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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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Serial No.: 88454741  
Mark: **RHAPSODY**  
Applicant: Telkonet, Inc.  
Filing Date: May 31, 2019  
Mailing Date of Office Action: August 28, 2019  
Examining Attorney: Maureen Dall Lott  
Law Office 105  
Applicant's Attorney of Record: Melinda S. Giftos

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**NON-FINAL OFFICE ACTION RESPONSE**

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In a Non-Final Office Action dated August 28, 2019, the Examining Attorney issued a refusal to register Applicant's RHAPSODY trademark on the grounds that: (a) there is a likelihood of confusion with the marks in Registration Nos. 4799973 and 5550071; (b) there is a potential likelihood of confusion with prior-filed, pending trademark application, U.S. Serial No. 87640918; and (c) Applicant's claimed goods in Class 9 require further clarification. Applicant has clarified its recitation of goods and has provided detailed information and analysis as to why there is no likelihood of confusion between Applicant's mark and the cited marks below. As Applicant has addressed all issues raised in the office action, Applicant respectfully requests the Examining Attorney to withdraw the likelihood of confusion refusal and approve Applicant's trademark application for publication.

**A. APPLICANT'S TRADEMARK.**

Applicant has applied for registration of the **RHAPSODY** trademark for use in connection with:

- Class 9: Commercial intelligent automation control systems, namely, wireless thermostats, wi-fi enabled smart switches, gateway routers in the nature of device and sensor control hardware and environmental sensors for internet of things (IoT) applications, for intelligence for internet of things (IoT) enabled devices, and for use in connection with commercial automation controls

- Class 42: Intelligent automation platform as a service (PAAS) featuring computer software for connecting, operating and managing a wide variety of networked commercial internet of things (IoT) devices for use in environmental control, energy management, facility optimization and data collection; Data automation and collection service using proprietary software to evaluate, analyze and collect service data from commercial intelligent automation systems; Custom design of intelligent automation computer software platforms for connecting, operating and managing a wide variety of networked commercial internet of things (IoT) devices for use in environmental control, energy management, facility optimization and data collection

Applicant intends to use its RHAPSODY trademark in connection with Applicant's EcoSmart Automation platform that allows its customers to reduce energy consumption and improve their facility management capabilities. Applicant's RHAPSODY solution is a smart Internet of Things (IoT) system paired with a platform-as-a-service. See more information on Applicant's product offering in the attached evidence.

## **B. CITED MARKS.**

The Examining Attorney has refused registration of Applicant's RHAPSODY mark on the basis of two existing registrations and one prior-filed application.

1. The Prior-Filed Application Has Been Abandoned and No Longer Poses an Obstacle to Registration.

U.S. Serial No. 87640918 for the **ETERNAL RHAPSODY** trademark is now abandoned. Accordingly, the application should no longer pose a potential obstacle to registration of applicant's RHAPSODY trademark.

2. WRAPSODY Trademark Registration.

The Examining Attorney has cited U.S. Reg. No. 4799973 for the **WRAPSODY** trademark and claimed that there is a likelihood of confusion with Applicant's mark. The WRAPSODY trademark is registered in Class 42 in connection with a broad listing of services. The Examining Attorney has specifically cited the services highlighted in yellow below as conflicting:

**computer software development; design of computer software; maintenance of computer software; computer programming;** consultancy of computer security; **rental of computers, computer software and web servers;** web sites hosting services; hosting the web sites of others on a computer server for a global computer network in the field of electronic hosting of data, computer files, computer applications and information for others; provision of cloud computing services, namely, providing cloud computing featuring software for information management, for creating spreadsheets, tables, graphs and charts, for organizing and analyzing data, for word processing, for creating and displaying of presentations, for electronic mail and instant messaging services, calendar and meeting scheduling, for desktop publishing, for project management, for business planning, for

direct mail and business financial management, for online document collaboration, storage and editing services, for viewing and organizing audio-visual content, for creating and administering online communities and groups, for creating and maintaining personal blogs, for online sharing of digital content, for developing and testing new computer software, and for integrating and aggregating existing online services; information technology consultation, namely, providing personal technological information in the field of network security over computer networks, wireless networks and global communications networks; providing on-line non downloadable operating software for accessing and using a cloud computing network; providing on-line non downloadable software for software development and website development; providing on-line non downloadable software for operating and maintaining computer networks and servers; providing on-line non downloadable software for database management. providing an on-line non-downloadable software for creating and maintaining database, for security, for sales, for information management, for creating spreadsheets, tables, graphs and charts, for organizing and analyzing data, for word processing, for creating and displaying of presentations, for electronic mail and instant messaging services, calendar and meeting scheduling, for desktop publishing, for project management, for business planning, for direct mail and business financial management, for online document collaboration, storage and editing services, for viewing and organizing audio-visual content, for creating and administering online communities and groups, for creating and maintaining personal blogs, for online sharing of digital content, for developing and testing new computer software, and for integrating and aggregating existing online services; providing information of the development and operation of computer software and computer network in the field of finance, insurance, security, content management, creating and managing database, sales, information management, creating spreadsheets, tables, graphs and charts, organizing and analyzing data, word processing, creating and displaying or presentations, electronic mail and instant messaging services, calendar and meeting scheduling, project management, business planning, online document collaboration, storage and editing services, viewing and organizing audio-visual content, creating and administering online communities and groups, creating and maintaining personal blogs, online sharing of digital content, developing and testing new computer software, and integrating and aggregating existing online services; customization of computer software; computer hardware and software consulting services; consulting in the field of information technology; consulting in the field of cloud computing networks and application; design and development of computer networks and computer network software and applications. FIRST USE: 20150515. FIRST USE IN COMMERCE: 20150515

### 3. iRHAPSODY (& Design) Trademark Registration



The Examining Attorney also cited U.S. Reg. No. 5550071 for the iRHAPSODY (& Design) trademark registration, which is used in connection with armatures for use in electrical apparatus; connections, electric; electric relays and wire connectors.

**C. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN APPLICANT'S MARK AND THE CITED MARKS.**

Not only are marks at issue readily distinguishable in sight, sound and connotation:

**RHAPSODY**

**WRAPSODY**



Applicant's goods and services and the goods/services identified in the cited registrations are entirely distinct.

The only overlap between Applicant's mark and the WRAPSODY mark is that the WRAPSODY mark is used broadly with computer-related services. However, Applicant does not offer any of the same services offered by the owner of the WRAPSODY mark. Indeed, Applicant does not provide computer development and design services for others, computer consulting services or software rentals. To the contrary, Applicant offers and sells a full IoT system for environmental control, energy management and facility optimization to large scale organizations, which includes offering platform as a service software services and the necessary components to enable the services. Applicant's customers include hotels, universities, public housing and the military.

Likewise, the only overlap between Applicant's mark and the iRHAPSODY (& Design mark) is the fact that both very broadly use electrical/wireless components. However, Applicant does not provide stand-alone components such as those offered in connection with the iRHAPSODY mark (which are geared toward electric components offered to the automotive

industry as suggested by the mark itself). Indeed, Applicant does not offer or sell armatures for use in electrical apparatus, electric connections, electric relays or wire connectors.

Further, those goods are not even loosely connected to the wireless thermostats, environmental sensors and communications routers applicant uses as part of its overall IoT system. Indeed, a purchaser of iRHAPSODY automotive electric components would not encounter Applicant's IoT environmental control system, or have any reason to believe the two are related in any manner.

Part of the challenge at issue is the USPTO's current identification guide for goods and services does not adequately account for complete IoT solutions. As such, applicants must claim both goods (IoT components) and services (PAAS) for the component IoT sensor parts as well as the software platforms, which triggers potential conflicts with broadly claimed, yet highly unrelated goods and services.

Pragmatically viewing Applicant's claimed goods and services in comparison to the goods and services in the cited marks, it is clear that the marks, goods, services, purchasers and channels of trade are entirely distinct. As such, Applicant respectfully requests the Examining Attorney withdraw the refusal to register and publish Applicant's trademark application for publication.