

ESTTA Tracking number: **ESTTA1583**

Filing date: **06/12/2013**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Google Inc.		
Entity	Corporation	Citizenship	Delaware
Address	1600 Amphitheatre Parkway Mountain View, CA 94043 UNITED STATES		

Attorney information	Morgan Champion Cooley LLP 1299 Pennsylvania Ave. NW Suite 700 Washington, DC 20004 UNITED STATES mchampion@cooley.com, jnorberg@cooley.com, trademarks@cooley.com Phone:202-728-7103
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Applicant Information

Application No	85806667	Publication date	05/14/2013
Opposition Filing Date	06/12/2013	Opposition Period Ends	06/13/2013
Applicant	Farnsworth, Boulter, Burke & Stamper, LLC PO Box 66 La Salle, CO 80645 UNITED STATES		

Goods/Services Affected by Opposition

Class 038. All goods and services in the class are opposed, namely: Telepresence services
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	77318565	Application Date	10/31/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	ANDROID		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 009. First use: mobile phones; operating system software; software for use in developing, executing, and running other software on mobile devices, computers, computer networks, and global communication networks; computer software development tools; computer software for use in transmitting and receiving data over computer networks and global communication networks; computer software for managing communications and data exchange among and between mobile devices and desktop computers; computer middleware, namely, software that mediates between the operating system of a mobile device and the application software of a mobile device; computer application software for mobile phones

Attachments	Google--Notice_of_Opposition_re_ICOMMANDROID.pdf(20444 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	/Morgan Champion/
Name	Morgan Champion
Date	06/12/2013

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

In the matter of application Serial No. 85/806,667
For the Trademark ICOMMANDROID
Published in the Official Gazette on May 14, 2013

GOOGLE INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
FARNSWORTH, BOULTER, BURKE & STAMPER, LLC,)	
)	
)	
Applicant.)	
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NOTICE OF OPPOSITION

Opposer Google Inc. (“Google”), a Delaware corporation having its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California, 94043, believes that it will be damaged by the issuance of a registration for the mark ICOMMANDROID, in Application Serial No. 85/806,667, filed December 19, 2012 by Farnsworth, Boulter, Burke & Stamper, LLC, a company with a listed address of P.O. Box 66, La Salle, Colorado 80645 (“Applicant”). Google hereby opposes Applicant’s application pursuant to Section 13 of the United States Trademark Act, as amended, 15 U.S.C. §1063.

As grounds for opposition, Google alleges that:

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

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

2. Development of the Android platform began several years before Google acquired the original developer, Android, Inc., in 2005. Google continued to develop the software, ultimately announcing the Android platform in 2007. Since launching the Android platform, Google has introduced successive updates to the software, continually improving its performance and adding new features. The Android platform has enjoyed resounding success in the marketplace and has quickly increased its share of the mobile device market. In February 2010, there were approximately 60,000 daily activations of Android devices. Today, that number has grown exponentially to more than 1.5 million daily Android activations. As of today there are more than 900 million Android devices in use around the world. According to comScore, as of February 2013, the Android platform is installed on 53.7% of all active smartphones in the United States, more than any other mobile operating system. (Exhibit A.)

3. As the popularity of the Android platform has grown among device manufacturers, the number of applications available for Android has increased dramatically. As of February 2011, more than 150,000 applications were available on the Android platform. That number continues to grow exponentially; by May 28, 2013, more than 975,000 applications were

available through Google for Android devices. These applications offer users a vast array of functionality and enhance the utility and value to users of their mobile devices.

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

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

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

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

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

APPLICANT AND ITS PENDING APPLICATION

8. Applicant seeks to register the word mark ICOMMANDROID in connection with “telepresence services” in International Class 38. Applicant filed its application claiming intent to use the ICOMMANDROID Mark in commerce.

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

10. On information and belief, Applicant selected the ANDROID portion of the ICOMMANDROID Mark with intent to call to mind Google’s ANDROID Mark and trade off the goodwill that Google has developed. Google is not the source of Applicant’s intended goods or services, nor has Google endorsed or sponsored Applicant or its services.

11. Google has priority over Applicant based on Google’s use of the ANDROID Mark in commerce and based on the filing dates of its trademark application, well prior to the December 19, 2012 filing date of the application for the ICOMMANDROID Mark.

**FIRST GROUND FOR OPPOSITION
LIKELIHOOD OF CONFUSION**

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

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

14. The high degree of similarity between Google’s ANDROID Mark and Applicant’s ICOMMANDROID Mark and the use and planned use of the respective marks is

likely to cause confusion, mistake, or deception as to the source, origin, sponsorship or approval of Applicant's services, and is likely to suggest an affiliation, connection or association between Google and Applicant and their respective goods and services.

15. Applicant's Services, described in the Application as "telepresence services" are competitive with and related to the mobile phones and operating system software for mobile devices with which Google uses the ANDROID Mark.

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

17. Registration of the mark herein opposed will damage Google because Applicant's mark is likely, when used on or in connection with the goods and services described in the opposed application, to cause confusion, or to cause mistake or to deceive. Thus, Applicant's ICOMMANDROID Mark is unregistrable under 15 U.S.C. §§1052 and 1125, and should be refused registration.

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

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

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

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

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

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

23. The ANDROID Mark is famous.

24. The ANDROID Mark became famous before Applicant filed his application for the ICOMMANDROID Mark.

25. The ICOMMANDROID Mark is substantially similar to, subsumes the entirety of, and is likely to cause dilution of the famous ANDROID Mark, all to Google's detriment.

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

27. Wherefore, Google prays that this Opposition be sustained, and that Application Serial No. 85/806,667 be refused.

Respectfully submitted,

COOLEY LLP

Date: June 12, 2013

By: /s/ Morgan Champion
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Jeffrey Norberg
Morgan Champion
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CERTIFICATE OF SERVICE

I hereby certify that on **June 12, 2013**, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served by mailing said copy on June 12, 2013, via U.S. Mail, postage prepaid, addressed to Correspondent for the Applicant and the Applicant at the following addresses of record with the USPTO:

Michael D. Reilly
MICHAEL REILLY LLC
1835 Bell Dr.
Erie, Colorado 80516-7582
UNITED STATES

Date: June 12, 20113

/s/ Morgan Champion
Morgan Champion