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U.S. Patent & TMOtc/TM Mail Rcpt Dt. #64

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

Applicant: Optivision, Inc.

International Class: 38

Serial No.: 76/152,566

Published for Opposition: January 28, 2003

Official Gazette: Vol. 1266, No. 4, Page TM 474

Filed: October 23, 2000

Attorney Docket No.: AMNC62393

Mark: AMNIS SYSTEMS[✓]

Goods: audio and video streaming transmissions over networks using internet protocol

AMNIS CORPORATION, a Washington corporation,

Opposition No. _____

Opposer,

NOTICE OF OPPOSITION

v.

OPTIVISION, INC., a California corporation,

Applicant.

NOTICE OF OPPOSITION

Seattle, Washington 98101

February 24, 2003

TO THE COMMISSIONER FOR TRADEMARKS

TRADEMARK TRIAL AND APPEAL BOARD:

Amnis Corporation, a corporation of the State of Washington, having a place of business

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at 2505 Third Avenue, Suite 210, Seattle, Washington 98121 (hereinafter "Opposer"), believes that it will be damaged by registration of the service mark AMNIS SYSTEMS as requested by Application Serial No. 76/152,566, filed October 23, 2000 in International Class 38, and hereby opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. On information and belief, Optivision, Inc. is a California corporation, having a place of business at 3450 Hillview Avenue, Palo Alto, California 94304 (hereinafter "Applicant").

2. Opposer owns rights in the trade name Amnis Corporation and in the trademark AMNIS that have a priority date that is prior to any date upon which Applicant can rely, and therefore superior to any rights that can be owned by Applicant in and to the service mark AMNIS SYSTEMS.

3. Continuously since at least as early as February 3, 1998, Opposer has used the trade name Amnis Corporation in association with the conduct of business in the same channels of trade in which Applicant will provide the services claimed by Application Serial No. 76/152,566.

4. Opposer is the owner of U.S. Trademark Application Serial No. 75/822,422 for the mark AMNIS for use in association with diagnostic testing systems, namely, hardware, software and peripherals for use in performing optical imaging and electronic analysis of the chemistry and composition of cells and molecules of blood and other body fluids for laboratory use in International Class 9, and diagnostic and testing systems, namely, hardware, software and peripherals for use in performing optical imaging and electronic analysis of the chemistry and composition of cells and molecules of blood and other body fluids for medical use in International Class 10. U.S. Trademark Application Serial No. 75/822,422 was filed on

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October 13, 1999, and therefore confers upon Opposer a provisional priority date that is prior to any date upon which Applicant can rely. Upon the demonstration by Opposer of the use of its mark in association with the goods claimed by Application Serial No. 75/822,422, Opposer will perfect its registration and be entitled to the benefits of nationwide constructive use granted by 15 U.S.C. § 1057(c).

5. The mark AMNIS SYSTEMS shown by Application Serial No. 76/152,566 includes the entirety of Opposer's distinctive trademark AMNIS and includes the most distinctive component of Opposer's trade name Amnis Corporation, such that when used in association with the provision of the services claimed by Application Serial No. 76/152,566, customers are likely to be confused, mistaken, or deceived within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

6. Opposer will be damaged by the registration sought by Applicant insofar as the registration will be *prima facie* evidence of the validity of the registration, Applicant's ownership of the mark AMNIS SYSTEMS, and Applicant's exclusive right to use the mark AMNIS SYSTEMS when, in fact, Applicant is not entitled to such rights by virtue of Opposer's prior rights in the mark AMNIS and prior rights in the trade name Amnis Corporation in the same channels of trade in which the services claimed by Application Serial No. 76/152,566 would be provided.

7. Based upon the foregoing, registration of the mark AMNIS SYSTEMS shown by Application Serial No. 76/152,566, filed October 23, 2000, is likely to cause injury and damage to Opposer.

WHEREFORE, Opposer respectfully requests that the registration of the mark AMNIS SYSTEMS as requested by Application Serial No. 76/152,566 be denied pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and that this Opposition be sustained.

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Accompanying the duplicate signed copies of this Notice of Opposition is our Check No. 145909 for the required filing fee in the amount of \$300.00 (\$300.00 per class). Please charge any excess fees to Deposit Account No. 03-1740 of Opposer's counsel noted below.


Please direct all correspondence to Cindy L. Caditz of Christensen O'Connor Johnson Kindness^{PLLC} at the following address:

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Respectfully submitted,

CHRISTENSEN O'CONNOR
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Cindy L. Caditz
Attorneys for Opposer

CERTIFICATE OF MAILING

I hereby certify that this NOTICE OF OPPOSITION to U.S. Service Mark Application Serial No. 76/152,566 for the mark AMNIS SYSTEMS is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid addressed to: BOX TTAB FEE, Commissioner for Trademarks, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA 22202-3513, on 2-25-03.

Date: February 25, 2003 Jeffrey Harbert

CLC;jh

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