

ESTTA Tracking number: **ESTTA921878**

Filing date: **09/13/2018**

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	Information Builders, Inc.
Granted to Date of previous extension	09/15/2018
Address	2 Penn Plaza New York, NY 10121 UNITED STATES

Attorney information	Howard F. Mandelbaum Levine Mandelbaum PLLC 222 Bloomingdale Road, Suite 203 White Plains, NY 10605 UNITED STATES mail@levman.com (914) 421-0500
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**Applicant Information**

Application No	87801311	Publication date	07/17/2018
Opposition Filing Date	09/13/2018	Opposition Period Ends	09/15/2018
Applicant	BRAINCO INC. 120 Beacon St. Somerville, MA 02143 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 009. First Use: 0 First Use In Commerce: 0 Opposed goods and services in the class: Brain to computer interface systems comprised of amplifiers, computer software for use in the detection and analysis of brain waves
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**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.	1652265	Application Date	08/23/1990
Registration Date	07/30/1991	Foreign Priority Date	NONE
Word Mark	FOCUS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1975/03/00 First Use In Commerce: 1975/03/00 computer programs for data base management

U.S. Registration No.	2821942	Application Date	06/30/2000
Registration Date	03/16/2004	Foreign Priority Date	NONE

Word Mark	FOCUS
Design Mark	FOCUS

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1975/03/00 First Use In Commerce: 1975/03/00 COMPUTER SOFTWARE FOR DATABASE MANAGEMENT; COMPUTER SOFTWARE FOR USE IN DECISION SUPPORT SYSTEMS; COMPUTER SOFTWARE FOR USE IN ENTERPRISE REPORTING AND ANALYSIS SYSTEMS AND FOR BUILDING APPLICATIONS FOR THE MANAGEMENT AND TRACKING OF DATA FOR ENTERPRISE REPORTING SYSTEMS; COMPUTER DATABASE PROGRAMS FOR USE IN CONNECTION WITH DECISION SUPPORT, ANALYSIS, AND REPORTING PROGRAMS; COMPUTER SOFTWARE DEVELOPMENT TOOLS FOR USE IN DEVELOPING DECISION SUPPORT, ANALYSIS, AND REPORTING SYSTEMS AND APPLICATIONS; COMPUTER SOFTWARE, NAMELY, CLIENT/SERVER REPORTING, ANALYSIS AND DECISION SUPPORT TOOLS; COMPUTERIZED DATABASE, REPORTING, AND ANALYSIS SOFTWARE FOR USE ON CORPORATE INTRANETWEB SITES; ENTERPRISE SERVER SOFTWARE FOR USE IN WEB BASED DATA PUBLISHING, REPORTING, AND ANALYSIS SOLUTIONS; COMPUTERSOFTWARE FOR ACCESSING DATABASES BY MEANS OF GLOBAL COMPUTER NETWORKS TO GENERATE REPORTS; SOFTWARE DEVELOPMENT TOOLS FOR MAKING REPORTING AND ANALYSIS AVAILABLE THROUGH GLOBAL COMPUTER NETWORK WORLDWIDE WEBSITES AND FOR EXTENDING THE FUNCTIONALITY OF ENTERPRISE REPORTING AND ANALYSIS SYSTEMS ON TO GLOBAL COMPUTER NETWORKS; AND COMPUTER SOFTWARE FOR ACCESSING AND UPDATING DATABASES THROUGH GLOBALCOMPUTER NETWORKS

U.S. Registration No.	2248562	Application Date	03/03/1997
Registration Date	06/01/1999	Foreign Priority Date	NONE
Word Mark	WEBFOCUS		

Design Mark	<b>WEBFOCUS</b>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 computer programs for data base management

U.S. Registration No.	2685249	Application Date	06/30/2000
Registration Date	02/11/2003	Foreign Priority Date	NONE
Word Mark	WEBFOCUS		
Design Mark	WEBFOCUS		
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1996/04/00 First Use In Commerce: 1996/04/00 COMPUTER SOFTWARE FOR DATABASE MANAGEMENT; COMPUTER SOFTWARE FOR ACCESSING DATABASES BY MEANS OF GLOBAL COMPUTER NETWORKS TO GENERATE REPORTS; SOFTWARE DEVELOPMENT TOOLS FOR MAKING REPORTING AND ANALYSIS AVAILABLE THROUGH GLOBAL COMPUTER NETWORK WORLDWIDE WEBSITES AND FOR EXTENDING THE FUNCTIONALITY OF ENTERPRISE REPORTING AND ANALYSIS SYSTEMS ON TO GLOBAL COMPUTER NETWORKS; AND COMPUTER SOFTWARE FOR ACCESSING AND UPDATING DATABASES THROUGH GLOBAL COMPUTER NETWORKS		

Attachments	76083549#TMSN.png( bytes ) 75250817#TMSN.png( bytes ) 76081024#TMSN.png( bytes ) IBI C011US_TM_Notice_of_Opposition.pdf(200842 bytes )
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Signature	/Howard F. Mandelbaum/
Name	Howard F. Mandelbaum
Date	09/13/2018

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

In the matter of an application to register FOCUS, Serial No. 87/801,311 filed February 16, 2018, published for opposition on July 17, 2018, on Page 5467 of the Official Gazette:

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Information Builders, Inc.	:
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Plaintiff,	:
	:
v.	: Opp. No.
	:
Brainco Inc.	:
	:
Defendant.	:
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**NOTICE OF OPPOSITION**

Information Builders, Inc., a corporation of the State of New York, having a principal place of business at 2 Penn Plaza, New York, New York 10121-2898, believes that it will be damaged by registration of the mark identified above, and hereby opposes such registration.

The grounds for the opposition are as follows:

1. Plaintiff is a business intelligence company that produces, markets and/or licenses computer software for database management, for use in decision support systems, and for information control, reporting, and networking, including designing, building, and maintaining databases, recording, processing, analyzing and displaying data and information in a

wide variety of industries and other fields, and provides to its customers support services including education in the use of software, and technical support and consultation in connection with implementation and installation of the software.

2. Since 1975, Plaintiff has been marketing its software under the trademark FOCUS to computer users in a wide variety of industries and providing consulting services in connection with its FOCUS software for use in the management of business, and Plaintiff has registered its trademark in the Patent and Trademark Office under Nos. 1,652,265 and 2,821,942.

3. In the early 1980's, Plaintiff began marketing its software under various additional trademarks which include the word FOCUS. Plaintiff is also the owner of the following Patent and Trademark Office registrations:

<u>Registration No.</u>	<u>Trademark</u>
2,248,562	WEBFOCUS
2,685,249	WEBFOCUS

4. Plaintiff sells computerized instruction and training courses, accompanied by related printed materials, for teaching the use of FOCUS software.

5. Plaintiff renders consulting services in connection with its FOCUS software for use in the management of business.

6. Plaintiff has published a magazine entitled FOCUS SYSTEMS JOURNAL, and newsletters entitled FOCUS NEWS and FOCUS

FLASH, distributed to computer users, as well as an online magazine entitled "The FOCUS Quarterly", and currently publishes WEBFOCUS Journal.

7. Plaintiff established "The Focus Users Group" (FUSE) for its customers, and now holds annual conferences at which representatives of those who use FOCUS software attend educational workshops, see product demonstrations, and otherwise exchange information about FOCUS software.

8. Defendant seeks to register FOCUS, inter alia, for "Brain to computer interface systems comprised of amplifiers, computer software for use in the detection and analysis of brain waves. . ." in Class 9.

9. Upon information and belief, Defendant's goods are so closely related to Plaintiff's and Plaintiff's licensee's software, the printed and online materials distributed by Plaintiff, and Plaintiff's services, that use of similar marks on the respective goods and services of the parties is likely to cause confusion or mistake, or to deceive purchasers as to the origin of the goods and services.

10. Upon information and belief, the registration by Defendant of FOCUS for goods closely related to Plaintiff's and Plaintiff's licensee's goods and services will impair Plaintiff's free use of its trademark and will result in injury to the good will Plaintiff has acquired with respect to its trademark, all to

Plaintiff's damage.

WHEREFORE, Plaintiff prays that the registration for which application has been made be disallowed, and that this opposition be sustained.

/Howard F. Mandelbaum/  
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