

ESTTA Tracking number: **ESTTA955975**

Filing date: **02/22/2019**

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

Proceeding	91244607
Party	Defendant Peatalk Corporation
Correspondence Address	LISA HEMPHILL FOLEY & LARDNER LLP 2021 MCKINNEY AVENUE SUITE 1600 DALLAS, TX 75201-3340 UNITED STATES ipdocketing@foley.com, lhemphill@foley.com 214-999-4682
Submission	Motion to Amend Application
Filer's Name	Lisa R. Hemphill
Filer's email	ipdocketing@foley.com, tmiller@foley.com, lhemphill@foley.com, jsilberstein@fzlz.com, cmende@fzlz.com, ttabfiling@fzlz.com
Signature	/Lisa R. Hemphill/
Date	02/22/2019
Attachments	Peatalk Corp Consented Motion to Amend and Withdraw 2-22-2019 4835-7900-5321 v.1.pdf(154187 bytes )

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

A.V.M. SOFTWARE, INC.	)	
	)	
OPPOSER,	)	
v.	)	Opposition No. 91244607
	)	Application Serial No. 87/766020
	)	Mark: PEATALK
PEATALK CORPORATION	)	
	)	
APPLICANT.	)	

**CONSENTED MOTION TO AMEND APPLICATION  
AND TO WITHDRAW OPPOSITION**

In response to the Board's Order of January 30, 2019, and pursuant to 37 C.F.R. § 2.133(a) and § 514.02 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant, Peatalk Corporation, with the consent of Opposer, hereby moves the Board to amend the application at issue in the instant case, specifically, to amend the identification of services contained in Class 42 and to dismiss the Opposition with prejudice, contingent upon the acceptance of the proposed amendments to the Class 42 services.<sup>1</sup>

Applicant requests the following changes to Class 42 in Application Serial No. 87/766020 (proposed language for deletion stricken through):

~~--Computer software consultation, and integration of computer systems and networks; design of fixed and mobile satellite wireless and computer communication networks for others; consulting services in connection with designing fixed and mobile satellite wireless and computer communication networks for others; and testing, analysis, and evaluation of the goods and services of others to determine conformity with certification standards; providing non-downloadable virtual network telecommunications software for application sharing, presentation broadcasts, web page sharing, polling and instant messaging; and providing web-based non-downloadable software which transparently converts audio and video material from on user application to another in International Class 42--~~

<sup>1</sup> As advised in the Consented Motion to Amend Application filed by Applicant on December 11, 2018, in accordance with the settlement agreement between the parties, Opposer has agreed to withdraw the Opposition with prejudice if Applicant amended the identification of goods and services in Classes 9 and 42, and deleted Class 38. The Board, in its Order dated January 30, 2019 deleted the Class 38 services and accepted the amendment to Class 9, but did not accept the proposed amendments to Class 42.

Such that that identification of service be amended to state:

--Computer software consultation, and integration of computer systems and networks; design of fixed and mobile satellite communication networks for others; consulting services in connection with designing fixed and mobile satellite communication networks for others; and testing, analysis, and evaluation of the goods and services of others to determine conformity with certification standards in International Class 42--

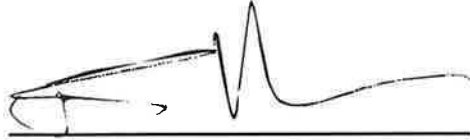
The requested amendments to the foregoing identification of services in Class 42, as shown above, have been consented to by Opposer A.V.M. Software, Inc.

As grounds for this motion, Applicant states that the above-proposed amendments accurately convey the services that Applicant intends to offer in conjunction with the mark PEATALK, which is the subject of the application at issue in this matter. Moreover, the proposed amendment complies with all other applicable rules and statutory provisions, including those set forth in 37 C.F.R. §§2.71-2.75, as the proposed amendments serve to clarify and limit, but in no way broaden, the identification of services. The other party's consent to the amendment is made of record by signature of Opposer's counsel, below.

Contingent upon the acceptance of the amendments to the identification of services in Class 42, and in view of the prior deletion of the Class 38 services and the amendment to the Class 9 goods, the parties consent to the withdrawal of this Opposition proceeding with prejudice, as these amendments will dispose of the dispute between the parties and will render this matter moot.

WHEREFORE, Applicant and Opposer request the Board to amend the opposed application in the manner set forth above, and GRANT the withdrawal of the Opposition proceeding with prejudice.

Respectfully submitted,



James D. Silberstein

FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.  
4 Times Square, 17<sup>th</sup> Floor  
New York, NY 10036  
(212) 813-5900

*Attorneys for Opposer*  
A.V.M. SOFTWARE, INC.

Respectfully submitted,



Lisa Hemphill

FOLEY GARDERE  
FOLEY & LARDNER LLP  
2021 McKinney Avenue, Suite 1600  
Dallas, TX 75201-3340  
(214) 999-4682

*Attorneys for Applicant*  
PEATALK CORPORATION

---

### CERTIFICATE OF SERVICE

---

I hereby certify that a true and complete copy of the foregoing Applicant's **Consented Motion to Amend Application and to Withdraw Opposition** was served on counsel for Opposer this 22nd day of February 2019, by electronic transmission to the email addresses stated below, as agreed by parties:

Craig S. Mende  
James D. Silberstein  
FROSS ZELNICK LEHRMAN & ZISSU, PC  
4 Times Square, 17<sup>th</sup> Floor  
New York, NY 10036  
Email: [cmende@fzlj.com](mailto:cmende@fzlj.com), [jsilberstein@fzlj.com](mailto:jsilberstein@fzlj.com), [ttabfiling@fzlj.com](mailto:ttabfiling@fzlj.com)  
Phone: (212) 813-5900



Lisa R. Hemphill