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

Proceeding	91211667
Party	Plaintiff Integra Realty Resources, Inc.
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Submission	Motion to Amend Pleading/Amended Pleading
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Date	12/16/2013
Attachments	Amended Notice of Opposition.pdf(21095 bytes) Exhibit A.pdf(585548 bytes)

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

Integra Realty Resources, Inc.,)	
Opposer,)	
)	
v.)	Opposition No. 91211667
)	
Integra Realty LLC)	Ser. No. 85/338,099
Applicant.)	

AMENDED NOTICE OF OPPOSITION

In the matter of Application Serial No. 85/338,099, filed February 23, 2012, in the name of Integra Realty LLC (hereinafter “Applicant”), published for opposition in the Trademark *Official Gazette* of May 21, 2013, for the mark INTEGRA REALTY (hereinafter the “Opposed Application”), Integra Realty Resources, Inc. (hereinafter “Opposer”) believes that it would be damaged by registration of the mark shown in said application and hereby opposes the same.

As grounds for opposition, it is alleged as follows:

1. Opposer, Integra Realty Resources, Inc., is a corporation organized under the laws of the State of Delaware, having a principal place of business at 1133 Avenue of the Americas, 27th Floor, New York, New York 10036.
2. Applicant, Integra Realty LLC, is, on information and belief, a limited liability company organized under the laws of the State of New Jersey, having a principal place of business at 317 Rahway Ave., Elizabeth, New Jersey 07202.
3. Applicant seeks to register the mark INTEGRA REALTY, and filed an application for registration of that mark for use on or in connection with the following services: Real estate appraisal; Real estate brokerage; Real estate management services in connection therewith, in

International Class 36. The Opposed Application was published in the *Official Gazette* on May 21, 2013.

4. The Opposed Application was filed on June 4, 2011, on the basis of Section 1(a) (“use in commerce”) of the Trademark Act. In that application, Applicant initially claimed a first use date of April 22, 2003, on or in connection with the services listed above, and first use in commerce date of April 28, 2003.

5. Opposer is the owner of a pending U.S. service mark application for INTEGRA REALTY RESOURCES, Serial No. 85974896, for “real estate appraisals and related real estate services, namely, valuation of real and personal property. Additionally, Opposer is the owner and licensee of its IRR service marks (which is an acronym for INTEGRA REALTY RESOURCES) in connection with residential franchise services. A listing of those IRR service marks are listed below:

Mark	Registration/ Serial No.	Goods/Services (International Class
IRR-DATAPOINT	4,361,053	Software as a service (SAAS) services featuring software in the field of real estate appraisals and valuation of real and personal property. (IC 41)
IRR-DATAPOINT and Design	3,212,717	Real estate appraisals and related real estate services, namely, the valuation of real and personal property. (IC 36)
IRR	4,349,004	Providing real property tax consulting services; data analysis services, namely, business data analysis in the field of real and personal property and analysis of data for purposes of tax consultation in the field of real property. (IC 35) Providing real property and business valuation services, namely, analysis of data for purposes of appraising real and personal property. (IC 36)

IRR	85/610,096	<p>Providing real property state sales tax consulting services; providing personal property use tax consulting services; providing costs estimating services for construction and land development projects; financial auditing services, namely, auditing the financial accounts of others for construction and land development projects (IC 35)</p> <p>Providing machinery and equipment valuation services; providing disaster recovery services, namely, arranging and financing of loans for real and personal property in connection with disaster relief (IC 36)</p>
IRR	3,840,785	Real estate appraisals and related real estate services, namely, valuation of real and personal property. (IC 36)
IRR RESIDENTIAL	3,615,093	Real estate appraisal and valuation. (IC 36)

(These service marks in combination with the mark identified in paragraph 5 are collectively referred to as the “Integra Service Marks.”)

6. Opposer, on its own and/or through its predecessors-in-interest and/or related entities, is and has, among other endeavors, been engaged in the real estate appraisal services field since at least as early as 1999, prior to the date of first use recited in the Opposed Application, and has built a successful business in that field.

7. Opposer, on its own and/or through its predecessors-in-interest and/or related entities, has used the INTEGRA Service Marks in connection with real estate appraisal, consultation regarding real estate appraisal services and franchising of real estate appraisal services since at least as early as 1999, and has used this mark in interstate commerce in connection with its real estate appraisal services, such use commencing at least as early as 1999, and being continuous thereafter until the present. Materials showing Opposer’s use of its INTEGRA Service Marks are attached hereto as Exhibit 1, and incorporated by reference in this Notice of Opposition.

8. Opposer's use of the INTEGRA Service Marks in connection with its real estate appraisal services has been continuous and commercially significant.

9. Opposer has, since long prior to the filing date or actual date of first use of the Opposed Application, used its INTEGRA Service Marks in commerce which Congress may regulate in connection with its appraisal services, and has priority with respect to the same based upon its date of first use of that mark in interstate commerce, which date is prior to the actual date of first use of the Opposed Application's mark.

10. Opposer's INTEGRA Service Marks are inherently distinctive and has no geographical significance or other significance as applied to Opposer's services and its business, and has acquired extensive goodwill as related to real estate appraisal services, and as identifying high quality real estate appraisal services which have their origin with Opposer.

11. On May 25, 2011, which was prior to Applicant's filing date, Opposer sent a notice and demand letter to Applicant via Federal Express to Applicant, notifying it of Opposer's superior trademark rights. A copy of said demand letter is attached as Exhibit A.

Count I - Priority and Likelihood of Confusion
Trademark Act §2(d) - 15 U.S.C. §1052(d)

12. Opposer realleges the allegations each of the paragraphs above as if fully set forth herein.

13. Applicant's real estate appraisal services identified in connection with Applicant's applied-for mark are competitive with, nearly identical to, closely related to, and/or in the natural zone of expansion to Opposer's real estate appraisal services.

14. Applicant's real estate appraisal services and Opposer's real estate appraisal services are such that they are directed to the same and overlapping classes of customers and are offered through the same and overlapping channels of trade.

15. Applicant's applied-for mark is essentially identical to Opposer's INTEGRA REALTY and INTEGRA marks, and is thus confusingly similar to Opposer's mark in sight, sound and meaning.

16. Applicant's use and registration of the applied-for mark INTEGRA REALTY in connection with real estate appraisal services is likely to cause in the minds of the public confusion, mistake or deception as to the source of origin of Applicant's services that would lead the public and prospective purchasers to believe that Applicant's services are those of Opposer and/or are provided by, sponsored by, approved by, licensed by, affiliated with Opposer, or are in some other way legitimately connected to Opposer and/or its services.

17. If Applicant is granted a registration for the applied-for INTEGRA REALTY mark for the services identified in the Opposed Application, Applicant would obtain at least a *prima facie* exclusive right to use this mark. Such registration would be a source of damage and injury to the Opposer, and to the reputation and goodwill it enjoys in its INTEGRA Service Marks. Opposer will be further damaged if Applicant is granted a registration on the Opposed Application in that Opposer is using the mark INTEGRA Service Marks in the United States in connection with the services set forth in paragraph 6 and 8 above.

18. A registration to Applicant based on the INTEGRA REALTY mark of the Opposed Application would remain as a cloud on Opposer's legal right to use and register its INTEGRA Service Marks.

19. WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the mark INTEGRA REALTY, Application Serial No. 85/338,099, be denied as filed and published, and Applicant adjudged not entitled to registration of the mark INTEGRA REALTY.

COUNT II - FRAUD

20. Opposer realleges the allegations each of the paragraphs above as if fully set forth herein.

21. Applicant, in signing the Declaration in the application at issue under penalty of perjury and other remedies, stated that it believed the Applicant to be the owner of the trademark/service mark sought to be registered, to the best of Applicant's knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

22. Applicant had actual knowledge, when making its Declaration, that its statements above were false and/or misleading.

23. Applicant knew that Opposer had priority rights in the INTEGRA REALTY mark when it filed the application at issue, being provided with actual notice by at least Opposer's correspondence, and had no reasonable basis for believing that a likelihood of confusion would not result from Applicant's use of its mark.

24. Applicant's deceptive statements were made knowingly for purposes of deceiving the U.S. Patent and Trademark Office and to secure a registration of the INTEGRA REALTY mark.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and Applicant's application to register the mark INTEGRA REALTY, Application Serial No.

85/338,099, be denied as filed and published, and Applicant adjudged not entitled to registration of the mark INTEGRA REALTY.

Respectfully Submitted,

Integra Realty Resources, Inc.

By its Attorneys,

Dated: December 16, 2013

/s/Cheryl L. Burbach
Cheryl Burbach
HOVEY WILLIAMS LLP
10801 Mastin Blvd., Suite 1000
Overland Park, Kansas 66210
(913) 647-9050 - Phone
(913) 647-9057 - Fax

Attorneys for Opposer

Certificate of Service

I hereby certify that a true and correct copy of the foregoing *Amended Notice of Opposition*, which was filed electronically with the Trademark Trial and Appeal Board, was served upon the Applicant this 16th day of December, 2013, at the following address via overnight delivery:

Integra Realty LLC
317 Rahway Ave
Elizabeth, NJ 07202

/s/Cheryl Burbach



Local Expertise...Nationally

DEREK GUEMMER
General Counsel

May 25, 2011

VIA FEDERAL EXPRESS

ERA Integra Realty
317 Rahway Avenue
Elizabeth, New Jersey 07202

Re: Trademark Infringement of Integra Realty Resource's INTEGRA mark

Dear Madame or Sir:

It recently came to our attention that ERA Integra Realty ("Integra Realty") offers and/or provides real estate brokerage services using the trademark INTEGRA REALTY. A sample of such use is enclosed. Use of this trademark infringes upon the INTEGRA mark and trade name developed and used for several years by Integra Realty Resources, Inc. ("Integra"). Integra is a real estate appraisal company which has operated on a nationwide basis since 1999. In particular, Integra has used the trademark INTEGRA in connection with appraisal services, including appraisal services relating to properties located in New Jersey since 1999. Consequently, Integra's common law right to use the trade name "INTEGRA" is superior to that of Integra Realty.

Accordingly, please confirm in writing by June 10, 2011 that Integra Realty will discontinue the use of INTEGRA REALTY, and any other mark that consists or contains the term INTEGRA, for use in connection with real estate related activities going forward. Integra would like to resolve this matter amicably. However, the failure to immediately cease and desist from using these marks will result in Integra's consideration of all of its available remedies, including litigation. We look forward to resolving this matter in a professional manner. This letter is written without prejudice to any rights or remedies Integra may have with regard to this matter.

Sincerely,

INTEGRA REALTY RESOURCES, INC.

A handwritten signature in black ink, appearing to read "D. Guemmer", is written over the typed name.

Derek Guemmer, General Counsel

CC: Cheryl Burbach, Esq.
Jeffrey Rogers

IRR.