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

Proceeding	91216624
Party	Defendant Appmachine B.V.
Correspondence Address	Carlos Romero Inventus Law 2600 El Camino Real, Suite 403 Palo Alto, CA 94306 car.f.romero@gmail.com;fred@appmachine.
Submission	Answer
Filer's Name	Michele S. Katz
Filer's e-mail	MSKdocket@AdvitamIP.com, TValente@AdvitamIP.com, Mkatz@advitamip.com
Signature	/Michele S. Katz/
Date	07/08/2014
Attachments	Appmachine Answer to Proscap Opp - APPMACHINE Design.pdf(28901 bytes)

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

In the Matter of Trademark Application)	
Serial No. 85935999)	
Filed May 18, 2013)	
For the mark  AppMachine)	
Published April 29, 2014)	
)	
Proscape Technologies, Inc.,)	
a Pennsylvania corporation,)	
)	
Opposer)	Opposition No. 91216624
)	
v.)	
)	
Appmachine B.V.,)	
a Dutch limited liability company)	
)	
Applicant.)	

APPLICANT’S ANSWER AND COUNTERCLAIMS

Applicant AppMachine B.V. (Applicant) files this Answer and Counterclaim in response to Opposer Proscape Technologies, Inc.’s (Opposer) Notice of Opposition as follows:

To the extent that the preamble of Opposer’s Notice of Opposition constitutes an allegation, Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.

1. Upon information and belief, Applicant denies this averment.
2. Upon information and belief, Applicant denies this averment.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
5. Admitted.

6. Admitted.
7. Admitted.
8. Denied as incomplete. Applicant's application was based on the bases of Section 1(b) and 44(d).
9. Admitted.
10. Applicant incorporates by reference its answers to ¶¶1-9.
11. Upon information and belief, Applicant denies this averment.
12. Upon information and belief, Applicant denies this averment.
13. Denied as to appearance. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted as to the sound, connotation and commercial impression of marks, and therefore those averments are denied.
14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
15. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
16. Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted, and therefore they are denied.
17. Denied as to "The grant of a Certificate of Registration to Applicant for the Applicant's Mark would be inconsistent with and in derogation of Opposer's prior rights." Applicant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted as to "and would cause damage and injury to Opposer and deception of and confusion to the public", and therefore those averments are denied.
18. Denied.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief may be granted.
2. Opposer's claim is barred by the doctrine of acquiescence.
3. Opposer's claim is barred by the doctrine of estoppel.

COUNTERCLAIMS

Applicant/Counterclaim Plaintiff Appmachine B.V. (Applicant), through its counsel, hereby asserts the following counterclaims (Counterclaims) against Opposer/Counterclaim Defendant Proscap Technologies, Inc. (Opposer):

1. Applicant Appmachine B.V. is an entity called "besloten vennootschap" existing under the laws of The Netherlands with a principal place of business located at Abe Lenstra Boulevard 44, 8448 JB Heerenveen, The Netherlands.

2. Opposer Proscap Technologies, Inc. has alleged that it is a Pennsylvania corporation with an address of 1155 Business Center Drive, Horsham, Pennsylvania 19044.

3. On or about May 7, 2013, Opposer filed an application with the United States Patent and Trademark Office (USPTO), assigned U.S. Application Serial No. 85/925424 (the '424 Application) that requested registration of the designation APPMACHINE as a service mark in connection with "computer software applications for use in connection with the processing of business sales and marketing."

4. In connection with the filing of the '424 Application, Opposer, through counsel, submitted in a sworn declaration, under penalty of perjury, that the designation APPMACHINE was "first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 04/03/2010, and first used in commerce at least as early as 04/03/2010, and is now in use in such commerce."

5. The USPTO subsequently issued an Office Action on or about August 28, 2013 refusing the '424 Application for three (3) grounds: 1) the filing date of the Applicant's pending applications, U.S. Application Serial Nos. 85935995 and 85935999 (Applicant's Marks) preceded Opposer's filing date; 2) the identification of goods were indefinite and required clarification, and 3) the specimen that accompanied the application was not acceptable to show use in commerce.

6. On or about February 26, 2014, Opposer filed a response to the Office Action referenced in ¶4 above by 1) amending the identification of services to "software for mobile phones and handheld computers for use in connection with the processing of business sales information and in marketing, namely, for use by others in designing, development and creating business and marketing software applications and for delivering business and sales presentations" and 2) submitting a substitute specimen swearing that the substitute specimens were in use in commerce at least as early as the filing date, e.g., May 7, 2013.

7. On or about March 25, 2014, the USPTO issued a Suspension Notice suspending the '424 Application because "[t]he effective filing date of the pending application(s) [Applicant's Marks] precedes the filing date of applicant's application."

8. Upon information and belief, Applicant has prior rights in and to the mark APPMACHINE over Opposer.

9. Upon information and belief, Opposer knew or should have known that it provided a first use date to the USPTO when it had not, in fact, commenced use.

10. Upon information and belief, Opposer knew or should have known that it provided a first use date in commerce to the USPTO when it had not, in fact, commenced use.

11. Upon information and belief, the '424 Application, and the alleged trademark rights associated therewith, are invalid, unenforceable and subject to withdrawal on grounds including, but not limited to, fraud on the USPTO.

WHEREFORE, Applicant requests that Opposer's '424 Application be refused registration; that no registration be issued to Opposer for the mark APPMACHINE; and this opposition be dismissed in favor of Applicant.

July 8, 2014

Respectfully Submitted,

RevenueWire, Inc.

By: /s/ Michele S. Katz/

Michele S. Katz, Esq.

Advitam IP, LLC

160 N. Wacker Drive

Chicago, Illinois 60606

(312) 332-7710

Mkatz@advitamip.com

Attorney for Applicant

Appmachine B.V.

CERTIFICATE OF ELECTRONIC MAILING

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWER AND COUNTERCLAIMS** is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 8th day of July 2014.

/s/ Michele S. Katz/
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S ANSWER AND COUNTERCLAIMS** is being deposited with UPS on the 8th day of July 2014 to:

Timothy D. Pecsénye
Bradford C. Craig
Blank Rome LLP
One Logan Square
130 N. 18th Street, 8th Floor
Philadelphia, Pennsylvania 19103

/s/ Michele S. Katz/
Attorney for Applicant