

ESTTA Tracking number: **ESTTA501490**

Filing date: **10/23/2012**

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	RxD Media, LLC
Granted to Date of previous extension	10/24/2012
Address	234 Bradley Court Holland, PA 18966 UNITED STATES

Attorney information	Nicole D. Galli Benesch Friedlander Coplan & Aronoff LLP 1650 Market Street, Suite 3611 Philadelphia, PA 19103 UNITED STATES trademark@beneschlaw.com, ngalli@beneschlaw.com Phone:267.207.2948
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Applicant Information

Application No	77913563	Publication date	06/26/2012
Opposition Filing Date	10/23/2012	Opposition Period Ends	10/24/2012
International Registration No.	NONE	International Registration Date	NONE
Applicant	IP Application Development LLC 2711 Centerville Road, Suite 400 Wilmington, DE 19808 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 038. All goods and services in the class are opposed, namely: 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</p>

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

Class 042.

All goods and services in the class are opposed, namely: 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

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.	77958000	Application Date	03/12/2010
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	IPAD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2007/09/01 First Use In Commerce: 2007/09/01 Providing temporary use of a web-based software application for mobile-access database management whereby users can store and access their personal information		

Related Proceedings	91207333
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Attachments	77958000#TMSN.jpeg (1 page)(bytes) Notice of Opposition - '563.pdf (12 pages)(307598 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	/Nicole D. Galli/
Name	Nicole D. Galli
Date	10/23/2012

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

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 No.: _____ Mark: IPAD</p>
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NOTICE OF OPPOSITION

RxD Media, LLC (“Opposer”) is a Pennsylvania corporation 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 application of IP Application Development LLC (“Applicant”), Serial No. 77/913,563, (“563 Application”) 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. 77/958000 (“’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 Int. 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 seeks to register IPAD as a mark for the following services:

“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” in Int. 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 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” in Int. Class 42.

5. Applicant’s 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 B. The Applicant has never alleged a date of first use in the United States.

6. 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 ‘563 Application.

7. Upon information and belief, Applicant’s services as set forth in the ‘563 Application, will be or are currently offered through channels of distribution that are common to those of Opposer.

8. By reason thereof, 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 ‘563 Application, 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 services marketed under the mark IPAD would

negatively impact and injure the reputation that Opposer has established for services under its IPAD mark.

9. 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 related computer services will be denied registration.

10. 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.

WHEREFORE, Opposer prays that this Notice of Opposition be sustained in favor of Opposer and that Application Serial No. 77/913,563, for the mark IPAD, be refused.

Dated: October 23, 2012

Respectfully Submitted,

/s/ Nicole D. Galli

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Attorneys for Opposer RxD Media, LLC.

CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2012, a true and complete copy of the foregoing NOTICE OF OPPOSITION was served on Applicant, IP Application Development, Inc., the correspondent of record, via first class mail, at the following address:

Robert Cohen
2711 Centreville Rd Ste. 400
Wilmington, Delaware 19809
ipadevel@gmail.com.

/Julie R. Fenstermaker
Attorney for Opposer
RXD MEDIA, LLC

EXHIBIT A



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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	Julie R. Fenstermaker
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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EXHIBIT B



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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, and 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 Opposition** June 26, 2012**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](#)