

ESTTA Tracking number: **ESTTA605658**

Filing date: **05/21/2014**

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	Inficon GmbH
Granted to Date of previous extension	05/21/2014
Address	Hintergasse 15B Bad Ragaz, CH-7310 SWITZERLAND

Attorney information	JASON S NARDIELLO HISCOCK & BARCLAY LLP 1270 AVENUE OF THE AMERICAS, SUITE 600 New York, NY 10020 UNITED STATES ip@hblaw.com, jnardiello@hblaw.com, ecominolli@hblaw.com
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Applicant Information

Application No	86049708	Publication date	01/21/2014
Opposition Filing Date	05/21/2014	Opposition Period Ends	05/21/2014
Applicant	Nanjing Fire Protection Technology Co.,Ltd. 599 Zhushan Rd., Jiangning District Nanjing, 211100 CHINA		

Goods/Services Affected by Opposition


<p>Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Access control and alarm monitoring systems; Acoustic sound alarms; Alarm central units; Alarm installations and alarms; Alarm monitoring systems; Alarm that utilizes pressure sensitive pads to monitor patients or resident movement; Alarms for the detection of inflammable gases; Anti-intrusion alarms; Building security systems comprising software and hardware for providing picture, video, alarm status, building plans, and other information to a remote station; Carbon dioxide discharge valves for use in fire suppression systems; Carbon dioxide refrigeration apparatus for use in fire suppression systems; Electrical controls for irrigation sprinkler systems; Electronic alarm for providing notice of bed-wetting; Electronic door alarms; Electronic exit alarms; Environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions; Fire alarm and emergency evacuation devices, namely, fire alarm control panels, smoke detectors, heat detectors, alarm pull stations, audible and visible notification appliances, strobes, sirens, bells, horns, and speakers; Fire alarms; Fire alarms in the shape of Christmas tree ornaments; Fire and smoke detectors; Fire boats; Fire engines; Fire extinguishers; Fire extinguishing apparatus; Fire extinguishing apparatus for automobiles; Fire fighting equipment, namely, fire fighting monitors that spray foam or liquids on fires; Fire hose nozzles; Fire pumps; Fire sprinklers; Fire-extinguishers; Fire-extinguishing systems; Fire-fighting equipment, namely, water cannons; Gas alarms; Leak detecting device for water supplied</p>
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home appliances consisting of water sensor, control unit with audible alarm and water valves; Manual control panels for use in carbon dioxide fire suppression systems; Release valves and switches for use in carbon dioxide fire suppression systems; Security alarm controllers; Security and fire alarms; Smoke alarm tester in the nature of a cool burning smoke generator; Smoke alarms; Sound alarms; Sprinkler heads for fire sprinklers; Sprinkler systems for fire protection; Sprinkler valve wiring hubs, including both computerized and non-computerized units; Telecommunications equipment, namely, fiber-optic transceivers, fiber optic repeaters, converters and optimizers, wave division multiplexers, free-space optics transmission systems, switches including Ethernet switches and routers, fiber-to-the-home and ethernet-over-VDSL access aggregators, terminators and repeaters, and remote presence management products, namely, switches, and console, alarm, sensor and power management devices; Thermally activated manually resettable fire safety valves; Wireless digital electronic apparatus to secure and protect data and images on all forms of wireless equipment including mobile telecommunications equipment using an automatic synchronization process and alarm notification of the loss or theft of the wireless equipment including mobile telecommunications equipment

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	79139120	Application Date	10/07/2013
Registration Date	NONE	Foreign Priority Date	04/30/2013
Word Mark	MAXTEK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 0 First Use In Commerce: 0 Scientific and measuring apparatus and instruments, particularly for measuring thin layers during the application of thin-layer coatings and quartz crystal microbalances; accessories for the above-mentioned goods		

Attachments	79139120#TMSN.jpeg(bytes) 2014.05.21 NAXTEK - Notice of Opposition.pdf(145343 bytes) Exhibit 1 (Maxtek).pdf(187517 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	/Jason S. Nardiello/
Name	JASON S NARDIELLO
Date	05/21/2014

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

In re Application Serial No. 86/049,708

Trademark: NaXtek (stylized)

Atty. Ref.: 3068830

INFICON GmbH,

Opposer,

v.

**Nanjing Fire Protection Technology Co.,
Ltd.**

Applicant.

Opposition No. _____

NOTICE OF OPPOSITION

Inficon GmbH (hereinafter, “Inficon”), a foreign Corporation duly organized under the laws of the Country of Switzerland, having an address at Hintergasse 15B, CH-7310 Bad Ragaz, Switzerland, believes that it will be damaged by the registration of Application Ser. No. 86/049,708 for the mark “NAXTEK” (stylized).

Pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, Inficon hereby opposes said application for registration:

1. Inficon is the owner of all relevant trademark rights associated with the “MAXTEK” brand of scientific and measuring apparatus and instruments, including sensors that are used in the manufacturing industry.

2. Inficon files this opposition against U.S. trademark Application Serial No. 86/049,708 to register the mark “NAXTEK” in connection with “access control and alarm monitoring systems; Acoustic sound alarms; Alarm central units; Alarm installations and alarms; Alarm monitoring systems; Alarm that utilizes pressure sensitive pads to monitor patients or resident movement; Alarms for the detection of inflammable gases; Anti-intrusion alarms; Building security systems

comprising software and hardware for providing picture, video, alarm status, building plans, and other information to a remote station; Carbon dioxide discharge valves for use in fire suppression systems; Carbon dioxide refrigeration apparatus for use in fire suppression systems; Electrical controls for irrigation sprinkler systems; Electronic alarm for providing notice of bed-wetting; Electronic door alarms; Electronic exit alarms; Environmental monitoring system comprised of meters and sensors that measure pressure, humidity, temperature and includes alarm and reporting functions; Fire alarm and emergency evacuation devices, namely, fire alarm control panels, smoke detectors, heat detectors, alarm pull stations, audible and visible notification appliances, strobes, sirens, bells, horns, and speakers; Fire alarms; Fire alarms in the shape of Christmas tree ornaments; Fire and smoke detectors; Fire boats; Fire engines; Fire extinguishers; Fire extinguishing apparatus; Fire extinguishing apparatus for automobiles; Fire fighting equipment, namely, fire fighting monitors that spray foam or liquids on fires; Fire hose nozzles; Fire pumps; Fire sprinklers; Fire-extinguishers; Fire-extinguishing systems; Fire-fighting equipment, namely, water cannons; Gas alarms; Leak detecting device for water supplied home appliances consisting of water sensor, control unit with audible alarm and water valves; Manual control panels for use in carbon dioxide fire suppression systems; Release valves and switches for use in carbon dioxide fire suppression systems; Security alarm controllers; Security and fire alarms; Smoke alarm tester in the nature of a cool burning smoke generator; Smoke alarms; Sound alarms; Sprinkler heads for fire sprinklers; Sprinkler systems for fire protection; Sprinkler valve wiring hubs, including both computerized and non-computerized units; Telecommunications equipment, namely, fiber-optic transceivers, fiber optic repeaters, converters and optimizers, wave division multiplexers, free-space optics transmission systems, switches including Ethernet switches and routers, fiber-to-the-home and ethernet-over-VDSL access

aggregators, terminators and repeaters, and remote presence management products, namely, switches, and console, alarm, sensor and power management devices; Thermally activated manually resettable fire safety valves; Wireless digital electronic apparatus to secure and protect data and images on all forms of wireless equipment including mobile telecommunications equipment using an automatic synchronization process and alarm notification of the loss or theft of the wireless equipment including mobile telecommunications equipment” filed on behalf of Nanjing Fire Protection Technology Co., Ltd. because Inficon believes that it will be damaged by the registration of the aforesaid mark within the meaning of Section 13 of the Lanham Act, 15 U.S.C. § 1063.

3. Inficon owns International Registration No. 1183340 for the mark “MAXTEK” which forms the basis for the application for extension of protection for the mark in the U.S., Application Serial No. 79/139,120 for use in connection with “scientific and measuring apparatus and instruments, particularly for measuring thin layers during the application of thin-layer coatings and quartz crystal microbalances; accessories for the above-mentioned goods.” The application is currently pending. Attached as “Exhibit 1” is a printout of the USPTO Trademark Electronic Search System (TESS) for the above referenced application, printed on May 21, 2014, demonstrating that the application is currently pending. Said application for “MAXTEK” claims a priority date of April 30, 2013.

4. Through Inficon’s and through acquired entity Maxtek, Inc.’s extensive and continuous use of the “MAXTEK” mark to advertise, market, promote and sell its products, the public has come to recognize the “MAXTEK” mark in connection with the goods referenced in Inficon’s aforementioned application for registration.

5. Inficon has developed, at great effort and expense, extremely valuable goodwill with

respect to its “MAXTEK” mark.

6. Inficon’s “MAXTEK” mark is inherently distinctive and highly distinctive to relevant purchasers.

7. The opposed application for the mark “NAXTEK” was filed on August 28, 2013.

8. Applicant has not yet alleged use of the mark “NAXTEK” mark in commerce.

9. Applicant’s applied-for mark “NAXTEK” merely replaces the first letter of the Inficon “MAXTEK” mark with an “N”.

10. Inficon’s “MAXTEK” products and applicant’s “NAXTEK” products may be distributed and/or marketed in overlapping channels of trade.

11. The respective parties’ “sensing” products are likely to be purchased by the same class of consumers.

12. The mark “NAXTEK” that is the subject of Application Serial No. 86/049,708 so resembles Inficon’s “MAXTEK” mark, as to be likely, when applied to the goods of the applicant, to cause confusion, mistake, or deception within the meaning of § 2(d) of the Trademark Act of 1946, as amended, (15 U.S.C. § 1052(d)), in that members of the purchasing public, the trade, and others, are likely to believe that Applicant’s products bearing the “NAXTEK” mark are provided by, sponsored by, approved by, licensed by, affiliated with or in some way legitimately connected to Inficon and/or Inficon’s products and/or services. The registration of Applicant’s mark will damage Inficon’s business and goodwill, and such registration will otherwise give Applicant color of right to use, exclusive ownership and other statutory benefits in the “NAXTEK” mark in violation and derogation of the prior and superior rights of Inficon.

WHEREFORE, Inficon respectfully requests that its Opposition be sustained and that the application to register the mark "NAXTEK" in Application Serial No. 86/049,708 be denied.

The filing fee for this opposition is being filed online.

Respectfully submitted,

INFICON GMBH

By _____


Jason S. Nardiello
Elizabeth A. Cominoli

Dated: New York, New York
May 21, 2014

HISCOCK & BARCLAY, LLP

1270 Avenue of the Americas, Suite 600
New York, New York 10020

Tel. No.: (212) 784-5821

Fax No.: (212) 784-5759

E-Mail: ip@hblaw.com

jnardiello@hblaw.com

ecominoli@hblaw.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Notice of Opposition” was served on counsel for Applicant, Yale Young, Orientech Company, 745 Cristini Boulevard, Lachute (Quebec), Canada, J8H 4N6, by depositing a true copy of the same with the United States Postal Service as first-class mail, postage prepaid, and by sending an e-mailed copy thereof to yale.young@orientech, on this the 21st day of May, 2014.

Dated: May 21, 2014



Jason S. Nardiello



Trademarks > Trademark Electronic Search System (TESS)

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Maxtek

Word Mark	MAXTEK
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Scientific and measuring apparatus and instruments, particularly for measuring thin layers during the application of thin-layer coatings and quartz crystal microbalances; accessories for the above-mentioned goods
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	79139120
Filing Date	October 7, 2013
Current Basis	66A
Original Filing Basis	66A
International Registration Number	1183340
Owner	(APPLICANT) Inficon GmbH Gesellschaft mit beschränkter Haftung SWITZERLAND Hintergasse 15B CH-7310 Bad Ragaz SWITZERLAND
Priority Date	April 30, 2013
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	LIVE

Indicator

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