

SYNTELLIREAD, INC.

----- X

COMES NOW Applicant/Defendant (herein "Defendant"), SYNTELLIREAD, INC., and for its Answer to the captioned Opposition, states:

IN GENERAL

Defendant denies, opposes and controverts the Opposition of Plaintiff, SYNTELL, INC. (herein "Plaintiff"), in its entirety, and in particular numbered Paragraphs 1-3 thereof, and respectfully demands dismissal of the Opposition, with costs in favor of Defendant.

Defendant predicates the foregoing demand(s), inter alia, upon the following:

1. Plaintiff fails to state any proper or substantive basis for a claim. The Opposition constitutes no more than a plurality of bald and unsubstantiated allegations.
2. Plaintiff's the entirety of Plaintiff's allegations constituting its basis of opposition is already well encompassed within the prosecution history of the subject Application. Plaintiff's opposition raises no new issue(s) of law or fact that would properly distinguish Plaintiff's position over such prosecution, as a matter of law.

ARRIRMATIVE DEFENSES AND ARGUMENTS

The Examining Attorney INITIALLY (but unsuccessfully) had refused registration under 15 U.S.C. 1052(d) in that Applicant's mark, when used on/in connection with the identified goods and services, so resembled the mark in U.S. Registration No. 1324171, i.e., "SYNTELLIGENCE", as to be likely to cause confusion or mistake or to give rise to deception (all herein "confusion").

More particularly, the Examining Attorney had initially determined a likelihood of confusion from: (I) the similarity in appearance, sound, connotation and commercial impression; and (II) a comparison of the goods/services as to the activities surrounding their marketing or as to their being otherwise related.

In its successful traverse of such initial refusal/rejection Applicant argued, with regard to reason (I) above, substantially as follows:

the dominant portion, and thus distinct from the case of Applicant's mark.

In connection with (A) above:

Reference is made, as example, to the mark "SYNTELLECT", as representative of multiple U.S. registered marks, registered subsequent to the cited registered mark, having such same first portion. In addition to "syntell" or "syntel" being the same for such marks and the cited registered mark, said first portion clearly constitutes the dominant portion of such marks.

See as example: (1) Regis. No. 2132113, "SYNTELLECT", Cl. 42:

Integration of computer systems and networks.

(2) Regis. No. 2136852, "SYNTELLECT", Cl. 9: Computer systems, (Interactive voice response systems, interactive transaction processing systems, devices to access global computer networks).

In the foregoing instances, the first portion of the mark, "syntell" (or indeed "syntel"), is identical to the cited registered mark ("SYNTELLIGENCE") and the goods/services may be deemed well within or confusingly similar to the broadly characterized goods/services of "Syntelligence", which are: "computers and computer programs".

Rather than recite anew herein, Defendant hereby incorporates its arguments set forth in the prosecution on the merits in the subject Application, as if set forth herein at length.

Notwithstanding, it is noted the Examining Attorney established the legal standard through the cited *Dupont* case as: the marks themselves (i.e., the cited registered mark and Applicant's mark) must be looked at for similarity in appearance, sound, connotation AND commercial impression. However, even more so than in the prosecution on the merits, neither similar appearance nor sound nor especially connotation NOR commercial impression appears or exists in the Plaintiff's mark or allegations. Plaintiff's mark fails to contain any legally sufficient similarity to Defendant's mark, beyond the bare and non-controlling fact that only the first 6 letters of Defendant's mark are the same as Plaintiff's. It is submitted that Plaintiff's burden of establishing as a

of the subject Application, and indeed, any of the other ones of the already registered marks containing the first 6 letters "Syntel".

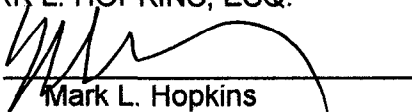
Unlike Plaintiff, Defendant's mark contains a substantial and dominating additional portion of 6 letters, including the part "read" that provides the mark with more than sufficient distinction and emphasis to dispel the bald and unsubstantiated claim(s) of Plaintiff.

If requested by Plaintiff or the Board, one or more Certifications or Affidavits can be supplied to further substantiate the foregoing.

The undersigned is retained as legal counsel for the Defendant in this Opposition, and is authorized to sign for the Defendant named in the within Opposition Proceeding. The undersigned has read the foregoing and knows its contents; all statements made to the undersigned's own knowledge are true and all statements made on information and belief and believed to be true.

Respectfully submitted,

MARK L. HOPKINS, ESQ.

BY: 

Mark L. Hopkins
Attorneys for Defendant, Syntelliread, Inc.
30 Schooleys Mtn. Road
Long Valley, NJ 07853
(Tel) 908-876-5000
(Fx) 908-876-4757
(E-Mail) mlhopkinesq@earthlink.net

Dated: December 24, 2002
EF260641466US