TTAB

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

BIRCH TELECOM, INC. Opposer, v. BELLSOUTH INTELLECTUAL PROPERTY CORPORATION Applicant.	Opposition No. 91157539

10-20-2003
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

STIPULATED MOTION TO AMEND NOTICE OF OPPOSITION

Birch Telecom, Inc. ("Opposer") hereby moves the Trademark Trial and Appeal Board to allow Opposer to amend its Notice of Opposition in the above-captioned proceeding. In support of its motion, Opposer states as follows:

1. On July 24, 2003, Opposer filed its Notice of Opposition. On September 29, Applicant filed and served its Answer to the Notice of Opposition.

2. In a phone conversation on October 2, 2003, Applicant's counsel, R. Charles Henn, consented to Opposer's amending its Notice of Opposition to correct a technical deficiency. Applicant's consent is evidenced by counsel's signature below.

3. As the amendment merely provides minor clarification and correction to the factual allegations that have already been asserted, Applicant has consented to the amendment, and the amendment does not change the underlying factual allegations that were made in Opposer's initial Notice of Opposition, allowing the amendment will not unfairly prejudice Applicant, interfere with discovery or cause any other undue delay. A copy of the proposed First Amended Notice of Opposition is attached.

WHEREFORE, Opposer respectfully requests that the Board grant its motion, and that Applicant be allowed to amend its Notice of Opposition in accordance with the attached proposed First Amended Notice of Opposition.

Respectfully submitted,
SPENCER FANE BRITT & BROWNE LLP

Rebecca S. Stroder
I. Edward Marquette
1000 Walnut Street Suite 1400
Kansas City, MO 64106
(816) 292-8301
Fax: (816) 474-3216
email: rstroder@spencerfane.com

ATTORNEYS FOR OPPOSER

As Stipulated:

R. Charles Henn
Kilpatrick Stockton LLP
1100 Peachtree Street North East
Atlanta, Georgia 30309
(404) 815-3074

ATTORNEYS FOR APPLICANT

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

BIRCH TELECOM, INC. Opposer, v. BELLSOUTH INTELLECTUAL PROPERTY CORPORATION Applicant.	) Opposition No. 91157539

STIPULATED MOTION TO AMEND NOTICE OF OPPOSITION

Birch Telecom, Inc. ("Opposer") hereby moves the Trademark Trial and Appeal Board to allow Opposer to amend its Notice of Opposition in the above-captioned proceeding. In support of its motion, Opposer states as follows:

1. On July 24, 2003, Opposer filed its Notice of Opposition. On September 29, Applicant filed and served its Answer to the Notice of Opposition.

2. In a phone conversation on October 2, 2003, Applicant's counsel, R. Charles Henn, consented to Opposer's amending its Notice of Opposition to correct a technical deficiency. Applicant's consent is evidenced by counsel's signature below.

3. As the amendment merely provides minor clarification and correction to the factual allegations that have already been asserted, Applicant has consented to the amendment, and the amendment does not change the underlying factual allegations that were made in Opposer's initial Notice of Opposition, allowing the amendment will not unfairly prejudice Applicant, interfere with discovery or cause any other undue delay. A copy of the proposed First Amended Notice of Opposition is attached.

WHEREFORE, Opposer respectfully requests that the Board grant its motion, and that Applicant be allowed to amend its Notice of Opposition in accordance with the attached proposed First Amended Notice of Opposition.

Respectfully submitted,
SPENCER FANE BRITT & BROWNE LLP

Rebecca S. Stroder
I. Edward Marquette
1000 Walnut Street Suite 1400
Kansas City, MO 64106
(816) 292-8301
Fax: (816) 474-3216
email: rstroder@spencerfane.com

ATTORNEYS FOR OPPOSER

As Stipulated:

R. Charles Henn
Kilpatrick Stockton LLP
1100 Peachtree Street North East
Atlanta, Georgia 30309
(404) 815-3074

ATTORNEYS FOR APPLICANT

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

BIRCH TELECOM, INC. Opposer, v. BELLSOUTH INTELLECTUAL PROPERTY CORPORATION Applicant.	Opposition No. 91157539

10-20-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

FIRST AMENDED NOTICE OF OPPOSITION

Opposer, Birch Telecom, Inc. ("Opposer"), a Delaware corporation with a business address of 2020 Baltimore, Kansas City, Missouri, 64108, hereby opposes registration of the mark **"BELLSOUTH HOME CONNECTION"** that is the subject of application **Serial No. 78/134,384** (the "Applicant's Mark"), published in the Official Gazette of **July 15, 2003**, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, since at least as early as May 6, 2002, has adopted and continuously used the mark "HOME CONNECTION" as a service mark for local and long distance wire line and wireless telephone service and providing multiple-user access to a global computer information network, in International Class 38 (the "Opposer's Mark").

2. Applicant has filed an application to register the mark "BELLSOUTH HOME CONNECTION" for telephone communication services, *inter alia*, in International Class 38.

3. That application was filed on June 10, 2002, and was assigned Serial No. 78/134,384.

4. Applicant filed its application on an intent to use basis, and has not, to date, alleged that it has used the Applicant's Mark in commerce.

5. Opposer filed an application for the Opposer's Mark on June 19, 2002, and that application was assigned serial number 78/137,133 ("Opposer's Application").

6. Applicant's Mark is similar to Opposer's previously used mark "HOME CONNECTION", and Applicant's use of the Applicant's Mark, when used with the services set forth in Applicant's application, is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act. By virtue of its prior use of this mark, the Opposer has superior rights in the mark HOME CONNECTION.

7. Opposer would be harmed by Applicant's registration in that the Opposer's Mark and the corresponding valuable business good will may become diluted. In addition, the Patent and Trademark Office Trademark Examiner has issued an Office Action with respect to Opposer's Mark, refusing the application on the basis that Applicant's Mark is confusingly similar to Opposer's Mark.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,
SPENCER FANE BRITT & BROWNE LLP

Rebecca S. Stroder
I. Edward Marquette
1000 Walnut Street Suite 1400
Kansas City, MO 64106
(816) 292-8301
Fax: (816) 474-3216
email: rstroder@spencerfane.com

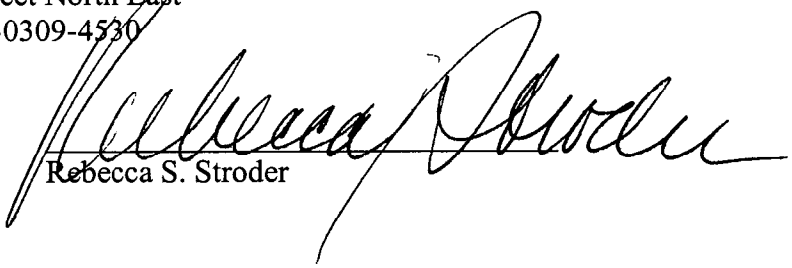
ATTORNEYS FOR OPPOSER

Dated this 16th day of October, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Stipulated Motion to Amend Notice of Opposition is being deposited with the United States Postal Service, first class postage prepaid, this 16th day of October, 2003 to the following:

R. Charles Henn
Kilpatrick Stockton LLP
1100 Peachtree Street North East
Atlanta, Georgia 30309-4530



Rebecca S. Stroder

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

BIRCH TELECOM, INC. Opposer, v. BELLSOUTH INTELLECTUAL PROPERTY CORPORATION Applicant.	) Opposition No. 91157539

10-20-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

FIRST AMENDED NOTICE OF OPPOSITION

Opposer, Birch Telecom, Inc. ("Opposer"), a Delaware corporation with a business address of 2020 Baltimore, Kansas City, Missouri, 64108, hereby opposes registration of the mark **"BELLSOUTH HOME CONNECTION"** that is the subject of application **Serial No. 78/134,384** (the "Applicant's Mark"), published in the Official Gazette of **July 15, 2003**, and requests that registration to Applicant be refused.

As grounds in support of its opposition, Opposer asserts as follows:

1. Opposer, since at least as early as May 6, 2002, has adopted and continuously used the mark "HOME CONNECTION" as a service mark for local and long distance wire line and wireless telephone service and providing multiple-user access to a global computer information network, in International Class 38 (the "Opposer's Mark").

2. Applicant has filed an application to register the mark "BELLSOUTH HOME CONNECTION" for telephone communication services, *inter alia*, in International Class 38.

3. That application was filed on June 10, 2002, and was assigned Serial No. 78/134,384.

4. Applicant filed its application on an intent to use basis, and has not, to date, alleged that it has used the Applicant's Mark in commerce.

5. Opposer filed an application for the Opposer's Mark on June 19, 2002, and that application was assigned serial number 78/137,133 ("Opposer's Application").

6. Applicant's Mark is similar to Opposer's previously used mark "HOME CONNECTION", and Applicant's use of the Applicant's Mark, when used with the services set forth in Applicant's application, is likely to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act. By virtue of its prior use of this mark, the Opposer has superior rights in the mark HOME CONNECTION.

7. Opposer would be harmed by Applicant's registration in that the Opposer's Mark and the corresponding valuable business good will may become diluted. In addition, the Patent and Trademark Office Trademark Examiner has issued an Office Action with respect to Opposer's Mark, refusing the application on the basis that Applicant's Mark is confusingly similar to Opposer's Mark.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,
SPENCER FANE BRITT & BROWNE LLP

Rebecca S. Stroder
I. Edward Marquette
1000 Walnut Street Suite 1400
Kansas City, MO 64106
(816) 292-8301
Fax: (816) 474-3216
email: rstroder@spencerfane.com

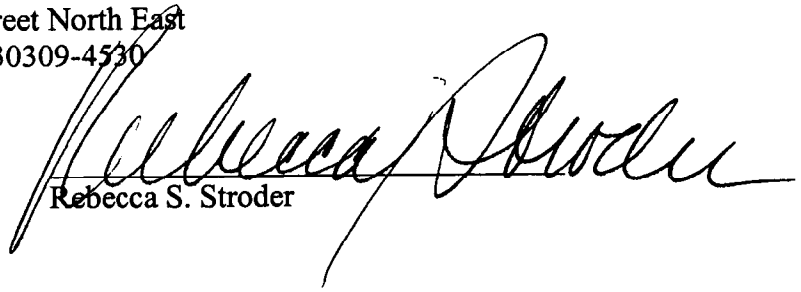
ATTORNEYS FOR OPPOSER

Dated this 16th day of October, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Stipulated Motion to Amend Notice of Opposition is being deposited with the United States Postal Service, first class postage prepaid, this 16th day of October, 2003 to the following:

R. Charles Henn
Kilpatrick Stockton LLP
1100 Peachtree Street North East
Atlanta, Georgia 30309-4530



Rebecca S. Stroder