

ESTTA Tracking number: **ESTTA567518**

Filing date: **10/28/2013**

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

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| Proceeding | 91212520 |
| Party | Defendant Enabledoc LLC |
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| Submission | Answer |
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| Date | 10/28/2013 |
| Attachments | EnableDoc-91212520-ANSWER.pdf(5509951 bytes) |

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

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|------------------------|---|--------------------------|
| Nth Technologies, Inc. |) | Mark: ENABLEDOC |
| <i>Opposer</i> |) | Application No. 85789055 |
| |) | |
| v. |) | |
| |) | |
| EnableDoc LLC, |) | Opposition No. 91212520 |
| <i>Applicant</i> |) | |

ANSWER TO OPPOSITION

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EnableDoc LLC (“EnableDoc”) filing of its trademark application for the mark ENABLEDOC (App. No. 85789055) and its use of the ENABLEDOC mark in the marketplace, presents no likelihood of confusion and denies Nth Technologies, Inc (“Opposer”) claims in opposition.

1. EnableDoc denies that the marks are similar. There are significant differences in appearance and sound between the marks at issue. Specifically, N·ABLE mark is pronounced as “n ā-bəl” MD while ENABLEDOC is pronounced as “i-’nā-bəle” DOC. Moreover, the N·ABLEMD mark is comprised of the stylized letter “N” and the term “ABLE”, separated by a sphere design in the middle, while the mark “ENABLEDOC” is comprised of one unitary word. Further, as shown below, the overall appearance and commercial impression of the respective marks are substantially different. Notably, in addition to the differences between the word elements of the marks, the marks also differ significantly with respect to the color and detail of the design elements included therewith:



vs.



EnableDoc denies that the letters in “Doc” are meant only to mean doctor. Doc has two meanings: documents and doctor. Document creation is enabled by our exclusive speech and word processor template technology. Doctor refers to all medical providers, such as chiropractic, not just medical doctors. EnableDoc’s market is much broader than medical doctors.

Ultimately, the ENABLEDOC mark and the N·ABLEMD marks are inherently different and create distinct overall commercial impressions, such that a healthcare provider would not confuse the marks. Thus, no likelihood of confusion exists.

Additionally, the recent Office Action (dated March 21, 2013) issued by the United States Patent and Trademark Office (“USPTO”) in connection with the ENABLEDOC Application also evidences that there is no likelihood of confusion between the ENABLEDOC and N·ABLEMD marks. Specifically, in the Office Action, the Examining Attorney required minor identification amendments, but stated that “there are no similar registered or pending marks that would bar registration under Trademark Act Section 2(d).”

2. EnableDoc denies that it focuses on healthcare practice management software. Our primary market is Electronic Health Records. N·ABLEMD mark focuses on practice management and billing service.

3. Opposer may have certain rights in its N· ABLE-marks, as discussed above, Opposer does not have exclusive rights to the term “ENABLE” particularly in the case of highly stylized marks incorporating additional terms and design elements. Moreover, any claim of exclusivity is further defeated by the fact that there are many other third-party uses of the term “NABLE” in the marketplace. *See Exhibit A.* Because these third-party uses are able to co-exist with the NABLE marks, EnableDoc’s use of the mark “ENABLEDOC” is also able to co-exist. We also note that the respective marks were able to co-exist in the marketplace for at least the past four years without any instances of consumer confusion.


4. Opposer will not be damaged by EnableDoc's use of the ENABLEDOC trademark. Healthcare professionals conduct evaluations of Electronic Health Record software and are well educated. EnableDoc LLC asserts that Opposer does not have grounds for a dilution claim. In order to succeed on a dilution claim the plaintiff must show that their mark "is widely recognized by the general public of the United States" 15 USC §1125(c)(2)(A). Nth Technologies fails to meet this requirement because of Opposer lack of extensive national advertising, limited geographic reach of Opposer sales, and lack of national recognition for the mark N-ABLEMD.

For these reasons and others, EnableDoc LLC has its own distinctive mark that does not dilute or otherwise infringe upon Nth Technologies Inc.'s trademark. And, any claims to copyright infringement are denied based upon use of common jargon and expressions in the industry.

Respectfully submitted,

EnableDoc LLC

Date: October 27, 2013

By: 

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CERTIFICATE OF MAILING AND SERVICE

The undersigned hereby certifies that the foregoing Answer to Notice of Opposition is being filed electronically via the Electronic System for the Trademark Trials and Appeals (ESTTA) with a copy being sent by first-class mail to:

Kevin A. Thompson
DAVID MCGRATH LLC
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On this 27th day of October 2013



Stephen M. Rothschild

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