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

CYBEX COMPUTER PRODUCTS)
CORPORATION,)
)
Opposer,)
)
v.)
)
NETWORK TECHNOLOGIES, INC.,)
)
Applicant.)

Opposition N°: 91157511

Serial N°: 78/170,319



10-02-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

**ANSWER TO NOTICE OF OPPOSITION
AND COUNTERCLAIM FOR CANCELLATION**

Applicant, Network Technologies, Inc., answers the Notice of Opposition of Opposer, Cybex Computer Products Corporation, and hereby files its counterclaim against Opposer for cancellation of Opposer's Registration N° 2,516,094 pleaded in the opposition as follows:

ANSWER

1. Applicant denies the allegations in paragraph 1 of the Notice of Opposition.
2. Applicant denies the allegations in paragraph 2 of the Notice of Opposition that Applicant has no common law rights in the mark XTENDEX, but admits the remaining allegations in paragraph 2.
3. Applicant denies the allegations in paragraph 3 of the Notice of Opposition that the word EXTENDER is Opposer's mark and that Opposer has registration rights in the word EXTENDER, but admits the remaining allegations in paragraph 3.

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4. Applicant denies the allegations in paragraph 4 of the Notice of Opposition that Applicant has no registration rights for the XTENDEX mark with the United States Patent and Trademark Office, but admits its only application for said mark is the subject of the current opposition proceeding.

5. Applicant denies the allegations in paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations in paragraph 6 of the Notice of Opposition.

7. Applicant admits the allegations in paragraph 7 of the Notice of Opposition that Applicant filed the application opposed herein to register its XTENDEX mark in typed drawing form, and that Opposer's registration is for the word EXTENDER in typed drawing form. Except as specifically admitted herein, Applicant denies the remaining allegations in paragraph 7.

8. Applicant admits the allegations in paragraph 8 of the Notice of Opposition that Applicant seeks registration of the XTENDEX mark for use in connection with "computer keyboard-video-mouse switches, computer terminal switches, audio-video switches, video switches and extenders, expansion modules and splitters therefor" in International Class No. 9. Except as specifically admitted herein, Applicant denies the remaining allegations in paragraph 8.

9. Applicant denies the allegations in paragraph 9 of the Notice of Opposition.

10. Applicant admits the allegations in paragraph 10 of the Notice of Opposition that if Applicant is granted the registration herein opposed, it will obtain a

prima facie exclusive right to use its XTENDEX mark in commerce with its goods, its XTENDEX mark will likely be deemed incontestible five (5) years from the date of registration, and Applicant will thereby obtain an incontestible right to use its XTENDEX mark in commerce. Except as specifically admitted herein, Applicant denies the remaining allegations in paragraph 10.

11. Applicant denies the allegations in paragraph 11 of the Notice of Opposition.

12. Applicant denies all allegations in the Notice of Opposition not specifically admitted above.

AFFIRMATIVE DEFENSES

13. Applicant's XTENDEX mark as used on or in connection with Applicant's goods is not likely to be confused with Opposer's alleged EXTENDER mark.

14. Applicant's XTENDEX mark is sufficiently different from Opposer's alleged EXTENDER mark in sound, appearance and meaning to avoid any likelihood of confusion.

15. Opposer's alleged EXTENDER mark is the common descriptive name of the goods identified in Opposer's EXTENDER Registration No. 2,516,094.

16. Opposer's alleged EXTENDER mark is not protectable or enforceable as a trademark.

17. The word EXTENDER is being used by Opposer and others including Opposer's parent company, Avocent Corporation, as the common descriptive name of the goods identified in Opposer's EXTENDER Registration No. 2,516,094.

18. Opposer's EXTENDER Registration No. 2,516,094 is invalid.

**COUNTERCLAIM FOR CANCELLATION OF
OPPOSER'S REGISTRATION NO. 2,516,094**

19. The Applicant/Petitioner, Network Technologies, Inc. (hereafter Applicant), is a corporation of Ohio having an office and place of business at 1275 Danner Drive, Aurora, Ohio 44202.

20. To the best of Applicant's information and belief, the current owner of Registration No. 2,516,094 pleaded herein is the Opposer, Cybex Computer Products Corporation, an Alabama corporation having an office and place of business at 4912 Research Drive, Huntsville, Alabama 35805.

21. On August 6, 2003 the Opposer filed the above Notice of Opposition against Applicant's XTENDEX trademark application, alleging *inter alia* that:

- (a) Opposer has acquired extensive common law rights and registration rights with the United States Patent and Trademark Office in the EXTENDER mark throughout the United States and is the owner of the EXTENDER mark;
- (b) Applicant's XTENDEX mark so resembles Opposer's EXTENDER mark as previously used, registered and protected throughout the

United States, as to be likely, when applied to the goods of the Applicant, to cause confusion, or to cause mistake, or to deceive.

22. Applicant has been and will be damaged by Opposer's EXTENDER Registration No. 2,516,094 pleaded herein.

23. Opposer's alleged EXTENDER mark is the common descriptive name of the goods identified in Opposer's EXTENDER Registration No. 2,516,094 and is not entitled to be registered as a trademark.

24. The word EXTENDER is being used by the Opposer and others including Opposer's parent company, Avocent Corporation, as the common descriptive name of the goods identified in Opposer's EXTENDER Registration No. 2,516,094.

25. Opposer's EXTENDER Registration No. 2,516,094 is invalid on the ground that the word EXTENDER is the common descriptive name of the goods identified in such registration.

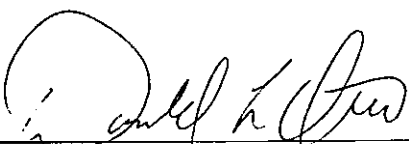
WHEREFORE, Applicant requests that the Notice of Opposition be dismissed, and that Opposer's EXTENDER Registration No. 2,516,094 be canceled.

A duplicate copy of the Answer and Counterclaim for Cancellation is being filed herewith, along with the cancellation fee of \$300.00. Please charge any additional fees, or credit any overpayment, to our Deposit Account No. 18-0988.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR, LLP

Date: September 29, 2003

By  _____


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CERTIFICATE OF MAILING

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

this 29th day of September, 2003.




Donald L. Otto

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM FOR CANCELLATION was served on the following attorney of record for Opposer by depositing same in the United States mail, postage prepaid, this 29th day of September, 2003:

Mary Fran Love, Esq.
Davidson, Berquist, Klima & Jackson, LLP
4501 N. Fairfax Drive, Suite 920
Arlington, Virginia 22203



Donald L. Otto