

ESTTA Tracking number: **ESTTA700730**

Filing date: **10/07/2015**

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	Cima Telecom, Inc.
Granted to Date of previous extension	10/07/2015
Address	1728 SW 22nd Street 7th Floor 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 kckline@duanemorris.com, ipdocketing@duanemorris.com
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Applicant Information

Application No	86257740	Publication date	06/09/2015
Opposition Filing Date	10/07/2015	Opposition Period Ends	10/07/2015
Applicant	Airus, Inc 840 S. Canal St, Suite 700 Chicago, IL 60607 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 038. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Broadcast communication services, namely, transmitting e-mails, faxes, text messages and telephone voice messages to designated recipients for others; Captioned telephone services for individuals who are deaf, hard of hearing or speech impaired; Cellular telephone communication; Cellular telephone services; Communication by mobile telephone; Communication via radio, telegraph, telephone and television transmissions; Communications by telephone; Fixed and mobile telephone services; International telephone services; Interstate telephone services; Intrastate telephone services; Local and long distance telephone services; Long distance telephone communication services; Mobile radio telephone services; Mobile telephone communication; Mobile telephone services; National and international telephone calling plan services; Prepaid local and long distance telephone services; Prepaid long distance telephone services; Providing electronic transmission of information to persons who are deaf or hearing impaired via the Internet, telephones and wireless devices; Radio, telephone, telegraph communication services; Radio/telephone paging services; Telecommunication services in the nature of providing telephone services with various telephone features, namely, a dedicated toll-free number, voicemail, multiple mailbox extensions, telephone message notification, fax capabilities, detailed call reports, call waiting, call identification, call forwarding, and message waiting; Telecommunication services, namely, wireless telephone services; Telephone communication services; Telephone communica-</p>

tions

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			
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			
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			
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			
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	<h1>AURIS VIRTUAL CLEC</h1>		
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	<h1>AURIS MOBILE APPS</h1>		
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.png(bytes) 85096671#TMSN.png(bytes) 85108685#TMSN.png(bytes) 85110378#TMSN.png(bytes) 85096697#TMSN.png(bytes) 85115929#TMSN.png(bytes) F6100-05200 Notice of Opposition.pdf(116606 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	/Karen C. Kline/
Name	Karen C. Kline
Date	10/07/2015

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

CIMA TELECOM, INC.)	
)	
)	Opposition No. _____
v.)	Mark: AIRUS TELECOM
)	
AIRUS, INC.,)	Serial No.: 86/257,740
)	
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 AIRUS TELECOM mark in Application Serial No. 86/257,740, 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 22nd Street, Miami, Florida 33145. Opposer is a well-known global telecommunications technology and services provider and provides services including telephone services and other telecommunications services.

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 services since at least as early as 2002.

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

- Reg. No. 3,980,667 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. 3,980,668 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. 3,980,717 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. 3,980,725 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. 4,005,083 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. 4,005,130 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 services that originate from Opposer, which include telephone and wireless mobile telephone services (“Opposer’s Services”).

Applicant and Its AIRUS Application

5. Upon information and belief, Airus, Inc. (hereinafter “Applicant”) is a Delaware corporation with an address at 840 South Canal Street, Suite 700, Chicago, Illinois 60607.

6. On April 21, 2014, Applicant filed U.S. Application Serial No. 86/257,740 (hereinafter “Application”), which is the subject of this Opposition, under 15 U.S.C. §1051(b) for registration of the mark AIRUS TELECOM in connection with “Broadcast communication services, namely, transmitting e-mails, faxes, text messages and telephone voice messages to designated recipients for others; Captioned telephone services for individuals who are deaf, hard of hearing or speech impaired; Cellular telephone communication; Cellular telephone services; Communication by mobile telephone; Communication via radio, telegraph, telephone and television transmissions; Communications by telephone; Fixed and mobile telephone services; International telephone services; Interstate telephone services; Intrastate telephone services; Local and long distance telephone services; Long distance telephone communication services;

Mobile radio telephone services; Mobile telephone communication; Mobile telephone services; National and international telephone calling plan services; Prepaid local and long distance telephone services; Prepaid long distance telephone services; Providing electronic transmission of information to persons who are deaf or hearing impaired via the Internet, telephones and wireless devices; Radio, telephone, telegraph communication services; Radio/telephone paging services; Telecommunication services in the nature of providing telephone services with various telephone features, namely, a dedicated toll-free number, voicemail, multiple mailbox extensions, telephone message notification, fax capabilities, detailed call reports, call waiting, call identification, call forwarding, and message waiting; Telecommunication services, namely, wireless telephone services; Telephone communication services; Telephone communications” in International Class 38 (“Applicant’s Services”).

7. The Application is for AIRUS TELECOM in standard characters without claim to any particular font style, size, or color.

8. In the Application, the term “TELECOM” is disclaimed.

9. The Application was published for opposition on June 9, 2015.

10. On July 7, 2015, the Trademark Trial and Appeal Board granted Opposer’s request and extended the time to oppose the Application to October 7, 2015.

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 Applicant's April 21, 2014 filing date of the Application.

13. On information and belief, Applicant has not yet used the applied-for AIRUS TELECOM mark and/or Opposer first used its AURIS Mark in commerce in connection with Opposer's Services prior to any use by Applicant of "AIRUS."

14. Opposer has priority based on its prior use and registration of the AURIS Mark.

15. Applicant's applied-for mark is confusingly similar to Opposer's AURIS Mark, with nearly identical phonetics and visual appearances between "AURIS" and "AIRUS" and the word "TELECOM" describing both Applicant's and Opposer's services.

16. Applicant's Services identified in the Application are the same, highly similar, and/or related to Opposer's Services.

17. As a result of the nearly identical marks and services, Applicant's AIRUS TELECOM 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 services, in violation of 15 U.S.C. §1052(d).

18. Registration of Applicant's AIRUS TELECOM 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 AIRUS TELECOM mark.

20. Registration of the mark in the Application would cause confusion among consumers as to the separate and distinct sources of Applicant's Services 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 "AIRUS TELECOM" for the services 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:

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Respectfully submitted,

DUANE MORRIS LLP

Date: October 7, 2015

By: /Karen C. Kline/

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Attorneys for Opposer
CIMA TELECOM, INC.

Ref. F6100-05200

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 October 7, 2015, via First Class Mail, postage prepaid to the Applicant's correspondence address of record:

AIRUS, INC
840 S CANAL ST STE 700
CHICAGO, ILLINOIS 60607-4519

/Karen C. Kline/
Karen C. Kline