

ESTTA Tracking number: **ESTTA552564**

Filing date: **08/06/2013**

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	Avatron Software, Inc.
Granted to Date of previous extension	08/07/2013
Address	101 SW Main Street Suite 1000 Portland, OR 97204 UNITED STATES
Correspondence information	Kurt M. Rylander Rylander & Associates PC PO Box 250 Vancouver, WA 98666 UNITED STATES rylander@rylanderlaw.com, beatty@rylanderlaw.com, lauren@avatron.com Phone:360-750-9931

Applicant Information

Application No	79115854	Publication date	04/09/2013
Opposition Filing Date	08/06/2013	Opposition Period Ends	08/07/2013
International Registration No.	1123882	International Registration Date	04/30/2012
Applicant	Someones Group Intellectual Property; Holdings Pty. Ltd. 121 Victoria Street FITZROY VIC 3065 AUSTRALIA		

Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: COMPUTER SOFTWARE PROGRAMS FOR WIRELESS BROADBAND APPLICATIONS THAT PROVIDE DATA, STREAMING MEDIA, AND GEOLOCATION TO USERS OF PERSONAL COMPUTERS AND WIRELESS COMMUNICATION DEVICES SUCH AS PERSONAL DIGITAL ASSISTANTS, PERSONAL COMPUTERS, AND CELLULAR TELEPHONES
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3608621	Application Date	09/10/2008
Registration Date	04/21/2009	Foreign Priority Date	NONE
Word Mark	AIR SHARING		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2008/04/12 First Use In Commerce: 2008/04/12 Computer application software for mobile phones		

Related Proceedings	91204875
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Attachments	NOTICE OF OPPOSITION Someones 8-6-2013.pdf(162571 bytes) Exhibit A t Notice of Opposition.pdf(282362 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	/kurt m. rylander/
Name	Kurt M. Rylander
Date	08/06/2013

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

<p>AVATRON SOFTWARE, Inc.</p> <p>Opposer,</p> <p>-v-</p> <p>SOMEONES GROUP INTELLECTUAL PROPERTY HOLDINGS PTY. LTD.</p> <p>Applicant.</p>	<p>Opposition No. _____</p> <p>NOTICE OF OPPOSITION</p> <p>Application Ser. No. 79115854</p> <p>Mark: AIRSHARE</p> <p>International Class: IC 009</p> <p>Filed: April 30, 2012</p> <p>Filing Basis: 66A – Madrid Protocol</p> <p>Publication Date: April 9, 2013</p>
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Avatron Software, Inc. (“Opposer”) believes that it will be damaged by the Federal registration of the mark AIRSHARE as applied for in Madrid Protocol application Ser. No. 79115854, filed on March 6, 2012 (the "Application"). The Application was filed by Someones (sic) Group Intellectual Property Holdings Pty. Ltd. ("Applicant"). By this Notice of Opposition, Opposer respectfully requests that the Application be denied and refused, in its entirety, and that Opposer's opposition be sustained.

THE PARTIES AND PLEADING HISTORY

1. Opposer is Avatron Software, Inc., an Oregon corporation, with principal place of business at 101 SW Main Street, Suite 1000, Portland, Oregon 97204.
2. Applicant is listed in the Application as Someones Group Intellectual Property Holdings Pty. Ltd, an Australian company, 121 Victoria Street, Fitzroy VIC 3065 AUSTRALIA.
3. Opposer timely obtained an extension of time to oppose to August 7, 2013 and timely files this Notice of Opposition.
4. With this Opposition is transmitted the fee of \$300.00.

OPPOSER AND ITS MARK

5. Opposer is Avatron Software, Inc. It is one of the most prolific sellers of software applications for smartphones and mobile wireless devices. One such product developed by Opposer is the AIR SHARING® product.

6. Opposer owns a Federal registration for AIR SHARING®, the application for which was filed on September 10, 2008 ("Opposer's Priority Date"), and which issued on April 21, 2009 (Reg. No. 3,608,621) for the following goods in International Class 009: "Computer application software for mobile phones." (A true and correct copy of the aforementioned registration, including status and ownership information, from the USPTO TARR database is incorporated herein by reference and attached hereto as an **Exhibit A.**)

7. The AIR SHARING® product has been on sale since at least as early as April 12, 2008. It is one of the highest selling software applications on the Internet, including over one million (1,000,000) downloads in the first two weeks of product introduction.

8. As described in Apple iTunes® App Store point of sale advertisement:

- "Air Sharing is the easiest way to take your documents with you and view them on the go."
- "With Air Sharing, you can:
 - Mount your iPhone or iPod touch as a wireless drive on any Mac, Windows, or Linux computer.
 - Drag-drop files between your iPhone or iPod touch and your computers.
 - View documents in many common formats."

9. AIR SHARING® allows the user to mount a smartphone as a wireless drive on any computer and then drag and drop files between the user's smartphone or wireless device and the computer, or between two smartphones running the application.

10. Opposer has used continuously, in interstate commerce, its AIR SHARING® trademark on software for computers and smartphones ("Opposer's Goods") since at least as

early as April 12, 2008.

11. Due to the extensive use and promotion of the AIR SHARING® mark by Opposer, which continues to date, the AIR SHARING® mark readily identifies Opposer's Goods and distinguishes such goods from those offered by Opposer's competitors. As a result, the AIR SHARING® mark is an extremely important asset of Opposer.

APPLICANT AND THE APPLICATION

12. Applicant seeks to register the term AIRSHARE as a trademark for the following goods: "computer software programs for wireless broadband applications that provide data, streaming media, and geolocation to users of personal computers and wireless communication devices such as personal digital assistants, personal computers, and cellular telephones" in International Class 009 ("Applicant's Goods").

13. Applicant filed the Application on April 30, 2012 ("Applicant's Filing Date") as a Madrid Protocol application with a priority date of February 27, 2012.

14. On information and belief, Applicant did not use AIRSHARE as a trademark for Applicant's Goods prior to February 27, 2012. Accordingly February 27, 2012 is the earliest date for which Applicant can claim priority.

15. On information and belief, Applicant's predecessor company Barnard Baudinette Financial Services Pty. Ltd., was organized on May 28, 2008, and Applicant was organized on June 2, 2010.

FURTHER GROUNDS FOR OPPOSITION

16. Opposer's AIR SHARING® mark was used at least as early as April 12, 2008 — four years prior to the Applicant's Filing Date. Thus, Opposer clearly has priority.

17. Opposer's AIR SHARING® mark and Applicant's proposed AIRSHARE mark are confusingly similar in sight, sound and meaning.

18. AIR SHARING® and AIRSHARE are visually similar. Both contain “AIR” and “SHAR” in the same proximal relationship.

19. AIR SHARING® and AIRSHARE are phonetically similar. Both “AIR” and “SHAR” are pronounced the same way, and in the same order, both rhyming in the same intended manner.

20. AIR SHARING® and AIRSHARE are suggestive of similar meanings to consumers. The first word in each suggests wireless transmission. The second word in each suggests communication between different devices. In combination, both marks suggest the same thing, wireless transmission communication between different devices.

21. Opposer is not aware of any product or service offered by Applicant that uses the trademark AIRSHARE. However, Applicant has recently received certification on an Innovation Patent in Australia, the claims of which include “A method for a user of a communications device sharing data items with one or more of a plurality of data recipients, comprising the steps of: selecting one or more data items to share — displaying symbols in a two-dimensional geometrical space on a display, at least some of which represent individuals or groups of the data recipients; selecting one or more of the symbols as destinations for the data item(s); and sharing the data item(s) with the destination(s).”

22. The claims embodied in Applicant’s certified patent are functionally identical to some of the product features sold in association with Opposer’s AIR SHARING® product.

23. Applicant's Goods are likely to be purchased by some of the same consumers who purchase Opposer's Goods offered under the AIR SHARING® mark.

24. Applicant’s Goods are likely to be marketed and advertised in the same or similar channels as those used in conjunction with Opposer’s goods bearing the AIR SHARING ® mark.

25. Consumers are likely to believe (incorrectly) that Opposer is the source of Applicant's Goods offered under the AIRSHARE mark and/or that Opposer sponsors, endorses, approves of or is affiliated with Applicant and/or Applicant's Goods offered under the AIRSHARE mark.

26. Applicant's proposed AIRSHARE mark so resembles Opposer's AIR SHARING® mark as to be likely, when applied to Applicant's Goods, to cause confusion, to cause mistake, and to deceive the public with consequent injury to Opposer, the trade, and the public.

27. Opposer will be damaged if the Application is allowed to proceed to registration as actual and potential consumers are likely to be confused, mistaken, or deceived into believing that Applicant or Applicant's Goods are connected or affiliated with, sponsored or approved by Opposer. Any negative connotation associated with Applicant's Goods marketed and sold under AIRSHARE will reflect poorly upon, and seriously injure and impair the valuable goodwill Opposer has generated through years of continuous and extensive use and promotion of the goods offered under the AIR SHARING® mark. To permit registration of AIRSHARE by Applicant also would damage Opposer because such a registration would give Applicant a statutory, exclusive, nationwide right to use AIRSHARE on goods related to those on which Opposer's AIR SHARING® mark is used; thereby violating Opposer's rights and unduly narrowing the scope of protection of the AIR SHARING® mark currently afforded to Opposer by statute. Such registration of AIRSHARE would contravene 15 U.S.C. § 1052(d).

28. Registration of Applicant's proposed AIRSHARE mark also should not be permitted as it would suggest a false connection or affiliation between Opposer and Applicant, in contravention of 15 U.S.C. § 1052(a).

WHEREFORE Opposer respectfully prays that its opposition be sustained and that the Application be denied and refused, in its entirety. This Notice of Opposition is filed according to

the rules governing electronic submissions to the Trademark Trial and Appeal Board, including payment of the requisite filing fee.

DATED: August 6, 2013

Respectfully submitted,

RYLANDER & ASSOCIATES PC

/kurt m. rylander/

KURT M. RYLANDER, Reg. No. 43,897

P.O. Box 250

Vancouver, WA 98666

T: (360) 750-9931

E: rylander@rylanderlaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE TO APPLICANT

I HEREBY CERTIFY that on the date signed below I inserted an envelope containing the document to which this certificate is attached into the **U.S. Mails, first class, postage pre-paid**, addressed to the attorney of record for the Applicant:

Dianne M. Smith-Misemer
Hovey Williams LLP
10801 Mastin Boulevard
Suite 1000
Overland Park, KANSAS 66210

and by **e-mail** to: tmcketing.misemer@hoveywilliams.com

and by **facsimile** to: (913) 647-9057

DATED August 6, 2013

/kurt m. rylander/
KURT M. RYLANDER

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36 and 38

United States Patent and Trademark Office

Reg. No. 3,608,621

Registered Apr. 21, 2009

**TRADEMARK
PRINCIPAL REGISTER**

AIR SHARING

AVATRON SOFTWARE, INC. (WASHINGTON
CORPORATION)
12503 SE MILL PLAIN BLVD, STE 112
VANCOUVER, WA 98684

FOR: COMPUTER APPLICATION SOFTWARE
FOR MOBILE PHONES, IN CLASS 9 (U.S. CLS. 21,
23, 26, 36 AND 38).

FIRST USE 4-12-2008; IN COMMERCE 4-12-2008.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SHARING", APART FROM THE
MARK AS SHOWN.

SER. NO. 77-567,003, FILED 9-10-2008.

DAVID COLLIER, EXAMINING ATTORNEY

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Serial Number: 77567003 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3608621

Mark

AIR SHARING

(words only): [AIR SHARING](#)

Standard Character claim: [Yes](#)

Current Status: [Registered](#). The registration date is used to determine when post-registration maintenance documents are due.

Date of Status: [2009-04-21](#)

Filing Date: [2008-09-10](#)

Filed as TEAS Plus Application: [Yes](#)

Currently TEAS Plus Application: [Yes](#)

Transformed into a National Application: [No](#)

Registration Date: [2009-04-21](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 104](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [650 -Publication And Issue Section](#)

Date In Location: [2009-04-21](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [AVATRON SOFTWARE, INC.](#)

Address:

[AVATRON SOFTWARE, INC.](#)
[111 SW FIFTH AVE. STE. 4100](#)
[PORTLAND, OR 97204](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Oregon](#)

GOODS AND/OR SERVICES

International Class: [009](#)

Class Status: [Active](#)

[Computer application software for mobile phones](#)

Basis: [1\(a\)](#)

First Use Date: [2008-04-12](#)

First Use in Commerce Date: [2008-04-12](#)

ADDITIONAL INFORMATION

Disclaimer: ["SHARING"](#)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

[2010-12-09 - Automatic Update Of Assignment Of Ownership](#)

[2010-12-07 - Attorney Revoked And/Or Appointed](#)

2010-12-07 - TEAS Revoke/Appoint Attorney Received

2010-10-28 - Attorney Revoked And/Or Appointed

2010-10-28 - TEAS Revoke/Appoint Attorney Received

2009-04-21 - Registered - Principal Register

2009-02-03 - Published for opposition

2009-01-14 - Notice of publication

2008-12-30 - Law Office Publication Review Completed

2008-12-30 - Assigned To LIE

2008-12-16 - Approved for Pub - Principal Register (Initial exam)

2008-12-16 - Examiner's Amendment Entered

2008-12-16 - Notification Of Examiners Amendment E-Mailed

2008-12-16 - Examiners amendment e-mailed

2008-12-16 - Examiners Amendment - Written

2008-12-12 - Assigned To Examiner

2008-09-15 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Kurt M. Rylander

Correspondent

Kurt M. Rylander

RYLANDER & ASSOCIATES PC

P.O. Box 250

Vancouver WA 98666

Phone Number: 360-750-9931

Fax Number: 360-397-0473

[Assignments on the Web](#) > [Trademark Query](#)**Trademark Assignment Abstract of Title****Total Assignments: 1****Serial #:** [77567003](#)**Filing Dt:** 09/10/2008**Reg #:** [3608621](#)**Reg. Dt:** 04/21/2009**Registrant:** Avatron Software, Inc.**Mark:** AIR SHARING**Assignment: 1****Reel/Frame:** [4411/0976](#)**Received:** 11/09/2010**Recorded:** 11/09/2010**Pages:** 8**Conveyance:** MERGER EFFECTIVE 09/17/2010**Assignor:** [AVATRON SOFTWARE, INC.](#)**Exec Dt:** 09/17/2010**Entity Type:** CORPORATION**Citizenship:** WASHINGTON**Entity Type:** CORPORATION**Citizenship:** OREGON**Assignee:** [AVATRON SOFTWARE, INC.](#)111 SW FIFTH AVE.
STE. 4100
PORTLAND, OREGON 97204**Correspondent:** JERRY CARLETON
888 SW 5TH AVE.
STE. 300
PORTLAND, OR 97204

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