



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

ITILITY, L.L.C.,	)
	)
Opposer,	)
v.	) Opposition No. 91191003
	) Application No. 77/597,702
DYNASIS INTEGRATED SYSTEMS CORP.,	)
	)
Applicant.	)

OPPOSER'S MOTION FOR SUMMARY JUDGMENT  
AND MEMORANDUM IN SUPPORT THEREOF

Opposer Itility, L.L.C. (hereafter "opposer" or "Itility") respectfully moves the Trademark Trial and Appeal Board for an order pursuant to Fed. R. Civ. P. 56 and 37 C.F.R. § 2.127 granting it summary judgement on the grounds that applicant DynaSis Integrated Systems Corp.'s ("applicant" or "DynaSis") trademark ITILITY is confusingly similar to opposer's trademark ITILITY and opposer has superior rights in the ITILITY trademark. There is no genuine issue of material fact in dispute and opposer is entitled to judgment as a matter of law. This motion is supported by the Declaration of Grey and the Declaration of Breiner attached hereto as Exhibits A and B, respectively.

I. INTRODUCTION

Applicant has applied to register the trademark ITILITY for application service provider, namely, providing, hosting, managing, developing, and maintaining applications, software, web sites, and databases in the fields of personal



01-29-2010

productivity, wireless communication, mobile information access, wired Internet connectivity and remote data management for delivery of content to desktops, thin clients, handheld computers, laptops and mobile electronic devices (hereafter "IT Services"). Answer To Notice of Opposition, ¶ 1. Opposer has opposed registration of the trademark based on opposer's trademark ITILITY for business management and consultation and consulting in the field of information technology (hereafter "Consulting Services"). Notice of Opposition.

Applicant has not used the ITILITY trademark for the IT Services anywhere before November 15, 2007 and in commerce before March 1, 2008. Answer, ¶ 2.

Opposer has used the ITILITY trademark for Consulting Services before November 15, 2007. Declaration of Grey, ¶ 2.

Opposer served "Opposer's First Set Of Requests For Admissions" on applicant on November 10, 2009. Request No. 5 is as follows:

Admit that there is a likelihood of confusion between applicant's trademark ITILITY for the services of: application service provider, namely, providing, hosting, managing, developing, and maintaining applications, software, web sites, and databases in the fields of personal productivity, wireless communication, mobile information access, wired Internet connectivity and remote data management for delivery of content to desktops, thin clients, handheld computers,

laptops and mobile electronic devices and opposer's trademark ITILITY for business management and consultation and consulting in the field of information technology, assuming each party uses their respective trademark in United States commerce.

Declaration of Breiner, ¶ 2, Exhibit 1. Applicant's response to the Requests For Admissions was due on or before December 15, 2009. Applicant has not responded to this discovery. Id.<sup>1</sup> The Requests For Admissions are deemed admitted under Rule 36, Fed. R. Civ. P.; 37 C.F.R. § 2.120; and TBMP, § 407.03(a).

## II. ARGUMENT

Opposer has opposed registration of applicant's ITILITY trademark on the grounds of likelihood of confusion. See Notice of Opposition. Applicant is deemed to have admitted that there is a likelihood of confusion between applicant's trademark ITILITY for IT Services and opposer's trademark ITILITY for Consulting Services as set forth above. Opposer has superior rights in its trademark ITILITY by virtue of its prior use thereof. Accordingly, there is no genuine issue of material fact in dispute and opposer is entitled to judgment as a matter of law.

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Opposer also concurrently served its First Set Of Document Requests and First Set Of Interrogatories on this date and applicant has also not responded thereto. Id., ¶ 3.

III. CONCLUSION

For the foregoing reasons, opposer respectfully requests that the Board grant its summary judgment in this case, sustain the opposition and refuse registration of applicant's trademark ITILITY.

Respectfully submitted,

ITILITY, L.L.C.

BY 

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Attorneys for Opposer

January 29, 2010

CERTIFICATE OF SERVICE

It is hereby certified that on this 29th day of  
January, 2010, a true copy of the foregoing paper entitled -

OPPOSER'S MOTION FOR SUMMARY JUDGMENT  
AND MEMORANDUM IN SUPPORT THEREOF

was served by First Class mail, postage prepaid, on -

Stacy Raphael Stewart, Esquire  
RAPHAEL STEWART LAW GROUP, LLC  
Suite 300, 7 Piedmont Center  
3525 Piedmont Road  
Atlanta, Georgia 30305



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THEODORE A. BREINER

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DYNASIS INTEGRATED SYSTEMS CORP., )  
 )  
 ) Applicant. )

DECLARATION OF ROBERT L. GREY

Robert L. Grey declares that:

1. I am a Member of Itility, L.L.C., the opposer in the above-referenced opposition. I have personal knowledge of the facts stated herein.
2. Itility L.L.C. has used the name ITILITY for consulting services for information technology before November 15, 2007 and first used the ITILITY trademark for these services at least as early as 2002.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
ROBERT L. GREY

January 29, 2010

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 Applicant. )

DECLARATION OF THEODORE A. BREINER

Theodore A. Breiner declares that:

1. I am counsel for opposer in the above-referenced opposition. I have personal knowledge of the facts stated herein.
2. Attached hereto as Exhibit 1 is a true and correct copy of Opposer's First Set Of Requests For Admissions served on counsel for DynaSis Integrated Systems Corp. on November 10, 2009. Applicant's response to this discovery was due on or before December 15, 2009. Applicant has not served any response to these requests for admissions.
3. Opposer also served applicant with its first set of requests for documents and first set of interrogatories on November 10, 2009. Applicant has not responded to this discovery.

I declare under penalty of perjury that the foregoing is true and correct.



Theodore A. Breiner

January 29, 2010

**EXHIBIT**  
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