

ESTTA Tracking number: **ESTTA153603**

Filing date: **07/27/2007**

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	Skype Limited
Granted to Date of previous extension	07/28/2007
Address	Arthur Cox Building Earlsfort Terrace Dublin 2, IRELAND

Domestic Representative	Marvin H. Kleinberg Attorney Kleinberg & Lerner, LLP 2049 Century Park East Suite 1080 Los Angeles, CA 90067 UNITED STATES trademarks@kleinberglerner.com, pnulud@kleinberglerner.com Phone:310-557-1511
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Applicant Information

Application No	78489743	Publication date	05/29/2007
Opposition Filing Date	07/27/2007	Opposition Period Ends	07/28/2007
Applicant	Brady, David A. P.O. Box 1723 Rocky Mount, NC 27804 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Communications software for connecting a plurality of users allowing for voice, video, and application sharing over the Internet

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3263303	Application Date	04/05/2005
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	SKYPE		

Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2003/08/27 First Use In Commerce: 2003/08/27 Computer Software for use in Organizing, Transmitting, Manipulating, and Reviewing Text, Data, and Audio Files on Portable and Handheld Digital Electronic Devices; Wireless devices for communications, namely telephones, downloadable software that allows subscribers to utilize VOIP communication services</p> <p>Class 038. First use: First Use: 2003/08/27 First Use In Commerce: 2003/08/27 Providing a high speed access to area networks and a global computer information network</p> <p>Class 042. First use: First Use: 2003/08/27 First Use In Commerce: 2003/08/27 Computer services and software development for others, namely, design for others of computer software and hardware for use in telecommunications and voice over internet protocol (VOIP)</p>

U.S. Registration No.	3263302	Application Date	04/07/2005
Registration Date	07/10/2007	Foreign Priority Date	NONE
Word Mark	SKYPE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: First Use: 2003/11/00 First Use In Commerce: 2003/11/00 Computer Software for use in Organizing, Transmitting, Manipulating, and Reviewing Text, Data, and Audio Files on Portable and Handheld Digital Electronic Devices; Wireless devices for communications, namely telephones, Short Range Wireless radio devices for communications, namely telephones</p> <p>Class 042. First use: First Use: 2003/11/00 First Use In Commerce: 2003/11/00 Computer services and software development for others, namely, design for others of computer software and hardware for use in telecommunications and voice over Internet protocol (VOIP) applications, data transmission and instant messaging services</p>		

U.S. Registration No.	3005039	Application Date	01/15/2004
Registration Date	10/04/2005	Foreign Priority Date	NONE
Word Mark	SKYPE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 038. First use: First Use: 2003/11/01 First Use In Commerce: 2003/11/01 Providing voice over Internet protocol (VOIP) peer-to-peer communications, electronic transmission of data and documents over computer terminals, and instant messaging services</p>		

Attachments	78978542#TMSN.jpeg (1 page)(bytes)
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Signature	/marvin h. kleinberg/
Name	Marvin H. Kleinberg
Date	07/27/2007

NOTICE OF OPPOSITION

Skype Limited, a corporation duly organized and existing under the laws of Ireland, with principal offices at Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland ("Skype"), believes that it would be damaged by the registration of the United States Trademark Application Serial No. 78/489,743 filed on September 27, 2004 ("Application"), by David A. Brady ("Applicant") and hereby opposes the same. The grounds for opposition are as follows:

1. Skype is now and has been engaged in the distribution of computer software, hardware certification and services for audio, video, and data communication through the Internet. Skype is recognized as one of the foremost Voice Over Internet Protocol (VOIP) providers in the world and has won numerous awards. Skype has in excess of 202 million registered users and at any given times has in excess of 7 million people using their software simultaneously. A search for "Skype" on the popular search engine "Google" yields over 223 million hits.

2. Skype is the owner of Trademark Registration No. 3,263,302 for the mark "SKYPE."

3. Skype is the owner of Trademark Registration No. 3,005,039 for the mark "SKYPE."

4. Skype is the owner of Trademark Registration No. 3,263,303 for the mark "SKYPE" and Design.

5. At least as early as November 1, 2003, substantially prior to Applicant's filing of the Application on September 27, 2004, Skype adopted, began using and continues to use the "SKYPE" Mark with and without stylization, independently and in combination with other terms in interstate commerce in the United States. Skype has expended extensive time, money and resources developing and promoting the "SKYPE" Mark in connection with the above-identified goods and services.

4. Skype has continuously offered and advertised its goods and services in connection with the "SKYPE" Mark in interstate commerce, thereby creating valuable goodwill.

5. Skype has used the "SKYPE" Mark in connection with its goods and services so that the relevant consuming public has come to associate the "SKYPE" Mark with Skype.

6. Skype's continuous extensive use of the "SKYPE" Mark from a time preceding Applicant's application date for Applicant's Intent-To-Use application has made the "SKYPE" Mark famous in the United States and elsewhere.

8. Applicant's goods and Skypes' goods and services would likely be encountered by the same consumers offered using confusingly similar marks. Objections to Applicant's goods offered under Applicant's mark would necessarily reflect on and injure Skype's reputation for being the leader in VOIP communications.

9. Applicant's mark, if used in connection with the goods described in the Application, so resembles the "SKYPE" Mark as to be likely to cause confusion or to cause mistake or to deceive as to the affiliation, connection, association, origin, sponsorship, endorsement, or approval of Applicant's goods by Skype, to the irreparable damage of Skype.

10. If Applicant is granted a registration for the mark herein opposed for the goods specified in its Application, it would result in damage and injury to Skype due to the confusing similarity of Applicant's mark to the earlier used "SKYPE" Mark. The relevant public will likely associate Skype and its goods and services with Applicant's goods, thereby leading to the dilution of Skype's famous "SKYPE" Mark.

11. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use the mark. Such registration would be a source of damage and injury to Skype.

12. Based upon the foregoing, the registration of "Vype," United States Trademark Application Serial No. 78/489,743 filed on September 27, 2004, will cause damage and injury to Skype.

WHEREFORE, Skype respectfully requests the registration of Serial No. 78/489,743 be denied and this opposition be sustained.

Respectfully Submitted,
KLEINBERG & LERNER, LLP

/marvin h. kleinberg/
Marvin H. Kleinberg
Attorney for Skype Limited