

UNITED STATES PATENT AND TRADEMARK OFFICE
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mw/jle

May 4, 2020

Opposition No. 91254047

Leviton Manufacturing Co., Inc.

v.

Extreme Copper Incorporated

Michael Webster, Interlocutory Attorney:

On March 30, 2020, Applicant filed a proposed amendment to its application Serial No. 88353833, with Opposer's consent. The Board issued an order on April 10, 2020, ordering Applicant to provide proof of service of the motion to amend. On April 22, 2020, Applicant refiled the motion with proof of service, again alleging Opposer's consent.

By the proposed amendment, Applicant seeks to amend the identification of goods in International Class 9:¹

From: Computer hardware; Computer hardware and computer peripheral devices; Computer hardware and computer peripherals; Computer hardware and peripheral devices; Computer hardware and peripheral devices and recorded computer software for data communication and translating and transmitting data sold therewith; Computer hardware and peripherals; Computer hardware and peripherals therefor; Computer hardware and recorded software for setting up and configuring local area networks

¹ Wording proposed to be deleted is set forth with strike through and language to be added is in bold.

sold as a unit; Computer hardware and recorded software for setting up and configuring wide area networks sold as a unit; Computer hardware and recorded software system for remotely monitoring environmental conditions and controlling devices within a building, facility, grounds, or designated spatial area; Computer hardware for ~~communicating~~ audio, video and data between computers via a global computer network, wide-area computer networks, and peer-to-peer computer networks; Computer hardware for IP video surveillance; ~~Computer hardware for telecommunications~~; Computer hardware, namely, firewalls; Computer hardware, namely, wireless network extenders; Computer hardware, namely, wireless network repeaters; Computers and computer hardware; Broadband power line communication systems for transferring broadband data over electrical power lines, comprised of computer hardware, software and modems; Communications servers; Electronic communications systems comprised of computer hardware and software for the transmission of data between two points; Gateway routers in the nature of computer control hardware; Optical communications systems comprised of optical and electronic hardware and computer software for the transmission of data between two points; all of the foregoing goods containing copper

To: Computer hardware; Computer hardware and computer peripheral devices; Computer hardware and computer peripherals; Computer hardware and peripheral devices; Computer hardware and peripheral devices and recorded computer software for data communication and translating and transmitting data sold therewith; Computer hardware and peripherals; Computer hardware and peripherals therefor; Computer hardware and recorded software for setting up and configuring local area networks sold as a unit; Computer hardware and recorded software for setting up and configuring wide area networks sold as a unit; Computer hardware and recorded software system for remotely monitoring environmental conditions and controlling devices within a building, facility, grounds, or designated spatial area; Computer hardware for **the active transmission of** audio, video and data between computers via a global computer network, wide-area computer networks, and peer-to-peer computer networks; Computer hardware for IP video surveillance; Computer hardware, namely, firewalls; Computer hardware, namely, wireless network extenders; Computer hardware, namely, wireless network repeaters; Computers and computer hardware; Broadband power line communication systems for transferring broadband data **actively** over electrical power lines, comprised of computer hardware, software and modems;

Communications servers; Electronic communications systems comprised of computer hardware and software for the **active** transmission of data between two points; Gateway routers in the nature of computer control hardware; Optical communications systems comprised of optical and electronic hardware and computer software for the transmission of data between two points; all of the foregoing goods containing copper **for the active transmission of audio, video and data.**

The proposed amendment is unacceptable in part inasmuch as it identifies goods and/or services that are not within the scope of the present identification. Specifically, the wording “all of the foregoing goods containing copper **for the active transmission of audio, video and data**” is beyond the scope of the present identification because it appears to add functions to the computer software products in the identification. The wording is unclear as to how it applies to “all of the foregoing goods.”

Therefore, the Board cannot accept this wording in the proposed amendment and will not enter the amendment.

In view of these findings, the motion to amend is **denied** without prejudice. The present identification of goods, that is, the identification prior to the filing of the motion to amend, remains operative for purposes of future amendment. *See* Trademark Rule 2.71(a); TMEP §1402.07(d).

However, inasmuch as the filing of the proposed amendment indicates to the Board that the parties are making efforts to settle this matter, proceedings are **suspended**, and the parties are allowed until **THIRTY from the date of this order** to file a revised motion to amend, failing which the Board will resume proceedings and reset dates, and the opposition will go forward on the present application.