

ESTTA Tracking number: **ESTTA690491**

Filing date: **08/19/2015**

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	Buffalo, Inc.
Granted to Date of previous extension	08/26/2015
Address	30-20, Ohsu 3-chome, Naka-ku Nagoya-shi, Aichi, 4608315 JAPAN

Attorney information	John E. Lyhus Fitch, Even, Tabin & Flannery LLP 120 S. LaSalle Street Suite 1600 Chicago, IL 60603 UNITED STATES trademark@fitcheven.com Phone:312 577-7000
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### Applicant Information

Application No	86501254	Publication date	04/28/2015
Opposition Filing Date	08/19/2015	Opposition Period Ends	08/26/2015
Applicant	Fiber Mountain, Inc. 700 W. Johnson Avenue Cheshire, CT 06410 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 2015/01/09 First Use In Commerce: 2015/01/09 All goods and services in the class are opposed, namely: SOFTWARE DEFINED NETWORKING SYSTEM, NAMELY, COMPUTER SOFTWARE FOR MONITORING, ANALYZING, OPERATING, MANAGING AND MAINTAINING COMMUNICATION NETWORKS, COMPUTER SOFTWARE TO MONITOR, ANALYZE, OPERATE, MANAGE AND MAINTAIN OPTICAL COMMUNICATION NETWORKS AND PHYSICAL LAYER INFRASTRUCTURE EQUIPMENT, PRODUCTS AND SYSTEMS, COMPUTER SOFTWARE TO CONTROL ROUTE FLOWS OF DATA PACKETS IN COMMUNICATION NETWORKS, AND COMPUTER SOFTWARE TO REMOTELY CONFIGURE AND MONITOR FABRICS OF INTELLIGENT FIBER OPTICS AND ACTIVE OPTICAL SWITCHES
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### 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. Registration No.	3182487	Application Date	03/11/2004
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Registration Date	12/12/2006	Foreign Priority Date	11/10/2003
Word Mark	AOSS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2003/11/10 First Use In Commerce: 2004/01/31 Wireless local area network (LAN) equipment, namely, LAN transceivers, wireless LAN access points, wireless LAN cards, wireless print servers, wireless routers, wireless LAN antennas; computer software for wireless local area networking, namely, LAN operating software and network access server operating software; LAN networking cables; computer software to operate or control household electric appliances by wireless LAN; computers and their peripherals to operate or control household electric appliances by wireless LAN [; semiconductors ]		

Attachments	78382698#TMSN.png( bytes ) 7502-136962 Buffalo v. Fiber Mountain (AOS).pdf(420948 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	/John E. Lyhus/
Name	John E. Lyhus
Date	08/19/2015

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

Buffalo, Inc.,	)	
Opposer,	)	
	)	
v.	)	
	)	
Fiber Mountain, Inc.,	)	Opposition No. _____
Applicant.	)	
	)	
Application No.	)	86501254
Filed:	)	January 12, 2015
Mark:	)	AOS
Published:	)	April 28, 2015

NOTICE OF OPPOSITION

Buffalo, Inc., a corporation organized under the laws of Japan, located and doing business at 30-20, Ohsu 3-chome, Naka-ku, Nagoya-shi Aichi, Japan 4608315 (hereinafter referred to as “Buffalo”), believes that it will be damaged by registration of the trademark AOS, Application No. 86501254 belonging to Fiber Mountain, Inc. (hereinafter referred to as the “Applicant”) and hereby opposes the same upon the following grounds:

LIKELIHOOD OF CONFUSION BETWEEN AOSS AND AOS MARKS

1. Buffalo owns incontestable Registration No. 3182487 for the standard character mark AOSS issued December 12, 2006 and specifying:

Wireless local area network (LAN) equipment, namely, LAN transceivers, wireless LAN access points, wireless LAN cards, wireless print servers, wireless routers, wireless LAN antennas; computer software for wireless local area networking, namely, LAN operating software and network access server operating software; LAN networking cables; computer software to operate or control household electric appliances by wireless LAN; computers and their peripherals to operate or control household electric appliances by wireless LAN

having use in U.S. commerce at least as early as January 31, 2004 and having priority, constructive use and other rights in United States commerce beginning at least as early as the November 10, 2003 Section 44(d) priority claim asserted in the March 11, 2004 filing of Application No. 78382698, which resulted in Registration No. 3182487. A current printout of information from the USPTO electronic database records, which shows the current status and title of Registration No. 3182487, appears in Exhibit A.

2. The Applicant seeks registration of the mark AOS specifying:

Software defined networking system, namely, computer software for monitoring, analyzing, operating, managing and maintaining communication networks, computer software to monitor, analyze, operate, manage and maintain optical communication networks and physical layer infrastructure equipment, products and systems, computer software to control route flows of data packets in communication networks, and computer software to remotely configure and monitor fabrics of intelligent fiber optics and active optical switches

in Application No. 86501254, filed on a use basis January 12, 2015 in International Class 9 and alleging use both anywhere and in U.S. commerce as of January 9, 2015.

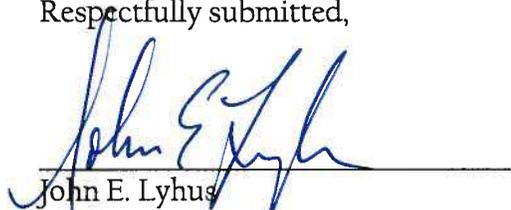
3. On information and belief, the Applicant cannot establish priority in its AOS mark earlier than the January 9, 2015 first use dates alleged in Application No. 86501254.
4. On information and belief, Buffalo's priority in and use of the AOSS mark is earlier than any priority that the Applicant can establish in its AOS mark.
5. By reason of use, marketing, publicity, advertising, promotion and resulting public recognition and sales of specified goods throughout the United States in connection with the AOSS mark and the high quality of its specified goods, the AOSS mark has acquired substantial distinctiveness and has come to represent substantial and valuable goodwill to Buffalo.

6. The Applicant's adoption of the AOS mark has been without the consent or permission of Buffalo.
7. On information and belief, the Applicant's adoption of its AOS mark has been with actual or constructive knowledge of Buffalo's prior rights in, use of and/or registration of the AOSS mark in connection with Buffalo's specified goods.
8. The goods specified in the AOS mark application are identical, similar and closely related to the goods Buffalo provides in connection with the AOSS mark.
9. On information and belief, the goods specified in the AOS mark application are marketed and sold to the same or related customers in the same or related channels of trade as Buffalo's goods in connection with the AOSS mark.
10. The AOS mark for which the Applicant seeks registration is confusingly similar to the AOSS mark.
11. If the Applicant is granted registration of its AOS mark as shown in Application No. 86501254, the Applicant will thereby obtain the *prima facie* exclusive right to use the AOS mark, and such registration of the AOS mark will impair, diminish, and dilute Buffalo's goodwill and rights in its AOSS mark causing irreparable injury to Buffalo.
12. The Applicant's AOS mark is confusingly similar to the AOSS mark, and use of the AOS mark for goods specified in Application No. 86501254 will cause the likelihood of confusion, mistake, or deception that the Applicant's goods are those of Buffalo or are otherwise endorsed, sponsored, or approved by Buffalo.

REQUEST FOR RELIEF

As Buffalo will be damaged by the registration of the Applicant's AOS mark on the Principal Register of the United States Patent and Trademark Office, Buffalo respectfully requests that Application No. 86501254 for the AOS mark be rejected and refused.

Respectfully submitted,



August 19, 2015

John E. Lyhus  
Alisa C. Simmons  
Fitch, Even, Tabin & Flannery, LLP  
120 South LaSalle, Suite 1600  
Chicago, Illinois 60603-3406  
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*Attorneys for Opposer*

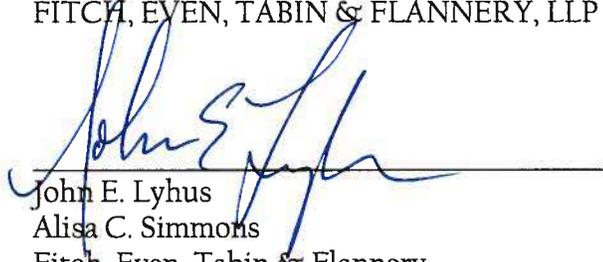
CERTIFICATE OF SERVICE

I, John E. Lyhus, Attorney for Opposer, Buffalo, Inc., hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid, upon:

Gerard M. Wissing  
Dilworth IP  
2 Corporate Dr.  
Trumbull, CT 06611-1376

on this 19<sup>th</sup> day of August, 2015.

FITCH, EVEN, TABIN & FLANNERY, LLP

A handwritten signature in blue ink, appearing to read "John E. Lyhus", is written over a horizontal line. The signature is stylized and cursive.

John E. Lyhus  
Alisa C. Simmons  
Fitch, Even, Tabin & Flannery  
120 South LaSalle, Suite 1600  
Chicago, Illinois 60603-3406  
Telephone: 312.577.7000  
Facsimile: 312.577.7007

*Attorneys for Opposer*

# **Exhibit A**

**Int. Cl.: 9**

**Prior U.S. Cls.: 21, 23, 26, 36 and 38**

**Reg. No. 3,182,487**

**United States Patent and Trademark Office**

**Registered Dec. 12, 2006**

**TRADEMARK  
PRINCIPAL REGISTER**

**AOSS**

BUFFALO, INC. (JAPAN CORPORATION)  
15, SHIBATA HONDORI 4-CHOME, MINAMI-KU  
NAGOYA-SHI, AICHI-KEN, JAPAN JP4578520

FOR: WIRELESS LOCAL AREA NETWORK (LAN) EQUIPMENT, NAMELY LAN TRANSCEIVERS, WIRELESS LAN ACCESS POINTS, WIRELESS LAN CARDS, WIRELESS PRINT SERVERS, WIRELESS ROUTERS, WIRELESS LAN ANTENNAS; COMPUTER SOFTWARE FOR WIRELESS LOCAL AREA NETWORKING, NAMELY LAN OPERATING SOFTWARE AND NETWORK ACCESS SERVER OPERATING SOFTWARE; LAN NETWORKING CABLES; COMPUTER SOFTWARE TO OPERATE OR CONTROL HOUSEHOLD ELECTRIC APPLIANCES BY WIRELESS LAN; COMPUTERS AND THEIR PERIPHERALS TO OPERATE OR CONTROL HOUSEHOLD ELECTRIC APPLIANCES BY WIRE-

LESS LAN; SEMICONDUCTORS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-10-2003; IN COMMERCE 1-31-2004.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY CLAIMED UNDER SEC. 44(D) ON JAPAN APPLICATION NO. 2003-99218, FILED 11-10-2003, REG. NO. 4816927, DATED 11-12-2004, EXPIRES 11-12-2014.

SER. NO. 78-382,698, FILED 3-11-2004.

DAVID H. STINE, EXAMINING ATTORNEY



**Trademark Status & Document Retrieval (TSDR)**

Status results found

Generated on: This page was generated by TSDR on 2015-08-13 11:36:40 EDT

Mark: AOSS

**AOSS**

<b>US Serial Number:</b>	78382698	<b>Application Filing Date:</b>	Mar. 11, 2004
<b>US Registration Number:</b>	3182487	<b>Registration Date:</b>	Dec. 12, 2006
<b>Register:</b>	Principal		
<b>Mark Type:</b>	Trademark		
<b>Status:</b>	A Sections 8 and 15 combined declaration has been accepted and acknowledged.		
<b>Status Date:</b>	May 16, 2012		
<b>Publication Date:</b>	Sep. 26, 2006		

**Mark Information**

[Collapse All](#)

<b>Mark Literal Elements:</b>	AOSS		
<b>Standard Character Claim:</b>	Yes. The mark consists of standard characters without claim to any particular font style, size, or color.		
<b>Mark Drawing Type:</b>	4 - STANDARD CHARACTER MARK		

**Foreign Information**

<b>Priority Claimed:</b>	Yes		
<b>Foreign Application Number:</b>	2003-99218	<b>Foreign Application Filing Date:</b>	Nov. 10, 2003
<b>Foreign Registration Number:</b>	4816927	<b>Foreign Registration Date:</b>	Nov. 12, 2004
<b>Foreign Application/Registration Country:</b>	JAPAN	<b>Foreign Expiration Date:</b>	Nov. 12, 2014

**Goods and Services**

**Note:**  
The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Wireless local area network (LAN) equipment, namely, LAN transceivers, wireless LAN access points, wireless LAN cards, wireless print servers, wireless routers, wireless LAN antennas; computer software for wireless local area networking, namely, LAN operating software and network access server operating software; LAN networking cables; computer software to operate or control household electric appliances by wireless LAN; computers and their peripherals to operate or control household electric appliances by wireless LAN [; semiconductors ]

<b>International Class(es):</b>	009 - Primary Class	<b>U.S Class(es):</b>	021, 023, 026, 036, 038
<b>Class Status:</b>	ACTIVE		
<b>Basis:</b>	1(a) 44(e)		
<b>First Use:</b>	Nov. 10, 2003	<b>Use in Commerce:</b>	Jan. 31, 2004

**Basis Information (Case Level)**

<b>Filed Use:</b> No	<b>Currently Use:</b> Yes	<b>Amended Use:</b> No
<b>Filed ITU:</b> Yes	<b>Currently ITU:</b> No	<b>Amended ITU:</b> No
<b>Filed 44D:</b> Yes	<b>Currently 44D:</b> No	<b>Amended 44D:</b> No
<b>Filed 44E:</b> No	<b>Currently 44E:</b> Yes	<b>Amended 44E:</b> No
<b>Filed 66A:</b> No	<b>Currently 66A:</b> No	
<b>Filed No Basis:</b> No	<b>Currently No Basis:</b> No	

**▼ Current Owner(s) Information**

<b>Owner Name:</b> Buffalo, Inc.	
<b>Owner Address:</b> 30-20, Ohsu 3-chome, Naka-ku Nagoya-shi Aichi 4608315 JAPAN	
<b>Legal Entity Type:</b> CORPORATION	<b>State or Country Where Organized:</b> JAPAN

**▼ Attorney/Correspondence Information**

**Attorney of Record**

<b>Attorney Name:</b> John E. Lyhus	<b>Docket Number:</b> 7502-82344
<b>Attorney Primary Email Address:</b> <a href="mailto:trademark@fitcheven.com">trademark@fitcheven.com</a>	<b>Attorney Email Authorized:</b> Yes

**Correspondent**

<b>Correspondent Name/Address:</b> John E. Lyhus FITCH, EVEN, TABIN & FLANNERY 120 South LaSalle Street Suite 1600 CHICAGO, ILLINOIS 60603 UNITED STATES	
<b>Phone:</b> 312-577-7000	<b>Fax:</b> 312-577-7007
<b>Correspondent e-mail:</b> <a href="mailto:trademark@fitcheven.com">trademark@fitcheven.com</a>	<b>Correspondent e-mail Authorized:</b> Yes

**Domestic Representative**

<b>Domestic Representative Name:</b> John E. Lyhus	<b>Phone:</b> 312-577-7000
<b>Fax:</b> 312-577-7007	
<b>Domestic Representative e-mail:</b> <a href="mailto:trademark@fitcheven.com">trademark@fitcheven.com</a>	<b>Domestic Representative e-mail Authorized:</b> Yes

**▼ Prosecution History**

Date	Description	Proceeding Number
May 16, 2012	NOTICE OF ACCEPTANCE OF SEC. 8 & 15 - E-MAILED	
May 16, 2012	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	70619
May 16, 2012	CASE ASSIGNED TO POST REGISTRATION PARALEGAL	70619
May 04, 2012	TEAS SECTION 8 & 15 RECEIVED	
Dec. 12, 2006	REGISTERED-PRINCIPAL REGISTER	
Sep. 26, 2006	PUBLISHED FOR OPPOSITION	
Sep. 06, 2006	NOTICE OF PUBLICATION	
Aug. 02, 2006	LAW OFFICE PUBLICATION REVIEW COMPLETED	71441
Jul. 21, 2006	ASSIGNED TO LIE	71441
Jul. 12, 2006	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jul. 12, 2006	USE AMENDMENT ACCEPTED	62520
Jul. 11, 2006	AMENDMENT TO USE PROCESSING COMPLETE	71441
Jun. 29, 2006	USE AMENDMENT FILED	71441
Jun. 29, 2006	TEAS AMENDMENT OF USE RECEIVED	
Jun. 30, 2006	TEAS/EMAIL CORRESPONDENCE ENTERED	76537
Jun. 28, 2006	CORRESPONDENCE RECEIVED IN LAW OFFICE	76537
Jun. 28, 2006	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Jun. 28, 2006	PETITION TO REVIVE-GRANTED	88888
Jun. 28, 2006	TEAS PETITION TO REVIVE RECEIVED	
Jun. 27, 2006	ABANDONMENT NOTICE MAILED - FAILURE TO RESPOND	

Jun. 27, 2006	ABANDONMENT - FAILURE TO RESPOND OR LATE RESPONSE	
Mar. 23, 2006	ASSIGNED TO EXAMINER	62520
Nov. 25, 2005	INQUIRY TO SUSPENSION E-MAILED	
Nov. 25, 2005	SUSPENSION INQUIRY WRITTEN	76726
Nov. 16, 2005	LIE CHECKED SUSP - TO ATTY FOR ACTION	76537
Apr. 29, 2005	LETTER OF SUSPENSION E-MAILED	6332
Apr. 29, 2005	SUSPENSION LETTER WRITTEN	76726
Apr. 21, 2005	AMENDMENT FROM APPLICANT ENTERED	68658
Mar. 31, 2005	CORRESPONDENCE RECEIVED IN LAW OFFICE	68658
Mar. 31, 2005	PAPER RECEIVED	
Sep. 29, 2004	LETTER OF SUSPENSION E-MAILED	6332
Sep. 29, 2004	SUSPENSION LETTER WRITTEN	76726
Sep. 24, 2004	ASSIGNED TO EXAMINER	76726
Apr. 01, 2004	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	77976
Apr. 01, 2004	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Mar. 31, 2004	APPLICANT AMENDMENT PRIOR TO EXAMINATION - ENTERED	
Mar. 31, 2004	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Apr. 01, 2004	TEAS VOLUNTARY AMENDMENT RECEIVED	
Mar. 31, 2004	TEAS VOLUNTARY AMENDMENT RECEIVED	
Mar. 26, 2004	NEW APPLICATION ENTERED IN TRAM	

▼ **Maintenance Filings or Post Registration Information**

**Affidavit of Continued Use:** Section 8 - Accepted

**Affidavit of Incontestability:** Section 15 - Accepted

▼ **TM Staff and Location Information**

**TM Staff Information - None**

**File Location**

**Current Location:** TMO LAW OFFICE 114

**Date in Location:** May 16, 2012

▲ **Assignment Abstract Of Title Information - None recorded**

▲ **Proceedings - None recorded**

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