

ESTTA Tracking number: **ESTTA97502**

Filing date: **09/01/2006**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Fonix Corporation
Granted to Date of previous extension	09/02/2006
Address	9350 South 150 East, Suite 700 Sandy, UT 84070 UNITED STATES

Attorney information	David W. Tufts Durham Jones & Pinegar 111 East Broadway, Suite 900 P.O. Box 4050 Salt Lake City, UT 84110-4050 UNITED STATES dtufts@djplaw.com Phone:(801) 415-3000
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Applicant Information

Application No	78580532	Publication date	07/04/2006
Opposition Filing Date	09/01/2006	Opposition Period Ends	09/02/2006
Applicant	mVox Electronics, Inc. Suite 150 20111 Stevens Creek Blvd Cupertino, CA 95014 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Cellular telephones and accessories, namely, wireless headsets, wireless earpieces, wireless smart headsets, wireless and USB (universal serial bus) multimode speakerphones, hand free devices for use with mobile telephones, microphones, and wireless voice interface devices; wireless communication equipment, devices and apparatuses, namely, wireless voice input and output devices; USB (universal serial bus) speakerphones with DSP (digital signal processing); USB (universal serial bus) headsets

Attachments	Fonix Not Opp.pdf (6 pages)(28357 bytes)
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Signature	/David W. Tufts/
Name	David W. Tufts
Date	09/01/2006

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

In the matter of Application Ser. No. 78580532
Filed: March 4, 2005
For the Mark: FOR TRUE FREEDOM OF SPEECH
Published in the *Official Gazette* (Trademarks) on July 04, 2006

Fonix Corporation,

Opposer,

v.

mVox Electronics, Inc.

Applicant.

NOTICE OF OPPOSITION

Fonix Corporation (“Fonix” or “Opposer”), a Delaware corporation having its principal place of business at Suite 700, 9350 South 150 East, Sandy, Utah, United States, 84070, believes that it will be damaged by registration of the mark shown in intent-to-use Application Serial No. 78580532 (“Application”) in International Class 09, and hereby opposes the same.

The grounds for the opposition are as follows:

1. The Applicant, mVox Electronics, Inc., seeks to register FOR TRUE FREEDOM OF SPEECH as a trademark for “Cellular telephones and accessories, namely wireless earpieces, wireless smart headsets, wireless and USB (universal serial bus) multimode speakerphones, hand free devices for use with mobile telephones, microphones, and wireless voice interface devices; wireless communication equipment, devices and apparatuses, namely, wireless voice input and output devices; USB (universal serial bus) speakerphones with DSP (digital signal processing);

USB (universal serial bus) headsets” in International Class 9. Application Serial No. 78580532 was filed on March 10, 2005, and was published for opposition in the *Official Gazette* on July 4, 2006. On August 3, 2006, Opposer filed a Request for Extension of Time to File an Opposition to the Application. On August 3, 2006, the Trademark Trial and Appeal Board granted Opposer’s extension request, which permits Opposer until September 2, 2006, to file a Notice of Opposition to the Application.

2. Fonix Corporation provides integrated communication services and technologies to its customers throughout the world. Specifically, Fonix offers telecommunications services and value-added speech technologies. These services include a fully integrated switched network, which provides next-generation communication technologies such as Voice Over Internet Protocol (VoIP), Broadband Over Power Lines (BPL) and fixed wireless technology; wireline voice, data and long distance and voice technology, speech recognition, text-to-speech solutions for mobile/wireless devices; interactive videogames, toys and appliances; computer telephony systems; the assistive market and vehicle telematics (“Opposer’s Products”). In marketing and selling Opposer’s Products, Opposer uses the mark FREEDOM OF SPEECH.

3. Opposer is the owner of a federal trademark and service mark registration for a mark which contains the distinctive phrase FREEDOM OF SPEECH. Opposer’s registration occurred on June 8, 1999, under the U.S. Registration No. 2,251,577. Opposer registered its mark in International Class 9 for use in “computers, computer peripherals, and computer programs for use in natural language voice recognition” (“Registered Uses”). Opposer has continually used FREEDOM OF SPEECH for the Registered Uses since April 30, 1998.

4. In addition to its federally registered mark, Opposer possesses valuable common law rights in the mark FREEDOM OF SPEECH for goods and services not included in the Registered Uses. Opposer filed two Trademark/Service Mark applications on August 10, 2006, for the mark FREEDOM OF SPEECH covering Opposer's uses of the mark outside of the Registered Uses. Opposer first used the mark FREEDOM OF SPEECH in commerce for the additional goods and services listed in these new applications (jointly, "Non-Registered Uses") prior to the filing date of the Application.

5. Opposer's first of its two new applications, assigned serial number 78949043, seeks to register the mark FREEDOM OF SPEECH in International Class 9 for "Computer hardware and software in the field of voice recognition and text-to-speech, for use in speech engine software and voice-enabled software applications, namely, speech-based telephone services, voice servers, embedded processors, desktop computer applications, console video games, wireless mobile devices, handheld and in-vehicle navigation systems featuring global positioning systems (GPS) functionality, and personal digital assistants (PDAs)." Opposer has used the mark FREEDOM OF SPEECH in commerce for these purposes since August 17, 2004, through its worldwide marketing system. Products and services for the uses listed in application serial number 78949043 bearing the FREEDOM OF SPEECH mark have been sold worldwide by Fonix since August 17, 2004.

6. Opposer's second application, assigned serial number 78949045, seeks to register the mark FREEDOM OF SPEECH in International Class 38 for "Telecommunications services, namely, the electronic transmission of voice, data and information; local, long distance, international and toll free telephone services; voice processing services, namely,

teleconferencing, voicemail, and telephone voice messaging services; call routing services; private line services; frame relay services; asynchronous transfer mode (ATM) services; Voice over Internet (VoIP) telephony services; ISDN services; DSL transmission services; telecommunications connections to the Internet; electronic-mail services; fax transmission services; voice, fax, paging and e-mail messaging services; voice communications services, namely, providing telephone users with access to information and data using interactive response, speech recognition, voice command, and text-to-speech services, audioconferencing services; videoconferencing services and global computer conferencing services; Internet service provider services; broadband over powerline (BPL) telecommunication services, namely, providing high-speed access to the Internet via electrical power lines.” Opposer has used the mark FREEDOM OF SPEECH in commerce for these purposes since August 17, 2004, through its worldwide marketing system. Products and services for the uses listed in application serial number 78949045 bearing the FREEDOM OF SPEECH mark have been sold worldwide by Fonix since August 17, 2004.

7. Opposer has expended considerable time, effort and expense in promoting, advertising and popularizing its FREEDOM OF SPEECH mark (“Opposer’s Mark”) for both the Registered Uses and Non-Registered Uses, with the result that the purchasing public has come to know, rely upon, and recognize Opposer’s Mark as an indicator of the goods and services so marked. Opposer has established valuable goodwill in Opposer’s Mark.

8. Opposer’s Mark for both the Registered Uses and Non-Registered Uses has been continuously used in commerce since before the date of the application to register the FOR

TRUE FREEDOM OF SPEECH mark. Opposer's Mark has priority over the FOR TRUE FREEDOM OF SPEECH mark shown in the Application based on Opposer's prior use.

9. According to the identification of goods in the Application, Applicant allegedly intends to offer products and/or services that are identical to and directly competitive with those goods and services offered by Opposer in its Registered Uses, including computer peripherals, namely, "USB (Universal Serial Bus) multimode speakerphones," "speakerphones" and "headsets." Moreover, according to the identification of goods in the Application, Applicant allegedly intends to offer products and/or services that are identical to and directly competitive with those goods and services Opposer offers under its Non-Registered Uses, including computer hardware. Applicant's products and/or services could be marketed in the same channels of trade in which Opposer markets and sells Opposer's Products under the Opposer's Mark. Upon information and belief, Applicant's cellular telephone and accessories have been and will continue to be purchased by the same people who purchase and/or use Opposer's Products. Those accustomed to buying Opposer's Products sold under Opposer's Mark, could naturally but mistakenly assume that the cellular telephones and accessories Applicant offers under the FOR TRUE FREEDOM OF SPEECH mark come from Opposer or are somehow affiliated with, sponsored by, or connected with the Opposer.

10. The FOR TRUE FREEDOM OF SPEECH mark Applicant seeks to register so resembles Opposer's Freedom of Speech mark as to be likely, when used on or in connection with the goods listed in the Application, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products of Applicant offered under the FOR TRUE FREEDOM OF SPEECH mark are produced,

