



OPPOSITION No B 2 043 001

Novis Telecom, S.A., Lugar do Espido, Via Norte, 4470-901 Maia, Portugal (opponent), represented by **J. Pereira da Cruz, S.A.**, Rua Victor Cordon, 14, 1249-103 Lisboa, Portugal (professional representative)

a g a i n s t

Curex Innovations, Llc, 120 West 45 Street, 22nd Floor, New York, 10036-4041, United States of America (applicant), represented by **MAQS Law Firm Advokatpartnerselskab**, Pilestræde 58, 1112 Copenhagen K, Denmark (professional representative).

On 10/10/2014, the Opposition Division takes the following

DECISION:

1. Opposition No B 2 043 001 is rejected in its entirety.
2. The opponent bears the costs, fixed at EUR 300.

REASONS:

The opponent filed an opposition against all the goods and services of Community trade mark application No 10 600 393 'C-LINK'. The opposition is based on Portuguese trade mark registration No 343 255 'I-LINK'. The opponent invoked Article 8(1)(b) CTMR.

PROOF OF USE

According to Article 42(2) and (3) CTMR, if the applicant so requests, the opponent shall furnish proof that, during the period of five years preceding the date of publication of the contested trade mark, the earlier trade mark has been put to genuine use in the territories in which it is protected in connection with the goods or services in respect of which it is registered and which he cites as justification for his opposition, or that there are proper reasons for non-use.

According to the same provision, in the absence of such proof the opposition must be rejected.

The applicant requested that the opponent submit proof of use of the trade mark on which the opposition is based, namely Portuguese trade mark No 343 255.

The request was filed in due time and it is admissible given that the earlier trade mark was registered more than five years prior to the publication of the contested application.

On 02/05/2014 the opponent was given two months to file the requested proof of use.

On 07/07/2014 the opponent requested a two month extension to submit proof of use. The Opposition Division informed the opponent that the extension of time was granted.

By the expiry of the extended time limit the opponent did not furnish any evidence concerning the use of the earlier trade mark on which the opposition is based. It did not argue that there were proper reasons for non-use either.

According to Rule 22(2) CTMIR, if the opposing party does not provide such proof before the time limit expires, the Office shall reject the opposition.

Therefore, the opposition must be rejected pursuant to Article 42(2) and (3) CTMR and Rule 22(2) CTMIR.

COSTS

According to Article 85(1) CTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the opponent is the losing party, it must bear the costs incurred by the applicant in the course of these proceedings.

According to Rule 94(3) and (7)(d)(ii) CTMIR, the costs to be paid to the applicant are the costs of representation which are to be fixed on the basis of the maximum rate set therein.



The Opposition Division

Ric
WASLEY

Juan Antonio
MORALES PAREDES

Hugh
O'NEILL

According to Article 59 CTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 60 CTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. Furthermore, a written statement of the grounds of appeal must be filed within four months of the same date. The notice of appeal will be deemed to be filed only when the appeal fee of EUR 800 has been paid.

The amount determined in the fixation of the costs may only be reviewed by a decision of the Opposition Division on request. According to Rule 94(4) CTMIR, such a request must be filed within one month from the date of notification of this fixation of costs and shall be deemed to be filed only when the review fee of EUR 100 (Article 2(30) CTMFR) has been paid.