

ESTTA Tracking number: **ESTTA383268**

Filing date: **12/13/2010**

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	Maryville Data Systems, Inc.
Granted to Date of previous extension	12/15/2010
Address	540 Maryville Centre Drive Suite 300 St. Louis, MO 63141 UNITED STATES
Correspondence information	Glenn K. Robbins II SPENCER FANE BRITT & BROWNE LLP 1 North Brentwood Blvd. Suite 1000 St. Louis, MO 63105-3925 UNITED STATES sfbbaction@spencerfane.com Phone:314-333-3932

Applicant Information

Application No	77902616	Publication date	08/17/2010
Opposition Filing Date	12/13/2010	Opposition Period Ends	12/15/2010
Applicant	Itility Solutions, LLC 1401 Northview Drive Luverne, MN 56156 UNITED STATES		

Goods/Services Affected by Opposition

Class 035. First Use: 2009/01/30 First Use In Commerce: 2009/01/30
All goods and services in the class are opposed, namely: business management and business consulting services in the field of public utilities and energy industry

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
--------------------------------------	----------------------------

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2724891	Application Date	05/25/2000
Registration Date	06/10/2003	Foreign Priority Date	NONE
Word Mark	ENTILITY		

Design Mark	ENTILITY
Description of Mark	NONE
Goods/Services	<p>Class 035. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Procurement, namely, purchasing computer hardware and software</p> <p>Class 037. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Computer hardware installation</p> <p>Class 041. First use: First Use: 2001/01/01 First Use In Commerce: 2001/01/01 Computer education training</p> <p>Class 042. First use: First Use: 2001/01/00 First Use In Commerce: 2001/01/00 Computer consultation in the nature of providing consultation in the field of computer information technology as it relates to enterprise management software, database management software, middleware, packaged application software, custom application management software, and data management; and installation of computer software</p>

U.S. Registration No.	3141660	Application Date	08/31/2005
Registration Date	09/12/2006	Foreign Priority Date	NONE

Word Mark	ENTILITY PLAYBOOK
Design Mark	ENTILITY PLAYBOOK
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 2005/02/28 First Use In Commerce: 2005/02/28 Electronic publications, namely, reference manuals and guides in the field of information systems management trouble shooting and best practices implementation recorded on computer media</p> <p>Class 016. First use: First Use: 2005/02/28 First Use In Commerce: 2005/02/28 Printed reference manuals and guides in the field of information systems management trouble shooting and best practices implementation</p>

Attachments	76056509#TMSN.gif (1 page)(bytes)
-------------	---------------------------------------

	78704803#TMSN.jpeg (1 page)(bytes) UTILITY OPPOSITION.pdf (4 pages)(66679 bytes)
--	--

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	/gkrii/
Name	Glenn K. Robbins II
Date	12/13/2010

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

MARYVILLE DATA SYSTEMS. INC.)	
)	Opposition No.
Opposer,)	
)	Mark ITILITY SOLUTIONS
)	
vs.)	
)	
ITILITY SOLUTIONS, LLC)	Serial No. 77/902,616
)	
Applicant.)	

NOTICE OF OPPOSITION

Maryville Data Systems, Inc. (“Opposer”), a Missouri corporation having a place of business at 540 Maryville Centre, Suite 300, St. Louis, Missouri 63141, believes that it would be damaged by the registration of the mark ITILITY SOLUTIONS, shown in U.S. Trademark Application Serial No. 77/902,616 (“Applicant’s Mark”) to Itility Solutions, LLC (“Applicant”) and hereby opposes same.

Opposer alleges upon personal knowledge for its own acts and upon information and belief with respect to all other matters, as follows:

1. Opposer is now, and has been for many years, engaged in, among other activities, services comprising the implementation of information technology essential to the operation of the business to which it is applied. Opposer offers computer and information technology consultation services that are specifically tailored to its business customers’ operational organizations as they relate to enterprise management software, database management software, middleware, packaged application software, custom application management software, and data management; and focus on a customer’s particular business needs in addressing and managing core information technology

operational disciplines. Plaintiff's customers benefiting from these services span multiple industries such as manufacturing, health care, distribution, government and telecommunications.

2. Opposer has used, and continues to use, the mark ENTILITY as a designator to identify itself as the source of goods and services for integrating complex technology infrastructures and software solutions.

3. Opposer is the owner of U.S. Trademark Registration No. 2,724,891 for the mark ENTILITY covering services for procurement, namely, purchasing computer hardware and software (Class 35); computer hardware installation (Class 37); computer education training (Class 41); and Computer consultation in the nature of providing consultation in the field of computer information technology as it relates to enterprise management software, database management software, middleware, packaged application software, custom application management software, and data management; and installation of computer software (Class 42).

4. Opposer has used, and continues to use, the mark ENTILITY PLAYBOOK as a designator to identify itself as the source of goods and services for computer information systems management trouble shooting and best practices implementation.

5. Opposer is the owner of U.S. Trademark Registration No. 3,141,660 for the mark ENTILITY PLAYBOOK covering electronic publications, namely, reference manuals and guides in the field of information systems management trouble shooting and best practices implementation recorded on computer media (Class 9) ; and printed reference manuals and guides in the field of information systems management trouble shooting and best practices implementation (Class 16).

6. Management of a company's computer information systems and its application software is a critical component of the company's overall operations, and computer information systems are generally integral to a company's core functions such as business management, employee efficiency, use of application software and sales information. That is, business management, employee efficiency, use of application software and sales information draws heavily upon computer information systems resources and management of application software.

7. Applicant's Mark includes the confusingly similar word "ITILITY", and the application describes services consisting of "business management and business consulting services in the field of public utilities and energy industry".

8. Business management and business consulting services are related to services comprising management of a company's computer information systems and could be reasonably assumed to be provided by the same source.

9. Applicant filed its application on December 30, 2009, alleging a date of first use on January 30, 2009, long after the use date of Opposer's ENTILITY and ENTILITY PLAYBOOK marks.

10. Applicant's Mark was filed long after the registration dates of Opposer's ENTILITY and ENTILITY PLAYBOOK registrations.

11. Applicant's mark ITILITY SOLUTIONS, when used in connection with the services set forth in its application, is confusingly similar to Opposer's use of its ENTILITY and ENTILITY PLAYBOOK marks, and registration of Applicant's mark and continued use by it with its services is likely to cause confusion, mistake and deception. Customers are likely to mistakenly believe that

Applicant's services are connected with Opposer's goods and services. Applicant's use of its mark interferes with Opposer's use of its ENTILITY and ENTILITY PLAYBOOK marks, and continued use or registration of Applicant's mark will seriously damage Opposer.

12. The registration of Applicant's Mark would grant Applicant rights to which it is not entitled, and would be inconsistent with the prior and established rights of Opposer in its ENTILITY and ENTILITY PLAYBOOK trademark rights under common law and in its registered trademarks.

By reason of the foregoing, Opposer will be seriously damaged by the registration of Applicant's Mark to Applicant.

WHEREFORE, Opposer respectfully requests that the Notice of Opposition be sustained and the registration of Applicant's Mark to Applicant be refused.

Respectfully submitted,

SPENCER FANE BRITT & BROWNE LLP

By 

Glenn K. Robbins II
One North Brentwood Blvd., Suite 1000
St. Louis, Missouri 63105
Telephone: (314) 863-7733
Facsimile: (314) 862-4656

Attorneys for Opposer
Maryville Data Systems, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed, via first-class mail, postage prepaid, this 13th day of December, 2010, to the following:

Itility Solutions, LLC
1401 Northview Drive
Luverne, MN 56156

