

ESTTA Tracking number: **ESTTA1087775**

Filing date: **10/09/2020**

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	NetScout Systems, Inc.
Granted to Date of previous extension	10/14/2020
Address	310 LITTLETON ROAD WESTFORD, MA 01866 UNITED STATES
Attorney information	AMANDA K. GREENSPON MUNCK WILSON MANDALA, LLP P.O. DRAWER 800889 DOCKET CLERK DALLAS, TX 75380 UNITED STATES Primary Email: ttab@munckwilson.com 972-628-3600
Docket Number	NTCT05-00306

Applicant Information

Application No.	88532585	Publication date	06/16/2020
Opposition Filing Date	10/09/2020	Opposition Period Ends	10/14/2020
Applicant	Xiong Bin 2-3, TIANSHENG ROAD NO.2, BEIBEI DISTRICT CHONGQING, 400700 CHINA		

Goods/Services Affected by Opposition

Class 009. First Use: 2018/07/17 First Use In Commerce: 2018/09/09 All goods and services in the class are opposed, namely: Computer hardware; Computer memory devices; Computer peripheral apparatus; Digital signage; Earphones; Eyeglasses; Headphones; Instruments for measuring length; Motion picture cameras; Protective covers for smartphones; Semiconductors; Surveying instruments; Time recording apparatus; Weighing apparatus and instruments; Wireless chargers

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2636255	Application Date	02/29/2000
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	NGENIUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2000/08/00 First Use In Commerce: 2000/08/00 COMPUTER HARDWARE AND SOFTWARE FOR MANAGING COMPUTER NETWORKS, NAMELY HARDWARE AND SOFTWARE TO MONITOR, ANALYZE, IDENTIFY, REPORT, TROUBLESHOOT, AND FORECAST THE PERFORMANCE AND EFFICIENCY OF APPLICATION AND CONTENT DELIVERY OVER NETWORK INFRASTRUCTURES		

U.S. Registration No.	4633137	Application Date	03/04/2013
Registration Date	11/04/2014	Foreign Priority Date	NONE
Word Mark	NGENIUSONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 2013/07/18 First Use In Commerce: 2013/07/18 Computer software and hardware devices used to manage, monitor, analyze and report the performance of computer applications, information technology service delivery to customers, network-based packetflows, information systems infrastructures, computer network infrastructures and equipment, and telecommunications network infrastructures and equipment; computer software and hardware devices used to provide security management for computer applications, information technology service delivery to customers, information systems infrastructures, computer network infrastructures and equipment and telecommunications network infrastructures and equipment; computer software and hardware devices used for automated analytics and troubleshooting for application and network performance management and management of information technology service delivery to customers		

Attachments	NTCT05-00306 Notice of Opposition.pdf(631409 bytes)
Signature	/AKG-aeh/
Name	AMANDA K. GREENSPON
Date	10/09/2020

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

NetScout Systems, Inc.	:	
	:	
Opposer,	:	Opposition No.
	:	[not yet assigned]
	:	
Xiong Bin (Individual)	:	
	:	
Applicant.	:	

RE: U.S. Trademark Application Serial No. 88/532,585 (GNEINESS)

Filed: July 24, 2019

Published: June 16, 2020

Extension of time to file opposition until October 14, 2020

NOTICE OF OPPOSITION

Opposer, NetScout Systems, Inc., a Delaware Corporation with its principal place of business at 310 Littleton Road, Westford, Massachusetts, 01866 (hereafter “NetScout” or “Opposer”) believes it is or will be damaged by GNEINESS, Application Serial No. 88/532,585 in International Class 009 ((hereinafter the “GNEINESS Mark” or Applicant’s Mark) and hereby opposes registration thereof pursuant to Section 13 of the Lanham Act (15 U.S.C. §1063), alleging as grounds for opposing the registration of Applicant’s Mark that:

1. Opposer is the current owner of the registered marks NGENIUS and NGENIUSONE used on or in connection with computer hardware and software for managing computer networks (“Opposer’s Registered Marks”).

2. Opposer, itself or by its predecessors, has used Opposer’s NGENIUS mark since at least as early as 2000 in interstate commerce in the United States and has established common law rights from that time in Opposer’s NGENIUS Mark.

3. Opposer’s use of the NGENIUS Mark has been continuous since 2000.

4. Opposer is the owner of the following U.S. Trademark registrations:

Trademark	Reg. No.	Full Goods/Services
NGENIUS	2,636,255	(Int'l Class 009) Computer hardware and software for managing computer networks, namely hardware and software to monitor, analyze, identify, report, troubleshoot, and forecast the performance and efficiency of application and over network infrastructures
NGENIUSONE	4,633,137	(Int'l Class 009) Computer software and hardware devices used to manage, monitor, analyze and report the performance of computer applications, information technology service delivery to customers, network-based packet flows, information systems infrastructures, computer network infrastructures and equipment, and telecommunications network infrastructures and equipment; computer software and hardware devices used to provide security management for computer applications, information technology service delivery to customers, information systems infrastructures, computer network infrastructures and equipment and telecommunications network infrastructures and equipment; computer software and hardware devices used for automated analytics and troubleshooting for application and network performance management and management of information technology service delivery to customers

(“Opposer’s Registered Marks”).

Copies of the Opposer’s Registered Marks from the USPTO TSDR Database are attached as Exhibit A and made of record in this proceeding pursuant to Trademark Rule 2.122(d).

5. Opposer’s U.S. Registration No. 2,636,255 for Opposer’s NGENIUS mark was issued on October 15, 2002.

6. Opposer’s U.S. Registration No. 2,636,255 for Opposer’s NGENIUS mark has been renewed and is currently a live valid trademark registration at the U.S. Patent and Trademark Office.

7. The records of the U.S. Patent and Trademark Office (“USPTO”) indicate a Declaration of Incontestability of a Mark under Section 15 (15 U.S.C. §1065) was acknowledged

for Opposer's U.S. Registration No. 2,636,255 on Oct 24, 2008.

8. Opposer's U.S. Registration No. 4,633,137 for Opposer's NGENIUSONE mark issued on November 4, 2014.

9. The records of the U.S. Patent and Trademark Office ("USPTO") indicate a Declaration of Incontestability of a Mark under Section 15 (15 U.S.C. §1065) was filed for Opposer's U.S. Registration No. 4,633,137 on September 10, 2020.

10. Opposer's Marks share the predominant term "GENIUS" making that term an indicator of source for Opposer.

11. Consumers have come to recognize Opposer of the source of goods and services provided under "GENIUS" formative marks.

12. Opposer's Registered Marks are arbitrary marks, and have achieved a high degree of notoriety, fame and reputation as identifiers of Opposer's computer hardware and software goods and services.

13. Opposer's GENIUS formative marks are and have become valuable assets of Opposer, identifying its computer hardware and software goods and services related or complementary thereto, and distinguishing Opposer's products and services from the products and services of others.

14. Opposer's GENIUS formative marks as described herein have been extensively advertised in the United States, and have appeared on or in relation to products, product packaging, point-of-sale displays and other promotional materials for products sold, offered and advertised, and/or have been used in connection with various products and services, throughout the United States.

15. The records of the USPTO indicate that Applicant is Xiong Bin, is an individual

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