

ESTTA Tracking number: **ESTTA293889**

Filing date: **07/07/2009**

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	Ipswitch, Inc.		
Entity	Corporation	Citizenship	Massachusetts
Address	10 Maguire Road Suite 220 Lexington, MA 02421 UNITED STATES		

Attorney information	John L. Welch LANDO & ANASTASI, LLP One Main Street Eleventh Floor Cambridge, MA 02142 UNITED STATES jlwtrademarks@ll-a.com Phone:617-395-7000
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**Applicant Information**

Application No	77041823	Publication date	06/30/2009
Opposition Filing Date	07/07/2009	Opposition Period Ends	07/30/2009
International Registration No.	NONE	International Registration Date	NONE
Applicant	Nero AG Im StÄ¼ckmÄ¼hle 13-15 Karlsbad, D-76307 GERMANY		

**Goods/Services Affected by Opposition**


<p>Class 009. All goods and services in the class are opposed, namely: Electronic apparatus for recording, transmitting, or reproducing sound or images; computer and data processing equipment, parts, and accessories therefor, namely, data input apparatus, data output apparatus, printers, graphic screens, and keyboards; external and internal drives, namely, CD drives, CD-R drives, CD-RW drives, DVD drives, optical disc drives, exchangeable disc drives, data audio tape drives, and parts for all the aforesaid goods; photocopying apparatus and machines, namely, electrostatic and thermal photocopying apparatus and machines; electric cables, wires, conductors, and connection fittings therefor; blank machine-readable data carriers, namely, magnetic tapes, data audio tapes, magnetic tape cassettes, magnetic storage disks, floppy disks, hard disks, exchangeable hard disks, and optical storage disks, in the nature of CD-ROMs, CD-Rs, CD-RWs, DVDs and optical discs, excepting interactive exercise optical discs, DVDs, CD-ROMs, and CD-Rs; storage disks with multiple overwrite and erase facilities; mechanical data carriers featuring programs for the copying, erasing, managing, compressing, decompressing, and repairing of data and data files; computer programs for reading, writing, and erasing data carriers with read and write facilities in the nature of floppy disks, magnetic floppy disks, and hard disks with overwrite facilities and user interfaces therefor; computer programs for activation of CD recorders; computer programs for preparing mechanical data carriers and for formatting mechanical data carriers for the subsequent writing of data and data files; computer</p>
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software for syncing, encoding, transcoding, transrating, and decoding of audio, video, picture and other files and streams of information; software for copying audio, video, and picture files to mobile devices, the Internet, to LAN and WAN consumer electronic devices, personal computers, or televisions; software for Digital Rights Management; software for playback of audio, video and picture data; software for collecting, organizing, publishing and transcoding; software for recoding video and audio files in other formats, namely, DVD, CD and other optical disc formats; video and audio authoring software; copying software; software for networking, interaction and data exchange between several computers, several data memories and several software applications; computer software for creating searchable databases of information and data; downloadable electronic dictionaries; none of the listed goods or software relating to computer systems software for use in providing secure file transfer and file management within and between organizations across unencrypted networks

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Other	lack of bona fide intention to use mark.

## Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2836489	Application Date	01/14/2003
Registration Date	04/27/2004	Foreign Priority Date	NONE
Word Mark	MOVE IT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2001/11/01 First Use In Commerce: 2001/11/01 Computer systems software for use in providing secure file transfer and file management within and between organizations across unencrypted networks		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MOVE IT		
Goods/Services	software for providing secure transfer and management of computer files		

Attachments	78203141#TMSN.gif ( 1 page )( bytes ) 77041823 opposition.pdf ( 5 pages )(203703 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/johnlwech/
Name	John L. Welch
Date	07/07/2009

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

Ipswitch, Inc.,	)	
	)	
Opposer,	)	
	)	Opposition No.
v.	)	
	)	
Nero AG,	)	Application S.N.
	)	77/041,823
Applicant.	)	
	)	
	)	

OPPOSITION

Ipswitch, Inc., a Massachusetts corporation having a place of business at 10 Maguire Road, Suite 220, Lexington, Massachusetts 02421, believes that it will be damaged by registration of the mark MOVE-IT, which mark is the subject of Application Serial No. 77/041,823, filed by Nero AG, a corporation of the Federal Republic of Germany, and which mark was published for opposition in the *Official Gazette* of June 30, 2009.

The grounds for the opposition are as follows:

1. Applicant seeks to register the trade mark MOVE IT for:

Electronic apparatus for recording, transmitting, or reproducing sound or images; computer and data processing equipment, parts, and accessories therefor, namely, data input apparatus, data output apparatus, printers, graphic screens, and keyboards; external and internal drives, namely, CD drives, CD-R drives, CD-RW drives, DVD drives, optical disc drives, exchangeable disc drives, data audio tape drives, and parts for all the aforesaid goods; photocopying apparatus and machines, namely, electrostatic and thermal photocopying apparatus and machines; electric cables, wires, conductors, and connection fittings therefor; blank machine-readable data carriers, namely, magnetic tapes, data audio tapes, magnetic tape cassettes, magnetic storage disks, floppy disks, hard disks,

exchangeable hard disks, and optical storage disks, in the nature of CD-ROMs, CD-Rs, CD-RWs, DVDs and optical discs, excepting interactive exercise optical discs, DVDs, CD-ROMs, and CD-Rs; storage disks with multiple overwrite and erase facilities; mechanical data carriers featuring programs for the copying, erasing, managing, compressing, decompressing, and repairing of data and data files; computer programs for reading, writing, and erasing data carriers with read and write facilities in the nature of floppy disks, magnetic floppy disks, and hard disks with overwrite facilities and user interfaces therefor; computer programs for activation of CD recorders; computer programs for preparing mechanical data carriers and for formatting mechanical data carriers for the subsequent writing of data and data files; computer software for syncing, encoding, transcoding, transrating, and decoding of audio, video, picture and other files and streams of information. software for copying audio, video, and picture files to mobile devices, the Internet, to LAN and WAN consumer electronic devices, personal computers, or televisions; software for Digital Rights Management; software for playback of audio, video and picture data; software for collecting, organizing, publishing and transcoding; software for recoding video and audio files in other formats, namely, DVD, CD and other optical disc formats; video and audio authoring software; copying software; software for networking, interaction and data exchange between several computers, several data memories and several software applications; computer software for creating searchable databases of information and data; downloadable electronic dictionaries; none of the listed goods or software relating to computer systems software for use in providing secure file transfer and file management within and between organizations across unencrypted networks (in international class 9).

2. The opposed Application was filed on November 10, 2006, alleging, *inter alia*, a *bona fide* intention to use the mark in commerce under Section 44(d)(2) of the Trademark Act.

3. Since at least 2003, and long prior to Applicant's filing date, Opposer and its predecessor-in-interest have used the trademark MOVE IT continuously in connection with software for providing secure transfer and management of computer files.

4. Opposer is the owner of incontestable U.S. Trademark Registration No. 2,836,489 for the mark MOVE IT & Design for "Computer systems software for use in providing secure file transfer and file management within and between organizations across unencrypted networks," in international class 9. Said registration is valid and subsisting.

5. Opposer's goods offered in connection with its trademark MOVE IT are closely related to goods identified in Application Serial No. 77/041,823. On information and belief, Opposer's goods and Applicant's goods are or will be offered to the same classes of customers through the same channels of trade.

6. Applicant's applied-for mark MOVE-IT is essentially identical to Opposer's trademark MOVE IT.

7. If Applicant uses the mark MOVE-IT with the goods identified in Application 77/041,823, such use would be likely to cause confusion, mistake, and/or deception of the relevant trade and public. Customers and potential customers are likely to believe that Applicant's goods offered under the mark MOVE-IT emanate from, or are licensed or approved by, Opposer, when that is not the case. Such confusion, mistake, and/or deception would be a source of damage to Opposer.

8. Because Applicant's mark MOVE-IT is likely to cause confusion with Opposer's trademark MOVE IT, Applicant's mark should be refused registration under Section 2(d) of the Trademark Act.

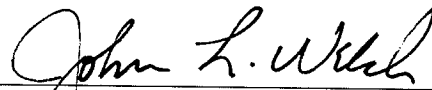
9. On information and belief, at the time of filing Application Serial No. 77/041,823, Applicant lacked a *bona fide* intention to use the mark MOVE-IT on the goods identified in the application, and on that ground the application should be declared *void ab initio*.

10. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* right to exclusive use of the MOVE-IT mark, which would be a further source of damage to Opposer.

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WHEREFORE, Opposer believes that it will be damaged by registration of said mark, and prays that this Opposition be sustained, that Application Serial No. 77/041,823 be rejected, and that the mark applied for therein be refused registration.

Ipswitch, Inc.



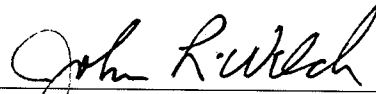
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7<sup>th</sup> day of July, 2009, a true copy of the foregoing NOTICE OF OPPOSITION was served by first-class mail, postage pre-paid on:

Robert W. Becker, Esq.  
707 State Highway 333, Suite B  
Tijeras, New Mexico 87059-7382



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