

ORIGINAL

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

SOLARWINDS.NET,

Opposer,

v.

VISION SOLUTIONS, INC.,

Applicant.

Opposition No. 91162596

Serial No. 76/440,193

Mark: ORION

Filed: August 14, 2002

Published: August 10, 2004

CERTIFICATE OF EXPRESS MAILING 37 C.F.R. 1.10

I hereby certify that this document and any documents indicated as being enclosed therein are being deposited with the United States Postal Service as Express Mail in an envelope addressed to: BOX TTAB, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 as Express Mail Label No. EV 018542449 US on: November 22, 2004

By: Patti Hill
Name: Patti Hill

ANSWER TO NOTICE OF OPPOSITION

Vision Solutions, Inc. (the "Applicant") hereby answers the Notice of Opposition against the mark ORION (the "Mark") filed by SolarWinds.Net ("Opposer") on or about October 20, 2004 (the "Notice of Opposition"). References to numbered paragraphs refer to the numbered paragraphs of the Notice of Opposition unless otherwise indicated.

1. Applicant is without sufficient information to admit or deny the allegations of Paragraph 1 and therefore, on that basis, denies the same.
2. Applicant admits that the records of the United States Patent and Trademark Office apparently reflect an application Serial No. 76/563,595 filed on November 23, 2003 for the mark "ORION" by an entity named SolarWinds.net, but Applicant is without sufficient

information to admit or deny the remaining allegations of Paragraph 2 and, on that basis, denies the same.

3. Applicant is without sufficient information to admit or deny the allegations of Paragraph 3 and therefore, on that basis, denies the same.

4. Applicant admits that its ORION application Serial No. 76/440,193 has been published for opposition. The remaining allegations of Paragraph 4 call for a legal conclusion to which no response is required and, on that basis, are denied.

5. Applicant is without sufficient information to admit or deny the allegations of Paragraph 5 and therefore, on that basis, denies the same.

6. Applicant is without sufficient information to admit or deny the allegations of Paragraph 6 and therefore, on that basis, denies the same.

7. Applicant is without sufficient information to admit or deny the allegations of Paragraph 7 and therefore, on that basis, denies the same.

8. Applicant is without sufficient information to admit or deny the allegations of Paragraph 8 and therefore, on that basis, denies the same.

9. Applicant is without sufficient information to admit or deny the allegations of Paragraph 9 and therefore, on that basis, denies the same.

FIRST AFFIRMATIVE DEFENSE

Applicant asserts the defense of unclean hands on information and belief.

SECOND AFFIRMATIVE DEFENSE

Applicant asserts the defense of laches on information and belief.

THIRD AFFIRMATIVE DEFENSE

Applicant asserts the defense of estoppel on information and belief.

FOURTH AFFIRMATIVE DEFENSE

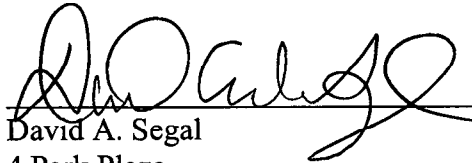
Applicant asserts the defense of acquiescence on information and belief.

WHEREFORE, Applicant respectfully requests that Opposer's Notice of Opposition be dismissed and that Application Serial Number 76/440,193 be granted registration.

DATED: November 22, 2004

Respectfully submitted,

GIBSON, DUNN & CRUTCHER, LLP

A handwritten signature in black ink, appearing to read "David A. Segal", is written over a horizontal line.

David A. Segal

4 Park Plaza

Irvine, California 92614-8557

Telephone: (949) 451-3800

Attorneys for Applicant
Vision Solutions, Inc.

Enc. Postcard receipt
Reference No. 63395-00026

Opposition No. 91162596
Serial No. 76/440,193
Mark: ORION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was placed in the United States mail, first-class, postage pre-paid and addressed to the following on this 22nd day of November, 2004.

William S. Dorman
406 South Boulder, Suite 830
Tulsa, Oklahoma 74103

Attorney for Opposer SolarWinds.Net



Patti Hill

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GIBSON, DUNN & CRUTCHER LLP

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11-22-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #66

Re: *Answer to Notice of Opposition*
Opposition No.: 91162596
Opposer: SolarWinds.Net
Applicant: Vision Solutions, Inc.
Mark: ORION; Serial No. 76/440,193

Dear Sir/Madam:

Enclosed please find (i) the Applicant's Answer to Notice of Opposition, including the original and one copy; and (ii) a postcard to be date stamped and sent back to us as indicated.

Thank you for your assistance. Please feel free to call me with any questions.

Very truly yours,

David A. Segal

DAS/ssk

Enclosure(s)

30359119_1.DOC

GIBSON, DUNN & CRUTCHER LLP

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November 22, 2004
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DATE OF DEPOSIT: November 22, 2004

I hereby certify that the foregoing document, Answer to Notice of Opposition, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed as follows:

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Arlington, Virginia 22202

By: 
Patti Hill