of Apple, consumers immediately associate the IPAD mark with Apple, and only with Apple, regardless of whether such mark was previously used by others.

42. Such flooding of the market by Applicant constitutes unfair competition in that it causes consumers to wrongfully conclude that others who do or have used IPAD for goods and services, including the Opposer, are affiliated with the Applicant and/or Apple.

43. Opposer has priority of use of the IPAD mark for services, and has received rejections of its advertising by those who mistakenly believe Opposer has no right to use the IPAD mark in light of the use by Apple for a tablet computer. Applicant's [REDACTED]

██████████, and Applicant proceeded with adoption of IPAD and its purported use with knowledge that Opposer had priority.

44. Applicant's alleged use of IPAD therefore so resembles Opposer's that Applicant's use is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Opposer with Applicant or Apple, or as to the origin, sponsorship, or approval of Opposer's services, or commercial activities by Applicant or Apple.

45. Given the Opposer's longstanding use of the IPAD mark and the unique nature of Opposer's services, Opposer will therefore be damaged by federal registration of the IPAD mark to Applicant in connection with the services described in its Applications. Opposer has priority over Applicant's use, and registration of Applicant's Applications should therefore be rejected.

WHEREFORE, Opposer prays that this Amended Notice of Opposition be sustained in favor of Opposer and that Application Serial Nos. 77/927,446 and 77/913,563 for the mark IPAD, be refused.

Dated: April 6, 2016

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key
Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)
DIMUROGINSBERG, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314
(703) 684-4333 (telephone)
(703) 548-3181 (facsimile)
e-mail: ckey@dimuro.com
e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2016, a true copy of the foregoing was mailed postage pre-paid and electronically mailed to the following:

Dale M. Cendali
Claudia Ray
Phil Hill
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Tel: (212) 446-4800
Fax: (212) 446-4900

Allison W. Buchner
Kirkland & Ellis LLP
333 South Hope Street
Los Angeles, CA 90071
Tel: (213) 680-8400
Fax: (213) 680-8500

/s/ Cecil E. Key _____
Cecil E. Key

EXHIBIT A



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Apr 5 03:20:58 EDT 2016

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 30 out of 53**

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

IPAD

Word Mark IPAD

Goods and Services IC 042. US 100 101. G & S: Providing temporary use of a web-based software application for mobile-access database management whereby users can store and access their personal information. FIRST USE: 20070901. FIRST USE IN COMMERCE: 20070901

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 77958000

Filing Date March 12, 2010

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) RXD Media, LLC LIMITED LIABILITY COMPANY PENNSYLVANIA 234 Bradley Court Holland PENNSYLVANIA 18966

Attorney of Record Cecil E. Key

Type of Mark SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

-
- [TESS HOME](#)
 - [NEW USER](#)
 - [STRUCTURED](#)
 - [FREE FORM](#)
 - [BROWSE DICT](#)
 - [SEARCH OG](#)
 - [TOP](#)
 - [HELP](#)
 - [PREV LIST](#)
 - [CURR LIST](#)
 - [NEXT LIST](#)
 - [FIRST DOC](#)
 - [PREV DOC](#)
 - [NEXT DOC](#)
 - [LAST DOC](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT B



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Apr 5 03:20:58 EDT 2016

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 28 out of 53**

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

IPAD

Word Mark IPAD

Goods and Services IC 035. US 100 101 102. G & S: business management; business administration; business consulting services; providing office functions; advertising and marketing services; sales promotion services; advertising and marketing services, namely, promoting the goods and services of others; conducting market research; analysis of advertising response and market research; dissemination of advertisements and advertising material; consumer loyalty services for promotion of digital electronic devices and software; arranging and conducting incentive rewards programs to promote the sale of digital electronic devices; computerized database and file management; data processing services; providing business and commercial information over computer networks and global communication networks; business services, namely, providing computer databases regarding the purchase and sale of a wide variety of products and services of others; business services, namely, dissemination of advertising for others via computer networks and global communication networks; compilations of business directories for publishing on the Internet and other electronic, computer and communications networks; retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest; retail store services in the field of downloadable entertainment programs featuring movies, television programs, sporting events, musical works, and audio and audiovisual works; retail store services in the field of computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products. retail store services in the field of books, magazines, periodicals, newsletters, journals and other publications on a wide range of topics of general interest, provided via the Internet and other computer, electronic and communications networks; retail store services in the field of entertainment featuring movies, television programs, sporting events, musical works, and audio and audiovisual works, via the Internet and other computer, electronic and communications networks; retail store services featuring computer, electronic and entertainment products, telecommunications apparatus, mobile phones, handheld mobile digital electronic devices, and other consumer electronics, computer software, and accessories, peripherals, and carrying cases for such products, via the Internet and other computer, electronic and communications networks; product demonstrations provided in-store and via

global communications networks and other electronic and communications networks; subscription services, namely, providing subscriptions to text, data, image, audio, video, and multimedia content, provided via the Internet and other electronic and communications networks; online retail store services featuring downloadable pre-recorded text, data, image, audio, video, and multimedia content for a fee or pre-paid subscription, provided via the Internet and other electronic and communications networks; arranging and conducting of commercial, trade and business conferences, shows, and exhibitions for commercial purposes; information, advisory and consultancy services relating to all the aforesaid business services

IC 039. US 100 105. G & S: Storage of electronic media, namely, images, text, video, and audio data

IC 042. US 100 101. G & S: computer services, namely, creating indexes of information, sites and other resources available on computer networks; Searching and retrieving information, sites, and other resources available on computer networks for others; Recording data for others on optical, digital and magnetic media for electronic storage; Computer service, namely, acting as an application service provider in the field of knowledge management to host computer application software for the collection, editing, organizing, modifying, book marking, transmission, storage and sharing of data and information according to user preferences; providing an online searchable database of text, data, image, audio, video, and multimedia content featuring information in the fields of computer hardware and software development, technology development, and consumer electronics

**Standard
Characters
Claimed**

**Mark
Drawing
Code** (4) STANDARD CHARACTER MARK

**Serial
Number** 77927446

Filing Date February 3, 2010

**Current
Basis** 1B

**Original
Filing
Basis** 1B;44D

**Published
for
Opposition** April 10, 2012

Owner (APPLICANT) IP Application Development LLC LIMITED LIABILITY COMPANY DELAWARE 2711 Centerville Road, Suite 400 Wilmington DELAWARE 19808

**Attorney of
Record** Robert Cohen

**Priority
Date** January 25, 2010

**Description
of Mark** Color is not claimed as a feature of the mark.

**Type of
Mark** SERVICE MARK

Register PRINCIPAL-2(F)

**Live/Dead
Indicator** LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[SEARCH OG](#)
[TOP](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)

[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

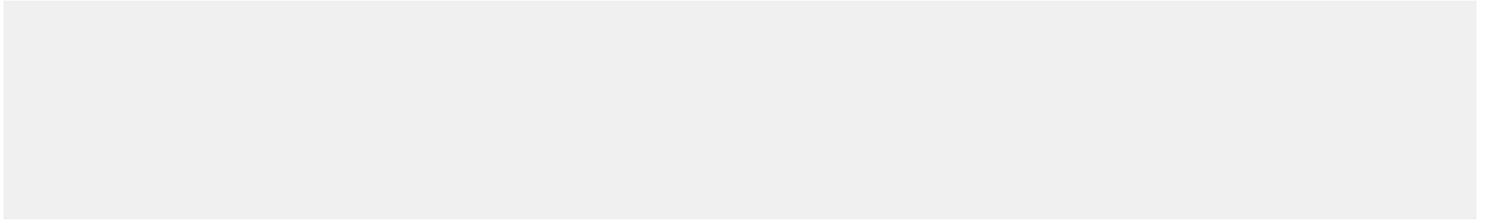


EXHIBIT C



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Tue Apr 5 03:20:58 EDT 2016

[TESS HOME](#) | [NEW USER](#) | [STRUCTURED](#) | [FREE FORM](#) | [BROWSE DICT](#) | [SEARCH OG](#) | [BOTTOM](#) | [HELP](#) | [PREV LIST](#) | [CURR LIST](#)
[NEXT LIST](#) | [FIRST DOC](#) | [PREV DOC](#) | [NEXT DOC](#) | [LAST DOC](#)

Please logout when you are done to release system resources allocated for you.

List At: OR to record: **Record 33 out of 53**

[TSDR](#) | [ASSIGN Status](#) | [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

IPAD

Word Mark IPAD

Goods and Services

IC 038. US 100 101 104. G & S: telecommunication access services; communications by computer terminals; communication services between computers, namely, electronic transmission of data and documents among users of computers; electronic sending of data and documentation via the Internet or other databases; electronic transmission of news and data; providing telecommunication access to websites and electronic news services online allowing the download of information and data; providing telecommunication access to web sites on the Internet; delivery of digital music by telecommunications; providing wireless telecommunications, namely, transmission of voice, audio, visual images, and data, via electronic communications networks; wireless digital messaging, paging services, and electronic mail services, including services that enable a user to send and/or receive messages through a wireless data network; one-way and two-way paging services; teletext, telegram transmission, and telephone services; broadcasting or transmission of radio and television programs; provision of telecommunications access and the Internet; electronic transmission of streamed and downloadable audio and video files for others via computer and other communications networks; webcasting services (transmission); delivery of messages by electronic transmission; provision of telecommunication connectivity services and access to electronic communications networks, for transmission or reception of audio, video or multimedia content; provision of telecommunications connections to electronic communication networks, for transmission or reception of audio, video or multimedia content; providing telecommunication access to digital music web sites on the Internet; providing telecommunication access to MP3 web sites on the Internet; delivery of digital music by telecommunications, namely, by electronic transmission; provision of telecommunications connections to the Internet or computer databases. electronic mail services; telecommunication of information, namely, computer aided transmission of information and images, including webpages; video broadcasting, broadcasting pre-recorded videos featuring music and entertainment, television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via a global computer network; streaming of video content via a global computer network; subscription audio broadcasting via a global computer network; audio broadcasting; audio broadcasting of spoken word, music, concerts, and radio programs, broadcasting pre-recorded videos featuring music and entertainment,

television programs, motion pictures, news, sports, games, cultural events, and entertainment-related programs of all kinds, via computer and other communications networks; streaming of audio content via a global computer network; electronic transmission of audio and video files via communications networks; peer-to-peer network computer services, namely, electronic transmission of music, video, and audio recordings among computers via communication networks; providing on-line bulletin boards for the transmission of messages among computer users concerning entertainment, music, concerts, videos, radio, television, film, news, sports, games and cultural events; rental of telecommunication apparatus; providing email services; news agency services for electronic transmission; telecommunications consultation; facsimile, message collection and transmission services; transmission of data and of information by electronic means, namely, by computer, cable, radio, teleprinter, teletype, electronic mail, telecopier, television, microwave, laser beam, communications satellite or electronic communication means; electronic transmission of data, namely, transmission of data by digital audio-visual apparatus controlled by electronic data processing apparatus or computers; information, advisory and consultancy services relating to all the aforesaid. provision of telecommunication access to web-sites featuring multimedia materials; providing telecommunication access to databases and directories via communications networks for obtaining data in the fields of music, video, film, books, television, games and sports; providing users with telecommunication access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users; Internet access provider services

IC 042. US 100 101. G & S: Providing web-sites, via a global computer network, to enable users to program the scheduling of audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs as they will be aired; design and development of computer hardware and software; computer hardware and software consulting services; rental of computer hardware and software apparatus and equipment; multimedia software and audio-visual software consulting services; computer programming; support and consultation services for developing computer systems, databases and software applications; graphic design for the compilation of web pages on the Internet; providing a website that features information on computer technology and programming; creating and maintaining web-sites; hosting the web-sites of others; providing search engines for obtaining data via communications networks; application service provider (ASP) services featuring software for use in connection with online music subscription service, software that enables users to play and program music and entertainment-related audio, video, text and multimedia content, and software featuring musical sound recordings, entertainment-related audio, video, text and multimedia content; providing temporary use of on-line non-downloadable software to enable users to program audio, video, text and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs; providing search engines for obtaining data on a global computer network; information, advisory and consultancy services relating to all the aforesaid; provision of Internet search engines; creating indexes of online information, sites and other resources available on global computer networks for others, providing websites, via a global computer network, featuring technology that enables users to program the scheduling of audio, video, text, and other multimedia content, including music, concerts, videos, radio, television, news, sports, games, cultural events, and entertainment-related programs as they will be aired

**Standard
Characters
Claimed**

**Mark
Drawing
Code** (4) STANDARD CHARACTER MARK

**Serial
Number** 77913563

Filing Date January 16, 2010

**Current
Basis** 1B

**Original
Filing Basis** 1B;44D

**Published
for** June 26, 2012

**Opposition
International**

Registration Number 1039213

Owner (APPLICANT) IP Application Development LLC LIMITED LIABILITY COMPANY DELAWARE 2711 Centerville Road, Suite 400 Wilmington DELAWARE 19808

Attorney of Record Robert Cohen

Priority Date July 16, 2009

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark SERVICE MARK

Register PRINCIPAL-2(F)

Live/Dead Indicator LIVE

[TESS HOME](#)[NEW USER](#)[STRUCTURED](#)[FREE FORM](#)[BROWSE DICT](#)[SEARCH OG](#)[TOP](#)[HELP](#)[PREV LIST](#)[CURR LIST](#)[NEXT LIST](#)[FIRST DOC](#)[PREV DOC](#)[NEXT DOC](#)[LAST DOC](#)

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)