

ESTTA Tracking number: **ESTTA722139**

Filing date: **01/22/2016**

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	Interlogic Outsourcing, Inc.
Granted to Date of previous extension	01/23/2016
Address	25325 LEER DRIVE Elkhart, IN 46514 UNITED STATES
Correspondence information	Garrick T. Lankford Botkin & Hall, LLP 105 E JEFFERSON BLVD, SUITE 400 South Bend, IN 46601 UNITED STATES glankford@bhlawyers.net, llf@bhlawyers.net

Applicant Information

Application No	86547167	Publication date	11/24/2015
Opposition Filing Date	01/22/2016	Opposition Period Ends	01/23/2016
Applicant	Sarvint Technologies, Inc. 888 Third St. NW Atlanta, GA 30318 UNITED STATES		

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: Sensors and devices to be worn by a user, to acquire, process, store, and transmit biometric data of the user for non-medical purposes, namely, electrodes, pedometers, accelerometers, stretch sensors, pressure sensors, optic sensors, motion sensors, thermistors, thermometers notfor medical purposes, bioimpedance monitors, muscle activity monitors, and skinimpedance monitors; computer hardware and software for use with biometric monitoring devices for receiving, processing, storing, transmitting, and displaying biometric data on entertainment and communications devices, namely, music playersand smart phones; the aforementioned sensors and devices featuring the ability to receive signals and information to effect an action on the user, with the aforementioned electronic sensors being mounted or otherwise incorporated on the user's garment, allowing for the acquisition of environmental data that can help the user take appropriate action</p>
<p>Class 010. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Heart rate monitors; respiratory monitors</p>
<p>Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Athletic pants; Athletic shirts; Athletic shorts; Athletic tights; Athletic tops and bottoms for athletes; Graphic T-shirts; Hooded sweat shirts;</p>

Hooded sweatshirts; Knit shirts; Shirts and short-sleeved shirts; Sport shirts; Sports bras; Sports pants; Sweat pants; Tank tops; Undergarments; Leotards; Activewear shorts; Activewear tops; Activewear shirts; Activewear bottoms; Leisurewear shorts; Leisurewear shirts; Leisurewear suits; Leisurewear jackets; Leisurewear tops; Leisurewear bottoms; Socks


Grounds for Opposition

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

U.S. Registration No.	3285770	Application Date	02/01/2006
Registration Date	08/28/2007	Foreign Priority Date	NONE
Word Mark	IOI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/01/01 First Use In Commerce: 2003/01/01 Outsourcing in the fields of payroll processing, human resource information management, benefit and retirement plan administration, automatic tax depositing and filing, employee electronic time and attendance services, employee assessment and profiling and corporate management training		

U.S. Registration No.	3088362	Application Date	11/13/2003
Registration Date	05/02/2006	Foreign Priority Date	NONE
Word Mark	IOI PAY		

Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2003/01/01 First Use In Commerce: 2003/01/01 Federal, state, and local tax calculating, filing and depositing services for employers		

U.S. Registration No.	3246719	Application Date	01/27/2006
Registration Date	05/29/2007	Foreign Priority Date	NONE

Word Mark	IOI PAY		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 2003/01/01 First Use In Commerce: 2003/01/01 Providing temporary use of non-downloadable computer software that enables employers to submit and manage their payroll and offers an electronic report archive that stores payroll information that can be reviewed online or printed as needed and which further allows for human resource information management, benefit administration, employee/employer self-service, payroll processing, and the calculating, filing, depositing, and reconciling of an employer's payroll taxes for all federal, state, and local authorities		

Attachments	78804029#TMSN.png(bytes) 78327478#TMSN.png(bytes) 78800710#TMSN.png(bytes) Opposition.pdf(354210 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 USPS Express Mail Post Office to Addressee on this date.

Signature	/Garrick T. Lankford/
Name	Garrick T. Lankford
Date	01/22/2016

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

In re Application Serial No: 86547167
For the Mark: IOI
Filed: 02/26/2015
Published in the Official Gazette on: 11/24/2015

INTERLOGIC OUTSOURCING, INC.,)	
)	
Opposer,)	
)	Opposition No.
v.)	
)	
SARVINT TECHNOLOGIES, INC.)	
)	
)	
Applicant)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

NOTICE OF OPPOSITION

1. Opposer, Interlogic Outsourcing, Inc., an Indiana company with its principal place of business at 25325 Leer Drive, Elkhart, IN 46514, believes that it will be damaged by registration of the mark “IOI” shown in the above-identified Application Serial No. 86547167 and hereby opposes same on the basis of likelihood of confusion, Section 2(d) of the Lanham Act and dilution, Section 43(a) of the Lanham Act.

2. The Opposer, Interlogic Outsourcing, Inc. (IOI) is a national provider of payroll and employer outsourcing services. It has been in business since 2001 and has built its reputation for business and software services with diligent attention to the quality of its services

and the creation of cutting-edge solutions to fit the needs of its clients. IOI and their affiliates have become industry leaders in payroll processing, tax filing, and human resource administration solutions with branches located in Elkhart and Fort Wayne, IN, Grand Rapids, MI, Scottsdale and Tucson, AZ, Atlanta, GA, Bensalem, PA, Ontario, CA, Knoxville, TN and Tampa, FL. IOI has invested considerable sums to build itself into a national company.

3. Opposer's services are used nationwide and online. Opposer maintains a website (<http://www.ioipay.com/>) that highlights the services they provide.

4. Interlogic Outsourcing, Inc. has continuously used its registered mark, "IOI" (Registration Number 3285770) since at least 2003 for "Outsourcing in the fields of payroll processing, human resource information management, benefit and retirement plan administration, automatic tax depositing and filing, employee electronic time and attendance services, employee assessment and profiling, and corporate management training."



5. Further, IOI has registered other marks that draw from the success of the IOI name. For example, "IOI PAY" (Registration Numbers 3088362 and 3246719) derives from the well-known IOI mark and has been in continuous use since 2003. IOI PAY is currently registered in classes 35 and 42. The registration for class 42 covers "Providing temporary use of non-downloadable computer software that enables employers to submit and manage their payroll and offers an electronic report archive that stores payroll information that can be reviewed online or printed as needed and which further allows for human resource information management, benefit administration, employee/employer self-service, payroll processing, and the calculating,

filing, depositing, and reconciling of an employer's payroll taxes for all federal, state, and local authorities”.



6. As is evidenced by the publication of the mark IOI in connection with Applicant’s Application Serial No. 86547167 in the Official Gazette on November 24, 2015, Applicant seeks to register the mark IOI as a trademark for use in connection with athletic clothing, sensors, and other fitness related items in International Classes 9, 10, and 25. This filing is under Section 1(b) for intent to use.

7. Applicant’s website (<http://www.sarvint.com/>) makes no mention of their applied mark IOI or how it is currently used in commerce, but the registration in class 9 is intending to cover “Sensors and...computer hardware and software for use with biometric monitoring devices for receiving, processing, storing, transmitting, and displaying biometric data on entertainment and communications devices...” Class 10 intends to cover “Heart rate monitors; respiratory monitors.” Finally, Class 25 intends to cover athletic and related clothing.

8. Opposer Interlogic Outsourcing, Inc. asserts that the Opposer’s application is exactly the same in sight, sound and meaning to be likely to cause confusion. Further, the description of goods in International Class 9 includes “smart phones” and “acquisition of environmental data” that frequently interface with online services and computers. In addition, Opposer asserts that the distribution channels of Applicant and Opposer are likely to be similar.

9. Additionally, Opposer asserts that Applicant's use of "IOI" will cause confusion with their registered marks "IOI" and "IOI PAY."

10. The Applicant's intended use of the trademark "IOI" which can involve the same services as Opposer is either an inadvertent or willful attempt to trade on the goodwill associated with Opposer's marks, "IOI" and "IOI PAY."

11. Based upon navigating their website and other internet searching, Sarvint Technologies, Inc. has not yet begun to use the subject mark in commerce. Its entry into the market with goods similar to services offered by Opposer will inevitably cause confusion and could blur the image of Opposer's services in the minds of those who comprise the relevant market.

12. Applicant's Application Serial No. 86547167 was filed on February 16, 2015. This application comes long after Opposer's first use in commerce of its distinctive and famous IOI and IOI PAY Marks, which began as early as 2003. Moreover, this application date is long after the date of Opposer's applications: 78327478 for IOI PAY in class 35 filed on November 13, 2003, 78804029 for IOI in class 35 filed on February 1, 2006, and 78800710 for IOI PAY in class 42 filed on January 27, 2006. Therefore, Opposer has priority of use over Applicant.

13. Opposer has not consented or authorized Applicant's use or registration of the mark IOI in connection with the goods identified in Application Serial No. 86547167 or any other goods or services.

14. Registration of Applicant's mark IOI would be damaging to Opposer. Further, Applicant's use of the mark IOI is likely to interfere with Opposer's use of its IOI and IOI PAY Marks and Opposer's ability to avail itself of present and future commercial benefits resulting from its sustained financial investment in the development thereof.

15. Applicant's registration and use of the mark IOI would also result in dilution of Opposer's famous IOI and IOI PAY marks by blurring and tarnishment, in violation of the Federal Trademark Dilution Act 15 U.S.C. §1125(c).

16. Therefore, Opposer requests that this Notice of Opposition be sustained, that Application Serial No. 86385139 be rejected, and that Applicant be denied registration.

This Notice of Opposition is being submitted electronically with payment for the filing fee in the amount of \$900.00.

Dated: January 22, 2016.

Respectfully submitted,

S/Garrick T. Lankford

Garrick T. Lankford

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Attorney for Opposer, Interlogic Outsourcing Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing document was served on January 22, 2016 via Express Mail Post Office to Addressee service of the United States Postal Service, postage prepaid, on counsel for Applicant:

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S/ Garrick T. Lankford
Garrick T. Lankford