

ESTTA Tracking number: **ESTTA575908**

Filing date: **12/11/2013**

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	Cima Telecom, Inc.
Granted to Date of previous extension	12/11/2013
Address	1728 SW 22nd Street, Suite 700 Miami, FL 33145 UNITED STATES
Attorney information	J. Rodman Steele, Jr. DUANE MORRIS LLP 5100 Town Center Circle, Suite 650 Boca Raton, FL 33486-9000 UNITED STATES jrsteale@duanemorris.com, kckline@duanemorris.com Phone:561-962-2100

### Applicant Information

Application No	85889443	Publication date	08/13/2013
Opposition Filing Date	12/11/2013	Opposition Period Ends	12/11/2013
Applicant	Auris, Inc. 341 Raven Circle Wyoming, DE 19934 GERMANY		

### Goods/Services Affected by Opposition

Class 009. First Use: 2012/09/01 First Use In Commerce: 2012/09/20  
All goods and services in the class are opposed, namely: Apparatus for wireless transmission of acoustic information; Audio-receivers and video-receivers; Receivers for audio; Wireless receivers and transmitters for portable media players; Wireless transmitters and receivers

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3980667	Application Date	07/30/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE
Word Mark	AURIS TECHNOLOGY		

Design Mark	<b>AURIS TECHNOLOGY</b>		
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2001/06/00 First Use In Commerce: 2001/06/00 telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans		

U.S. Registration No.	3980668	Application Date	07/30/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE

Word Mark	AURIS PREPAID		
-----------	---------------	--	--

Design Mark	<b>AURIS PREPAID</b>		
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2002/10/00 First Use In Commerce: 2002/10/00 telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans		

U.S. Registration No.	3980717	Application Date	08/16/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE

Word Mark	AURIS		
-----------	-------	--	--

Design Mark	<h1>AURIS</h1>		
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2002/02/19 First Use In Commerce: 2002/02/19 telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans		

U.S. Registration No.	3980725	Application Date	08/18/2010
Registration Date	06/21/2011	Foreign Priority Date	NONE

Word Mark	AURIS WHOLESale		
Design Mark	<h1>AURIS WHOLESale</h1>		
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2010/01/00 First Use In Commerce: 2010/01/00 telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans		

U.S. Registration No.	4005083	Application Date	07/30/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE
Word Mark	AURIS VIRTUAL CLEC		

Design Mark	<b>AURIS VIRTUAL CLEC</b>		
Description of Mark	NONE		
Goods/Services	Class 038. First use: First Use: 2010/07/26 First Use In Commerce: 2010/07/26 telecommunications services, namely, voice over internet protocol (VOIP) services		

U.S. Registration No.	4005130	Application Date	08/25/2010
Registration Date	08/02/2011	Foreign Priority Date	NONE

Word Mark	AURIS MOBILE APPS		
-----------	-------------------	--	--

Design Mark	<b>AURIS MOBILE APPS</b>		
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2009/12/00 First Use In Commerce: 2009/12/00 application service provider, namely, hosting, managing, developing, and maintaining computer software applications of others for use with mobile communications devices		

Attachments	85096625#TMSN.jpeg( bytes ) 85096671#TMSN.jpeg( bytes ) 85108685#TMSN.jpeg( bytes ) 85110378#TMSN.jpeg( bytes ) 85096697#TMSN.jpeg( bytes ) 85115929#TMSN.jpeg( bytes ) F6100-05100 Notice of Opposition.pdf(120277 bytes )
-------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### 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	/J. Rodman Steele, Jr./
Name	J. Rodman Steele, Jr.
Date	12/11/2013

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

CIMA TELECOM, INC.	)	
	)	
	)	Opposition No. _____
v.	)	Mark: AURIS
	)	
AURIS, INC.,	)	Serial No.: 85/889,443
	)	
Applicant.	)	
	)	

---

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

**NOTICE OF OPPOSITION**

Cima Telecom, Inc. (hereinafter “Opposer”) asserts that it is, and will be damaged, by the registration of the above-referenced mark (hereinafter the “AURIS Mark”) in Application Serial No. 85/786213, and hereby opposes the same.

As grounds for opposition, Opposer alleges as follows:

**Opposer and Its AURIS Mark**

1. Opposer is a Florida corporation having a business address at 1728 SW 22<sup>nd</sup> Street, Miami, Florida 33145. Opposer is a well-known global telecommunications technology and services provider and provides services including telephone calling plan services and wireless mobile telephone calling plans.

2. Opposer owns the mark AURIS, and Opposer and Opposer’s affiliate company Auris, LLC have continuously used the AURIS mark in commerce in connection with telecommunications and technology services since at least as early as 2002.

3. In connection therewith, Opposer owns the following U.S. Service Mark

Registrations:

- Reg. No. 3980667 for AURIS TECHNOLOGY for “telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans” in International Class 38 registered on June 21, 2011;
- Reg. No. 3980668 for AURIS PREPAID for “telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans” in International Class 38 registered on June 21, 2011;
- Reg. No. 3980717 for AURIS for “telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans” in International Class 38 registered on June 21, 2011;
- Reg. No. 3980725 for AURIS WHOLESALE for “telecommunications services, namely, providing custom and bundled national and international telephone calling plan services and wireless mobile telephone calling plans” in International Class 38 registered on June 21, 2011;
- Reg. No. 4005083 for AURIS VIRTUAL CLEC for “telecommunications services, namely, voice over internet protocol (VOIP) services” in International Class 38 registered on August 2, 2011; and

- Reg. No. 4005130 for AURIS MOBILE APPS for “application service provider, namely, hosting, managing, developing, and maintaining computer software applications of others for use with mobile communications devices” in International Class 42 registered on August 2, 2011

(collectively, the “AURIS Mark”).

4. By virtue of Opposer’s long-time use and promotion of its AURIS Mark, Opposer has established valuable goodwill in the mark, and the public has come to exclusively associate “AURIS” with Opposer. As such, the public has come to know the AURIS Mark as an indication of the telecommunication and technology services that originate from Opposer, which relate to telephone and wireless mobile telephone services (“Opposer’s Services”).

#### **Applicant and Its AURIS Application**

5. Upon information and belief, Auris, Inc. (hereinafter “Applicant”) is a Delaware corporation with a business address at 341 Raven Circle, Wyoming, Delaware 19934-4033.

6. On March 28, 2013, Applicant filed U.S. Application Serial No. 85/889443 (hereinafter “Application”), which is the subject of this Opposition, under 15 U.S.C. §1051(a) for registration of the mark AURIS in connection with “Apparatus for wireless transmission of acoustic information; Audio-receivers and video-receivers; Receivers for audio; Wireless receivers and transmitters for portable media players; Wireless transmitters and receivers” in International Class 9 (“Applicant’s Goods”).

7. The Application alleges a date of first use on September 1, 2012, and first use in commerce on September 20, 2012.

8. The Application is for AURIS in standard characters without claim to any particular font style, size, or color.
9. The Application was published for opposition on August 13, 2013.
10. On August 29, 2013, the Trademark Trial and Appeal Board granted Opposer's request and extended the time to oppose the Application to December 11, 2013.

**Likelihood of Confusion**  
**Lanham Act §2(d), 15 U.S.C. §1052(d)**

11. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 10.
12. Opposer first used its AURIS Mark in commerce in connection with Opposer's Services at least as early as February 2002, with a first use for AURIS TECHNOLOGY at least as early as June 2001, and the U.S. Service Mark Registrations for the AURIS Mark issued in either June or August of 2011. Opposer's use and registration of the AURIS Mark pre-date both Applicant's March 28, 2013 filing date of the Application and September 1, 2012 first use anywhere date.
13. On information and belief, Opposer first used its AURIS Mark in commerce in connection with Opposer's Services prior to any use by Applicant of "AURIS."
14. Opposer has priority based on its prior use and registration of the AURIS Mark.
15. Applicant's applied-for mark is identical to Opposer's AURIS Mark.
16. Applicant's Goods identified in the Application include wireless devices for transmission of audio data/music from phones and are similar and/or highly related to Opposer's telecommunications Services. *See, e.g., Communications Satellite Corp. v. Comcet, Inc.*, 429 F.

2d 1245, 1253 (4th Cir. 1970) (“A reasonable person may well believe that Comcet's communications computers come from a source related to Comsat's communications services. The possibility of confusion is increased because there are firms, such as RCA, that manufacture computers and also offer communications services.”)

17. As a result of the identical AURIS marks and similar nature of Applicant’s Goods and Opposer’s Services, Applicant’s AURIS mark is likely to cause confusion, mistake or deception in the trade and among purchasers as to the source, origin or sponsorship of the parties’ respective goods and services, in violation of 15 U.S.C. §1052(d).

18. Registration of Applicant’s AURIS mark in the Application opposed herein will result in damage to Opposer under 15 U.S.C. §1052(d).

19. If the Application is allowed to register, the registration would presumptively entitle Applicant to *prima facie* exclusive ownership of and rights to the AURIS mark.

20. Registration of the mark in the Application would cause confusion among consumers as to the separate and distinct sources of Applicant’s Goods and Opposer’s Services, thereby damaging Opposer’s goodwill in the AURIS Mark and resulting in irreparable harm to Opposer’s business and reputation, all to the detriment of Opposer, who has expended considerable sums and effort in promoting its mark.

WHEREFORE, registration by Applicant of “AURIS” for the goods set forth in the opposed Application would be damaging to Opposer, and Opposer respectfully requests that this opposition be sustained and that the registration sought by Applicant be denied.

**Deposit Account Information**

The USPTO is hereby authorized to charge any underpayment or credit any overpayment associated with this Notice of Opposition to Deposit Account No. 04-1679.

**Correspondent Information**

Please direct all correspondence regarding this matter to:

J. Rodman Steele, Jr.  
Karen C. Kline  
DUANE MORRIS LLP  
5100 Town Center Circle, Suite 650  
Boca Raton, FL 33486-9000  
Telephone: (561) 962-2100  
Facsimile: (561) 962-2101  
Emails: jrsteale@duanemorris.com; kckline@duanemorris.com

Respectfully submitted,

DUANE MORRIS LLP

Date: December 10, 2013

By: /Karen C. Kline/

J. Rodman Steele, Jr.  
(jrsteale@duanemorris.com)  
Karen C. Kline  
(kckline@duanemorris.com)  
Duane Morris LLP  
5100 Town Center Circle, Suite 650  
Boca Raton, FL 33486-9000  
Telephone: (561) 962-2100  
Facsimile: (561) 962-2101

Attorneys for Opposer  
CIMA TELECOM, INC.

Ref. F6100-05100

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing NOTICE OF OPPOSITION has been served on the Applicant by mailing the true and complete copy on December 11, 2013, via First Class Mail, postage prepaid to the Applicant's correspondence address of record:

AURIS, INC.  
341 RAVEN CIR  
WYOMING, DELAWARE 19934-4033

/Karen C. Kline/  
Karen C. Kline