

ESTTA Tracking number: **ESTTA1036369**

Filing date: **02/17/2020**

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	Brainlab AG
Granted to Date of previous extension	02/16/2020
Address	OLOF-PALME-STRAÅ#E 9 MUNICH, 81829 GERMANY

Correspondence information	PATRICK F. CLUNK TUCKER ELLIS LLP 950 MAIN AVENUE SUITE 1100 CLEVELAND, OH 44113 UNITED STATES trademarks@tuckerellis.com, patrick.clunk@tuckerellis.com 2165925000
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Applicant Information

Application No	88228599	Publication date	08/20/2019
Opposition Filing Date	02/17/2020	Opposition Period Ends	02/16/2020
Applicant	Zilog, Inc. 1590 Buckeye Drive Milpitas, CA 95035 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Microcontrollers and peripheral integrated circuits, namely, capacitive touch sensors; touch sensor controllers; and capacitive touch sensor controllers for use in connection with home appliances controls and consumer goods
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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. Registration No.	2781796	Application Date	10/19/2000
Registration Date	11/11/2003	Foreign Priority Date	NONE

Word Mark	Z-TOUCH
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 009. First use: First Use: 0 First Use In Commerce: 0 [Computers;] planning software and programs for medical purposes, namely, for use in the areas of neurosurgery, orthopedics and radiotherapy; for use in the area of ear, nose and throat (ENT) surgery; and for use in the area of three-dimensional registration or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers; [pre-recorded data carriers, featuring planning software and programs for neurosurgical, orthopedic and radiotherapeutic purposes; pre-recorded data carriers, featuring planning software and programs for application in ear nose, and throat surgery]</p> <p>Class 010. First use: First Use: 0 First Use In Commerce: 0 [Electronic apparatus and image presentation apparatus for medical purposes; electronic apparatus and image presentation apparatus for medical purposes, namely, for image-guided localization systems for surgical purposes;] light pointers; laser light pointers; infra-red light pointers; light pointers, laser light pointers and infra-red light pointers for three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers; [neurosurgical instruments and apparatus; radiotherapeutic apparatus; devices for detection and adjustment of radiation points for medical purposes; systems and components to precisely position patients for radiotherapeutic or neurosurgical purposes, namely, collimators, leaf collimators and micro leaf collimators for adjusting and forming ray forms in radiotherapeutic or radiosurgical applications, infra-red and video cameras, patient markers, computers, monitors, isocenter phantoms, calibration phantoms, patient trays, head holders including adaptors, vacuum pumps, vacuum cushions, referencing stars, ultrasound phantoms and ultrasound adaptors, x-ray registering kits; nuclear spin tomographs; intra-operative, image-guided localization systems for surgical purposes; intra-operative,] image-guided localization systems for neurosurgical, orthopedic, stereotactic and radiosurgical purposes; intra-operative, image-guided localization systems for application in ear, nose and throat surgery; [systems for software-controlled precision treatment in neurosurgery, orthopedics, radiotherapy and in ear, nose, and throat surgery, namely, localizers, stereotactic and neurosurgical arcs, biopsy kits, fixation adaptors, instrument calibration matrixes and fixation rings, planning stations, computers, couch mounts, collimators, target positioners, film holders, mask systems, couch stabilizers, couch adaptors, radiation devices, linear accelerators, gantries, microscope adaptors, fixation pins, head and neck immobilization units; probes, sensors,] electronic apparatus and image presentation apparatus all being parts of medical localization systems; instruments and apparatus for three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers, in particular infrared light, beamers and/or light pointers or laser light beamers</p> <p>Class 042. First use: First Use: 0 First Use In Commerce: 0 Design and development of computer software and programs in the fields of neurosurgery, orthopedics and radiotherapy and for ear, nose, and throat surgery; design and development of computer software and programs in the field of three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers</p>

Attachments	Brainlab Opposition of ZTOUCH final.pdf(282954 bytes)
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Signature	/Patrick F. Clunk/
Name	PATRICK F. CLUNK
Date	02/17/2020

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

BRAINLAB AG	Serial No. 88/228,599
Opposer,	Opposition No.
v.	
ZILOG, INC.	NOTICE OF OPPOSITION
Applicant.	

Brainlab AG, opposes the registration of ZTOUCH in Application Serial No. 88/228,599 in International Class 09. Brainlab AG is the owner of United States Trademark Registration No. 2,781,796, for the prior mark Z-TOUCH. Over the last several years Brainlab AG has devoted substantial resources and money promoting products under its distinctive Z-TOUCH mark. Brainlab AG believes that there is likelihood of confusion between its established Z-TOUCH mark and applicant's ZTOUCH mark.

As grounds for the opposition, Brainlab AG ("Opposer") alleges that:

1. Opposer is a German corporation having its place of business at Olof-Palme-Str. 9, 81829 Munich, Germany. Opposer is an innovator in the fields of surgery, radiotherapy, medical image sharing, and digitally integrated operating rooms, and has been innovating for thirty years. Opposer is headquartered in Germany and has locations throughout the world, including the United States. Opposer produces radiosurgery/radiotherapy software and hardware

that provide the ability to plan, monitor and deliver radiation treatment for patients with cancerous or functional diseases. Various software applications and hardware systems offer the advanced tools required for optimized treatment planning, monitoring and verification to achieve high precision throughout the whole course of the treatment.

2. Opposer owns United States Trademark Registration No. 2,781,796, which was registered on November 11, 2003, for Z-TOUCH for “planning software and programs for medical purposes, namely, for use in the areas of neurosurgery, orthopedics and radiotherapy; for use in the area of ear, nose and throat (ENT) surgery; and for use in the area of three-dimensional registration or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers” in International Class 009, “light pointers; laser light pointers; infra-red light pointers; light pointers, laser light pointers and infra-red light pointers for three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers; image-guided localization systems for neurosurgical, orthopedic, stereotactic and radiosurgical purposes; intra-operative, image-guided localization systems for application in ear, nose and throat surgery; electronic apparatus and image presentation apparatus all being parts of medical localization systems; instruments and apparatus for three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers, in particular infrared light, beamers and/or light pointers or laser light beamers” in International Class 010, and “Design and development of computer software and programs in the fields of neurosurgery, orthopedics and radiotherapy and for ear, nose, and throat surgery; design and development of computer software and programs in the field of three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection

points, by means of light beamers” in International Class 042. The Z-TOUCH registration is valid and subsisting on the Principal Register. Attached as Exhibit 1 is a true printout from the United States Patent and Trademark Office TESS database showing the current status and title of the registration as of February 17, 2020.

3. Opposer filed for the Z-TOUCH mark on December 19, 2000 and received its registration on November 11, 2003.

4. As a result of its widespread, continuous, and exclusive use of the Z-TOUCH mark to identify Opposer as its source, Opposer owns valid and subsisting federal statutory and common law rights to the Z-TOUCH mark.

5. Opposer’s Z-TOUCH mark is distinctive to both the consuming public and Opposer’s trade.

6. Opposer has expended substantial time, money, and resources marketing, advertising, and promoting the goods sold under the Z-TOUCH mark, and the goods Opposer offers under the Z-TOUCH mark are of high quality.

7. Upon information and belief, Applicant, Zilog, Inc., with an address at 1590 Buckeye Drive, Milpitas, California, 95035, on March 18, 2019 filed trademark Application Serial No. 88/228,599 to register the proposed mark ZTOUCH for “Microcontrollers and peripheral integrated circuits, namely, capacitive touch sensors; touch sensor controllers; and capacitive touch sensor controllers for use in connection with home appliances controls and consumer goods” in International Class 09.

8. Opposer’s Z-TOUCH mark has priority over the proposed mark because Opposer’s registration date predates the Applicant’s filing date or any other date on which the Applicant may rely for purposes of priority.

9. Applicant's proposed mark ZTOUCH is confusingly similar to Opposer's Z-TOUCH mark as both marks are similar in their entireties as to appearance, sound, connotation and commercial impression.

10. The goods covered by the Applicant's Application Serial No. 88/228,599 are related to the goods Opposer offers under its Z-TOUCH mark and would be offered in the same channels of trade.

11. The proposed mark is barred from registration because it consists of or comprises a mark which so resembles Opposer's previously used and registered Z-TOUCH mark as to be likely, when used in connection with the alleged goods of Applicant, to cause confusion, mistake, or deception within the meaning of 15 U.S.C. § 1052(d).

12. If Applicant's application is allowed to proceed to registration, likelihood of confusion, damage, and/or other injury to Opposer will occur.

Opposer requests that this Opposition be sustained and that registration of Application Serial No. 88/228,599 be refused in its entirety.

Respectfully submitted,

TUCKER ELLIS, LLP

Date: February 17, 2020

By /s/Jay R. Campbell
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Typed Drawing

Word Mark Z-TOUCH

Goods and Services IC 009. US 021 023 026 036 038. G & S: [Computers;] planning software and programs for medical purposes, namely, for use in the areas of neurosurgery, orthopedics and radiotherapy; for use in the area of ear, nose and throat (ENT) surgery; and for use in the area of three-dimensional registration or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers; [pre-recorded data carriers, featuring planning software and programs for neurosurgical, orthopedic and radiotherapeutic purposes; pre-recorded data carriers, featuring planning software and programs for application in ear nose, and throat surgery]

IC 010. US 026 039 044. G & S: [Electronic apparatus and image presentation apparatus for medical purposes; electronic apparatus and image presentation apparatus for medical purposes, namely, for image-guided localization systems for surgical purposes;] light pointers; laser light pointers; infra-red light pointers; light pointers, laser light pointers and infra-red light pointers for three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers; [neurosurgical instruments and apparatus; radiotherapeutic apparatus; devices for detection and adjustment of radiation points for medical purposes; systems and components to precisely position patients for radiotherapeutic or neurosurgical purposes, namely, collimators, leaf collimators and micro leaf collimators for adjusting and forming ray forms in radiotherapeutic or radiosurgical applications, infra-red and video cameras, patient markers, computers, monitors, isocenter phantoms, calibration phantoms, patient trays, head holders including adaptors, vacuum pumps, vacuum cushions, referencing stars, ultrasound phantoms and ultrasound adaptors, x-ray registering kits; nuclear spin tomographs; intra-operative, image-guided localization systems for surgical purposes; intra-operative,] image-guided localization systems for neurosurgical, orthopedic, stereotactic and radiosurgical purposes; intra-operative, image-guided localization systems for application in ear, nose and throat surgery; [systems for software-controlled precision treatment in neurosurgery, orthopedics, radiotherapy and in ear, nose, and throat surgery, namely, localizers, stereotactic and neurosurgical arcs, biopsy kits, fixation adaptors, instrument calibration matrixes and fixation rings, planning stations, computers, couch mounts, collimators, target positioners, film holders, mask systems, couch stabilizers, couch adaptors, radiation devices, linear accelerators, gantries, microscope adaptors, fixation pins, head and neck immobilization units; probes, sensors.] electronic apparatus and image presentation apparatus all being parts of medical localization systems; instruments and apparatus for three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers, in particular infrared light, beamers and/or light pointers or laser light beamers

IC 042. US 100 101. G & S: Design and development of computer software and programs in the fields of neurosurgery, orthopedics and radiotherapy and for ear, nose, and throat surgery; design an development of computer software and programs in the field of three-dimensional registration and/or referencing patient location data by producing light markings, in particular light reflection points, by means of light beamers

Mark Drawing Code (1) TYPED DRAWING

Serial Number 78031509

Filing Date October 19, 2000

Current Basis 44E

Original Filing Basis 1B;44D

Published for Opposition December 10, 2002

Registration Number 2781796

Registration Date November 11, 2003

Owner (REGISTRANT) BrainLAB AG CORPORATION FED REP GERMANY Olof-Palme-Str. 9 Munich FED REP GERMANY 81829

Attorney of Record Patrick F. Clunk

Priority Date April 19, 2000

Description of Mark Color is not claimed as a feature of the mark.

Type of TRADEMARK. SERVICE MARK

Mark
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20140328.
Renewal 1ST RENEWAL 20140328
Live/Dead Indicator LIVE

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