

TTAB

**UNITED STATES PATENT AND TRADEMARK
OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**



01-02-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #70

Mailed: December 20, 2002

NEURON DATA, INC.
444 HIGH STREET
PALO ALTO, CA 94301

Cancellation No. 92041293
Reg. No. 1453986, 1963840

Katherine S. Chang
Hunton & Williams
200 Park Avenue
New York, NY 10166-0136

NexPress Solutions, LLC

v.

NEURON DATA, INC.

Clara Vela, Legal Assistant

01-02-2003

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final

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Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

Discovery and testimony periods are set as follows:

Discovery period to open: **January 09, 2003**

Discovery period to close: **July 08, 2003**

30-day testimony period for party
in position of plaintiff to close: **October 06, 2003**

30-day testimony period for party
in position of defendant to close: **December 05, 2003**

15-day rebuttal testimony period
for plaintiff to close: **January 19, 2004**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or

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decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

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

In the Matter of
Reg. No. 1,453,986 for NEXPERT
and Reg. No. 1,963,840 for NEXPERT OBJECT

NEXPRESS SOLUTIONS, LLC)
)
Petitioner,)
)
v.)
)
NEURON DATA, INC.)
)
Registrant.)

I hereby certify that this correspondence is being deposited today with the United States Postal Service as First Class Mail in an envelope addressed to:

BOX TTAB FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Luba Romero
Luba S. Romero

8/28/02
Date

Cancellation No. 92041293

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TRADEMARK TRIAL AND APPEAL BOARD

Consolidated Petition To Cancel

Petitioner NexPress Solutions, LLC, pursuant to 15 U.S.C. § 1064(3) and through its undersigned attorneys, in petitioning to cancel the above-identified registrations, states as follows:

1. Petitioner is a New York limited liability company with a principal place of business at 1447 St. Paul Street, Rochester, New York 14653.
2. Petitioner is a joint venture between Eastman Kodak Company and Heidelberger Druckmaschinen AG, and it develops, manufactures and markets digital printing presses.
3. On April 25, 2001, Petitioner applied to register the mark NEXPERT in Class 9. The application was assigned Serial No. 78/060,318.
4. The application has been refused registration on the ground of a likelihood of confusion with two registrations (the "Registrations"), summarized below, owned by Registrant Neuron Data, Inc. ("Registrant"):

Mark	Goods	Reg. No.	Reg. Date
NEXPERT	artificial intelligence computer programs	1,453,986	August 11, 1993
NEXPERT OBJECT	computer programs for use in developing computer programs and instructional manuals distributed therewith	1,963,840	March 26, 1996

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Copies of the certificates of registration are attached hereto.

5. Upon information and belief, Registrant is a California corporation having, now or at one time, a place of business in Palo Alto, California.

6. Upon information and belief, the ownership and/or the name of Registrant has changed one or more times since the registration dates of the Registrations. The current owner is believed to be either Blaze Software, Inc. or HNC Software, Inc., located at 181 Metro, Suite 600, San Jose, California 95110.

7. Upon information and belief, neither Registrant nor its successor(s) is using the marks that are the subject of the Registrations and has not been using them for nearly ten years. Therefore, Registrant has abandoned the marks.

8. Registrant is not entitled to maintain registrations for marks that are no longer being used. The invalid registrations are currently preventing Petitioner from registering its NEXPERT mark. Cancellation of the Registrations will allow Petitioner to proceed.

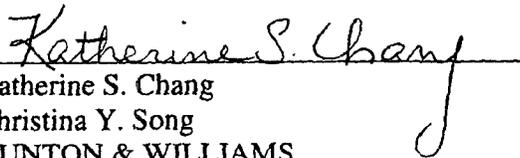
9. Petitioner believes that it is being damaged by the Registrations and therefore petitions to cancel the Registrations.

10. This Consolidated Petition To Cancel is being filed in duplicate. The filing fee of \$600.00, and any other required charges, may be charged to Hunton & Williams's deposit account # 08-3436.

Petitioner respectfully requests that the Registrations be cancelled on grounds of abandonment.

Respectfully submitted,

August 28, 2002


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Attorneys for Petitioner
NexPress Solutions, LLC

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,453,986
Registered Aug. 25, 1987

**TRADEMARK
PRINCIPAL REGISTER**

NEXPERT

NEURON DATA, INC. (CALIFORNIA CORPORATION)
444 HIGH STREET
PALO ALTO, CA 94301

FIRST USE 6-0-1985; IN COMMERCE
9-0-1985.

SER. NO. 592,557, FILED 4-10-1986.

FOR: ARTIFICIAL INTELLIGENCE COMPUTER PROGRAMS, IN CLASS 9 (U.S. CL. 38).

G. T. GLYNN, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office **Reg. No. 1,963,840**
Registered Mar. 26, 1996

**TRADEMARK
PRINCIPAL REGISTER**

NEXPERT OBJECT

NEURON DATA, INC. (CALIFORNIA CORPORATION)
UNIVERSITY AVENUE
CALO ALTO, CA 94301

FOR: COMPUTER PROGRAMS FOR USE IN
DEVELOPING COMPUTER PROGRAMS AND
INSTRUCTIONAL MANUALS DISTRIBUTED
THERewith, IN CLASS 9 (U.S. CL. 38).

FIRST USE 12-31-1985; IN COMMERCE
12-31-1985.

OWNER OF U.S. REG. NO. 1,453,986.
NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "OBJECT", APART FROM THE
MARK AS SHOWN.

SER. NO. 74-576,332, FILED 9-21-1954.

MARY C. MACK, EXAMINING ATTORNEY