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Filing date: **01/08/2016**

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

Proceeding	91225191
Party	Defendant Mark Langer Avery
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Submission	Answer
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Date	01/08/2016
Attachments	Answer to Notice of Opposition.pdf(1620263 bytes)

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

Digi International Inc.,)	
)	
Opposer,)	Opposition No. 91225191
)	Serial Nos.: 86/550,995
)	
V.)	
)	
Mark Langer Avery)	Marks: DIGIDOCLINKS
)	Application No. 86550995
Respondent.)	Filing Date: March 3, 2015
)	Published for Opposition: July 28, 2015

**ANSWER TO NOTICE OF OPPOSITION
IN SUPPORT OF MOTION TO DISMISS**

Mark Langer Avery (“Respondent”) answers Digi International Inc (“Opposer”) Notice of Opposition as follows:

1. The allegations of paragraph 1 are admitted.
2. The allegations of paragraph 2 are admitted.
3. The allegations of paragraph 3 are admitted. Except the allegations “Registrant’s customers are accustomed to seeing the DIGI mark used both alone and as the first term of numerous composite marks”, which is denied.
4. The allegations of paragraph 4 are admitted. Except the allegations “providing temporary use of on-line non-downloadable software allowing users or enterprise software applications to interface with remote devices, to connect to and manage remote devices” which is denied.

5. Opposer cites U.S. trademark applications the records of which are the best evidence of their content; therefore, reference is hereby made to the same. Except as admitted, denied.
6. Opposer states, they have “been using the DIGI mark in commerce continuously since 1985.” Opposer asserted, “has acquired substantial common law rights in the DIGI marks registered and unregistered.” And, even if that were true, the degree of resemblance between DIGI and DIGIDOCLINKS is insufficient, as a matter of law, to support a finding of likely confusion for purposes of Section 2(d) of the Lanham Act.
7. The allegations of paragraph 7 are denied as there is no likelihood of confusion between the DIGI and DIGIDOCLINKS marks, as the goods and services are in no way identical or closely related products which are likely to result in confusion, mistake or deception occurring in their trade in the minds of purchasers.
8. The allegations of paragraph 8 are denied. The Respondent asserts that there is a sufficient phonetic distinction between the marks which is not likely to cause confusion.
9. The allegations of paragraph 9 are denied. The goods and services are in no way likely to be sold through the same trade channels or are they likely to appeal to the same class of purchaser (refer to paragraph 12).
10. The allegations of paragraph 10 are denied.
11. The allegations of paragraph 11 even if that were true, are mere speculation.

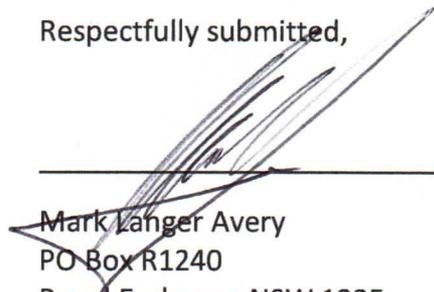
12. The allegations of paragraph 12 are denied. The Respondent disputes the Opposer claiming priority on the basis of "earlier continuous use of its DIGI marks in connection with identical and closely related goods and services." The distinction between the Respondents and the Opposer, is that the Respondents goods and services are to provide software to users over the internet, whereas the Opposer goods and services are to provide software which enables the operation of computer hardware.

13. The allegations of paragraph 13 are denied. The Respondent cites that the mark DIGIDOCLINKS (No.WO0000001257537) was registered on 5/11/2015 in the United Kingdom where the Opposer holds the registered mark DIGI (No.EU 003482511) which was registered on 4/08/2010. Further the Respondent cites that the mark DIGIDOCLINKS (No.1616944) was registered on 4/12/2014 in Australia where the Opposer holds the registered the mark DIGI (No.633867) which was registered on 1/07/1994. In both cases the allegations that "mark are so close to one another in appearance, sound and in connotation as to be likely to cause confusion" were not seen as grounds to deny registration of the mark in these jurisdictions.

WHEREFORE, Respondent respectfully submits that the mark sought to be registered be accepted and for the reasons stated above, the opposition should be dismissed.

Date: 8th January 2016

Respectfully submitted,

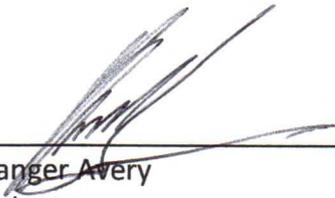


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 8, 2015 a copy of the foregoing Reply Answer to Notice of Opposition in Support of Motion to Dismiss was served by Australia Post (via U.S. mail), first class postage prepaid, on the following counsel of record for Opposer:

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UNITED STATES



Mark Langer Avery
Respondent