

ESTTA Tracking number: **ESTTA1345677**
Filing date: **03/13/2024**

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	Fractal Analytics, Inc.
Granted to date of previous extension	03/13/2024
Address	1 WORLD TRADE CENTER SUITE 76J NEW YORK, NY 10007 UNITED STATES

Attorney information	DAVID E. WESLOW WILEY REIN LLP 2050 M STREET NW WASHINGTON, DC 20036 UNITED STATES Primary email: dweslow@wiley.law Secondary email(s): akosak@wiley.law, docketing@wiley.law, tmdocket@wiley.law 2027197000
Docket no.	86758.0066

Applicant information

Application no.	79353306	Publication date	11/14/2023
Opposition filing date	03/13/2024	Opposition period ends	03/13/2024
International registration no.	1691425	International registration date	09/21/2022
Applicant	Fractal Gaming AB DATAVÅGEN 37 B SE-436 32 ASKIM SWEDEN		


Goods/services affected by opposition


Class 009. First Use: None First Use In Commerce: None
All goods and services in the class are opposed, namely: Headphones; wireless headphones; audio equipment, namely, audio mixing consoles, computer headsets, computer headsets with microphones, gaming headsets, gaming headsets with microphones, subwoofers, computer headset microphones; audio amplifiers; audio speakers for computers; audio speakers

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.	4934960	Application date	02/03/2015
Register	Principal		
Registration date	04/12/2016	Foreign priority date	NONE
Word mark	FRACTAL		
Design mark			
Description of mark	NONE		
Goods/services	Class 035. First use: First Use: 2005 First Use In Commerce: 2005 business data analysis through use of computer software Class 042. First use: First Use: 2005 First Use In Commerce: 2005 providing software-as-a-service (saas) for business data analysis		

U.S. registration no.	4934961	Application date	02/03/2015
Register	Principal		
Registration date	04/12/2016	Foreign priority date	NONE
Word mark	FRACTAL ANALYTICS		
Design mark			
Description of mark	NONE		
Goods/services	Class 035. First use: First Use: 2005 First Use In Commerce: 2005 business data analysis through use of computer software Class 042. First use: First Use: 2005 First Use In Commerce: 2005 providing software-as-a-service (saas) for business data analysis		

U.S. registration	5605981	Application date	03/21/2018
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no.			
Register	Principal		
Registration date	11/13/2018	Foreign priority date	NONE
Word mark	FRACTAL		
Design mark			
Description of mark	The mark consists of the wording "FRACTAL" in black followed by three circles. The first circle is in red, the second circle is in yellow, and the third circle is in blue.		
Goods/services	Class 035. First use: First Use: Feb 9, 2018 First Use In Commerce: Feb 9, 2018 business data analysis through use of computer software Class 042. First use: First Use: Feb 9, 2018 First Use In Commerce: Feb 9, 2018 providing software-as-a-service (saas) for business data analysis		

U.S. registration no.	5605982	Application date	03/21/2018
Register	Principal		
Registration date	11/13/2018	Foreign priority date	NONE
Word mark	FRACTAL INTELLIGENCE FOR IMAGINATION		
Design mark			
Description of mark	The mark consists of the wording "FRACTAL" in black followed by three circles. The first circle is in red, the second circle is in yellow, and the third circle is in blue. Below this is the wording "INTELLIGENCE FOR IMAGINATION" in black.		
Goods/services	Class 035. First use: First Use: Feb 9, 2018 First Use In Commerce: Feb 9, 2018 business data analysis through use of computer software Class 042. First use: First Use: Feb 9, 2018 First Use In Commerce: Feb 9, 2018 providing software-as-a-service (saas) for business data analysis		

Attachments	86522232#TMSN.png(bytes) 86522234#TMSN.png(bytes) 87843006#TMSN.png(bytes) 87843012#TMSN.png(bytes) Notice of Opposition - FRACTAL 79353306.pdf(358874 bytes)
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Signature	/David E. Weslow/
Name	DAVID E. WESLOW
Date	03/13/2024

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

FRACTAL ANALYTICS, INC.,

Opposer,

v.

FRACTAL GAMING AB,

Applicant.

E-FILING

Application No.: 79353306

Mark: FRACTAL (and F design)

Opposition No.: _____

NOTICE OF OPPOSITION

Fractal Analytics, Inc. (hereinafter “Fractal”), a corporation organized and existing under the laws New York with a principal business address of 1 World Trade Center, Suite 76J, New York, NY 10007, believes that it will be damaged by registration of Application No. 79353306, FRACTAL (and F design), for all goods identified therein in Class 9.

As grounds for opposition, Fractal hereby alleges:

1. Fractal was founded in 2000, and is an analytic company providing information and consultancy services to organizations for data-driven decision-making.
2. Fractal provides software and strategic analytic services to companies around the world, offering, *inter alia*, data transformation and delivery services, predictive analytics solutions, artificial intelligence, valuation management, and various other business-oriented software solutions.
3. Since its founding, Fractal has used the FRACTAL and FRACTAL ANALYTICS marks around the world, including in the United States, in association with a wide range of software development, data analytics, artificial intelligence, and related services (collectively the “FRACTAL Marks”).

4. Fractal has been recognized as a leader among software and data analytics service providers by independent analyst Forrester Research and won the “Analytics Platform/Solution Provider of the Year” award by Frost & Sullivan, a leading independent research firm, in 2018.

5. The independent global research and advisory firm Gartner named Fractal to its Hype Cycle list for Digital Care Delivery Including Telemedicine and Virtual Care in 2017 and 2018 as well as to its Hype Cycle lists for U.S. Healthcare Payors, Supply Chain Strategy, and Business Process Services in 2018.

6. Gartner also included Fractal’s Cuddle.ai product in its 2017 Magic Quadrant for Business and Intelligence and Analytics Platforms report, identifying Cuddle.ai as one of the emerging and next-generation innovative modern business intelligence and analytics platforms vendors for the “Smart Data Discovery” category.

7. Fractal has received a wide range of additional awards and recognitions from around the world including, for example, the Best Artificial Intelligence Solution in the credit scoring category at the 2017 Artificial Intelligence Worldwide Software Vendor Selection Event; ranked by Inc. among the Fastest Growing Private Companies in Business Products and Services for five consecutive years; identified on the Great Place to Work® list for 2016 and 2017 and certified as the same for 2018, 2019, and 2020; recognized as the “Leader” in Forrester Research’s report “The Forrester Wave: Customer Analytics Service Providers” for Q3 2017, Q2 2019, Q2 2020, and Q3 2021; recognized as an Honorable vendor in the Gartner “Pure Play Data & Analytics Providers” category for 2019 and 2020; and the 2018 Analytics Platform/Solution Provider of the Year award by Frost & Sullivan.

8. Fractal advertises its services through use of the FRACTAL Marks, *inter alia*, its website, at www.FractalAnalytics.com and www.Fractal.ai, in various digital mediums including LinkedIn, Facebook, Twitter, Glassdoor, GooglePlus, and Youtube, and through advertisements

in print magazines such as the Economist.

9. By creating, adopting, and extensively using the FRACTAL Marks with data analytics and related software and services for over fifteen years, Fractal is entitled to wide common law trademark protection for the FRACTAL Marks.

10. The FRACTAL word mark is also registered on the Principal Trademark Register of the U.S. Patent and Trademark Office under registration number 4934960. *See* Exhibit A. Reg. No. 4934960 was filed February 3, 2015 and registered April 12, 2016.

11. The FRACTAL ANALYTICS mark is also registered on the Principal Trademark Register of the U.S. Patent and Trademark Office under registration number 4934961. *See* Exhibit B. Reg. No. 4934961 was filed February 3, 2015 and registered April 12, 2016.

12. The FRACTAL (and Design) mark is also registered on the Principal Trademark Register of the U.S. Patent and Trademark Office under registration number 5605981. *See* Exhibit C. Reg. No. 5605981 was filed March 21, 2018 and registered November 13, 2018.

13. The FRACTAL INTELLIGENCE FOR IMAGINATION (and Design) mark is also registered on the Principal Trademark Register of the U.S. Patent and Trademark Office under registration number 5605982. *See* Exhibit D. Reg. No. 5605982 was filed March 21, 2018 and registered November 13, 2018.

14. Fractal's federal registrations for the FRACTAL Marks are *prima facie* evidence of the validity of the marks, of Fractal's ownership of the marks, and of Fractal's exclusive right to use the marks in U.S. commerce.

15. Reg. Nos. 4934960 and 4934961 have achieved incontestable status, and constitute *conclusive* evidence of the validity of the marks, of Fractal's ownership of the marks, and of Fractal's exclusive right to use the marks in U.S. commerce.

16. The application opposed herein was filed by Fractal Gaming AB (“Applicant”) on September 21, 2022, and was assigned Application Serial No. 79353306 by the U.S. Patent and Trademark Office.

17. The application was published for opposition on November 14, 2023. Fractal requested and was granted a 90-day extension of time to oppose, until March 13, 2024.

18. The application opposed herein seeks to register the mark FRACTAL (and F design) for the following Class 9 goods:

Headphones; wireless headphones; audio equipment, namely, audio mixing consoles, computer headsets, computer headsets with microphones, gaming headsets, gaming headsets with microphones, subwoofers, computer headset microphones; audio amplifiers; audio speakers for computers; audio speakers

19. There is no issue of priority. Fractal has priority by virtue of its longstanding and continuous use and registration of the FRACTAL Marks prior to the filing date of Application No. 79353306.

20. The overall commercial impression of the FRACTAL (and F design) mark is identical and/or highly similar to the FRACTAL Marks.

21. The mark identified in Application No. 79353306 so resembles Fractal’s FRACTAL Marks as to be likely to cause confusion, mistake, or deception in that it entirely incorporates Fractal’s FRACTAL mark and is offered for registration in association with the goods identified in the application, which are identical and/or similar to goods and/or services provided by Fractal under and through the FRACTAL Marks.

22. Registration of the FRACTAL (and F design) mark by Applicant in association with the Class 9 goods identified in Application No. 79353306 will result in irreparable damage to Fractal as consumers are likely to believe, mistakenly, that Applicant’s FRACTAL (and F design) mark is affiliated with or approved by Fractal.

23. Concurrent registration of the mark of Application No. 79353306 will result in irreparable damage to Fractal as consumers will be likely to consider the goods offered under the FRACTAL (and F design) mark as emanating from, affiliated with, or approved by Fractal.

24. If Applicant is granted registration of the FRACTAL (and F design) mark, confusion within the meaning of Section 2(d) of the Trademark Act (15 U.S.C. § 1052(d)) is likely to result, to the detriment of Fractal.

WHEREFORE, Fractal requests that Application Serial No. 79353306 be rejected, that no registration be issued in connection with the opposed Class 9 goods of the application, and that this opposition be sustained in favor of Fractal.

Respectfully submitted,



Date: March 13, 2024

By: /s/

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*Attorneys for Opposer
Fractal Analytics, Inc.*

Exhibit A



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FRACTAL

Word Mark	FRACTAL
Goods and Services	IC 035. US 100 101 102. G & S: business data analysis through use of computer software. FIRST USE: 20050000. FIRST USE IN COMMERCE: 20050000
	IC 042. US 100 101. G & S: providing software-as-a-service (saas) for business data analysis. FIRST USE: 20050000. FIRST USE IN COMMERCE: 20050000
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86522232
Filing Date	February 3, 2015
Current Basis	1A;44E
Original Filing Basis	1A;44E
Published for Opposition	January 26, 2016
Registration Number	4934960
Registration Date	April 12, 2016
Owner	(REGISTRANT) Fractal Analytics, Inc. CORPORATION NEW YORK Suite 76J 1 World Trade Center New York NEW YORK 10007
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	David E. Weslow
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

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Exhibit B



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Word Mark FRACTAL ANALYTICS

Goods and Services IC 035. US 100 101 102. G & S: business data analysis through use of computer software. FIRST USE: 20050000. FIRST USE IN COMMERCE: 20050000

IC 042. US 100 101. G & S: providing software-as-a-service (saas) for business data analysis. FIRST USE: 20050000. FIRST USE IN COMMERCE: 20050000

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86522234

Filing Date February 3, 2015

Current Basis 1A;44E

Original Filing Basis 1A;44E

Published for Opposition January 26, 2016

Registration Number **4934961**

Registration Date April 12, 2016

Owner (REGISTRANT) Fractal Analytics, Inc. CORPORATION NEW YORK Suite 76J 1 World Trade Center New York NEW YORK 10007

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record David E. Weslow

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ANALYTICS" APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator **LIVE**

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Exhibit C



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Word Mark	FRACTAL
Goods and Services	IC 035. US 100 101 102. G & S: business data analysis through use of computer software. FIRST USE: 20180209. FIRST USE IN COMMERCE: 20180209 IC 042. US 100 101. G & S: providing software-as-a-service (saas) for business data analysis. FIRST USE: 20180209. FIRST USE IN COMMERCE: 20180209
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.01.15 - Circles, exactly three circles ; Three circles 26.01.21 - Circles that are totally or partially shaded.
Serial Number	87843006
Filing Date	March 21, 2018
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	August 28, 2018
Registration Number	5605981
Registration Date	November 13, 2018
Owner	(REGISTRANT) Fractal Analytics, Inc. CORPORATION NEW YORK Suite 76J 1 World Trade Center New York NEW YORK 10007
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	David E. Weslow
Prior Registrations	4934960;4934961;4944078
Description of Mark	The color(s) black, red, yellow, and blue is/are claimed as a feature of the mark. The mark consists of the wording "FRACTAL" in black followed by three circles. The first circle is in red, the second circle is in yellow, and the third circle is in blue.

Type of Mark SERVICE MARK
Register PRINCIPAL
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Exhibit D



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Word Mark	FRACTAL INTELLIGENCE FOR IMAGINATION
Goods and Services	IC 035. US 100 101 102. G & S: business data analysis through use of computer software. FIRST USE: 20180209. FIRST USE IN COMMERCE: 20180209 IC 042. US 100 101. G & S: providing software-as-a-service (saas) for business data analysis. FIRST USE: 20180209. FIRST USE IN COMMERCE: 20180209
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.01.15 - Circles, exactly three circles ; Three circles 26.01.21 - Circles that are totally or partially shaded.
Serial Number	87843012
Filing Date	March 21, 2018
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	August 28, 2018
Registration Number	5605982
Registration Date	November 13, 2018
Owner	(REGISTRANT) Fractal Analytics, Inc. CORPORATION NEW YORK Suite 76J 1 World Trade Center New York NEW YORK 10007
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	David E. Weslow
Prior Registrations	4934960;4934961;4944078
Description of Mark	The color(s) black, red, yellow, and blue is/are claimed as a feature of the mark. The mark consists of the wording "FRACTAL" in black followed by three circles. The first circle is in red, the second circle is in yellow,

and the third circle is in blue. Below this is the wording "INTELLIGENCE FOR IMAGINATION" in black.

Type of Mark SERVICE MARK
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