

ESTTA Tracking number: **ESTTA505923**

Filing date: **11/16/2012**

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	Dell Inc.		
Entity	Corporation	Citizenship	Delaware
Address	One Dell Way Round Rock, TX 78682 UNITED STATES		

Attorney information	Stephen P. Meleen Pirkey Barber PLLC 600 Congress Avenue, Suite 2120 Austin, TX 78701 UNITED STATES smeleen@pirkeybarber.com, wlarson@pirkeybarber.com, drausa@pirkeybarber.com, tmcentral@pirkeybarber.com Phone:512-322-5200		
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Applicant Information

Application No	78457353	Publication date	10/23/2012
Opposition Filing Date	11/16/2012	Opposition Period Ends	11/22/2012
Applicant	Precision I/O, Inc. 4005 Miranda Avenue Suite 210 Palo Alto, CA 94304 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: computer hardware; computer software, namely, ethernet acceleration software for enhancing performance of computer systems and computer applications
Class 042. All goods and services in the class are opposed, namely: technical support services, namely, troubleshooting of computer hardware and software problems

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2187970	Application Date	02/27/1992
Registration Date	09/08/1998	Foreign Priority Date	NONE

Word Mark	PRECISION
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1998/04/15 First Use In Commerce: 1998/04/15 digital computers and components therefor

U.S. Registration No.	2284782	Application Date	03/05/1998
Registration Date	10/12/1999	Foreign Priority Date	NONE
Word Mark	DELL PRECISION		
Design Mark	DELL PRECISION		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1998/04/15 First Use In Commerce: 1998/04/15 computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, [printers,] mouses, co-processors, modems, hard and[floppy disk drives, tape drives], CD-ROM drives, data storage units, and electronic or [magnetic cards] and memory add ons, memory boards and chips, cables and connectors, all for use with computers		

Attachments	75445276#TMSN.gif (1 page)(bytes) Notice of Opposition SN 78457353.pdf (5 pages)(645049 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	/SPM/
Name	Stephen P. Meleen
Date	11/16/2012

4. Opposer's sales under the PRECISION Marks have been extensive, and Opposer has expended great effort and resources promoting these marks and its products sold under these marks.

5. Opposer's PRECISION Marks are inherently distinctive, serving to identify and indicate the source of Opposer's goods to the consuming public, and to distinguish Opposer's goods from those of others.

6. Additionally, as a result of Opposer's use and promotion of its PRECISION Marks, the mark has become distinctive and is recognized by consumers. Opposer has invested significant effort and resources in advertising and promoting its PRECISION Marks and the goods sold under those marks, with the result that the purchasing public has come to know, rely on, and recognize the goods and services of Opposer by those marks. Opposer has established valuable goodwill in its PRECISION Marks.

7. In addition to its extensive common law rights, Opposer is the owner of United States Trademark Registrations covering its PRECISION Marks, specifically, Registration Number 2,187,970 for PRECISION for "digital computers and components therefor" in Class 9 and Registration Number 2,284,782 for "computers, computer peripheral devices and parts and fittings therefor; monitors, keyboards, [printers,] mouses, co-processors, modems, hard and floppy disk drives, tape drives], CD-ROM drives, data storage units, and electronic or [magnetic cards] and memory add ons, memory boards and chips, cables and connectors, all for use with computers" in Class 9. These registrations are valid and subsisting, and have become incontestable pursuant to 15 U.S.C. § 1065.

8. Applicant Precision I/O, Inc. ("Applicant") is a Delaware corporation with a business address of 4005 Miranda Avenue, Suite 210, Palo Alto, California 94304. Applicant filed

Application Serial No. 78/457,353 (the “Application”) on an intent-to-use basis pursuant to 15 U.S.C. § 1051(b) on July 27, 2004 for the mark PRECISION I/O (“Applicant’s Mark”) for “computer hardware; computer software, namely, ethernet acceleration software for enhancing performance of computer systems and computer applications” in Class 9 and for “technical support services, namely, troubleshooting of computer hardware and software problems” in Class 42.

9. Opposer has priority based on its prior use and registration of its PRECISION Marks in the United States.

10. The goods in the Application are related to the goods for which Opposer has registered and used its PRECISION Marks.

11. Opposer has not given Applicant permission or approval to use or register Applicant’s Mark.

12. Applicant’s Mark so resembles Opposer’s PRECISION Marks as to be likely, when used on or in connection with the identified goods of the Application, to cause confusion, or to cause mistake, or to deceive consumers as to the source, sponsorship, approval or affiliation between Opposer and Applicant. Registration therefore should be refused under 15 U.S.C. § 1052(d).

13. Registration of Applicant’s Mark on the Principal Register would be inconsistent with Opposer’s rights under the aforementioned registrations and common law and would be damaging to Opposer.

WHEREFORE, Opposer prays that Application Serial No. 78457353 be rejected, and that registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey

Barber PLLC, Account No. 50-3924/DELL268/SPM, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Dated: 11/16/12



Stephen P. Meleen
Wendy C. Larson
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF OPPOSITION was served via First Class Mail, postage pre-paid, upon the Applicant at the address below on November 16, 2012:

Precision I/O, Inc.
4005 Miranda Avenue, Suite 210
Palo Alto, CA 94304


