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Filing date: **02/06/2007**

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

Proceeding	91173354
Party	Defendant LINX SA LINX SA 2A RUE DES CAPUCINS , LU L-1313
Correspondence Address	IRA S. DORMAN LAW OFFICE OF IRA S. DORMAN 330 ROBERTS STREET, SUITE 200 EAST HARTFORD, CT 06108 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Jess M. Collen
Filer's e-mail	jecollen@collenip.com, tgulick@collenip.com, jahrens@collenip.com
Signature	/Jess M. Collen/
Date	02/06/2007
Attachments	g204 mot to set aside de_20070206192348.pdf (12 pages)(311973 bytes)

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

WACOM CO., LTD. AND WACOM TECHNOLOGY CORPORATION, Opposers, V. LINX S.A., Applicant.	Opposition No. 91173354 Mark: INTUIX Serial No. 76/554068

MOTION TO SET ASIDE DEFAULT JUDGMENT AND MOTION TO DEEM ANSWER TIMELY FILED

Applicant, by and through its attorneys, move to set aside default judgment in the above referenced action and deem the Answer attached hereto as timely filed.

On January 17, 2007, Dexxon Digital Storage ("Dexxon") retained Collen IP regarding a trademark litigation suit in the Northern District of California regarding the INTUIX mark (captioned Intuit, Inc. v. Dexxon Digital Storage, Inc.). After becoming involved, as counsel for Dexxon, counsel became aware of an opposition to the INTUIX mark, Opposition No. 91/174,897. Applicant is currently seeking the suspension of the opposition proceedings pending the outcome of the federal litigation filed by Intuit, Inc. (N.D. Cal. 06-cv-7830).

This opposition (Opposition No. 91/173354) was only learned of later after another search revealed an additional opposition to the INTUIX mark. Subsequently, on January 30, 2007, Applicant sent a power of attorney for Collen IP for representation in

the Trademark Trial and Appeal Board in the opposition proceedings. See Power of Attorney, attached as Exhibit A.

There is no prejudice to the Opposer as the outcome of the litigation may have effect the rights of the Opposer by subsequent judgment as to the rights of the parties. Applicant is seeking to set aside default judgment just 6 days after the judgment was entered. This will not interfere with the proceedings as there is still adequate time to exchange discovery and continue the proceedings. In addition, default judgment is not favored by the law. See TBMP § 3120.03.

In addition, Applicant notes that in Opposer's Notice of Opposition, Opposer has opposed all of the classes in the application for Serial No. 76/554,068. However, specifically there is no allegation alleged against any of the Applicant's goods in International Class 003. Opposer's failure to include any factual basis or grounds for the opposition to the registration should not have resulted in the failure to register in all classes. In addition as alleged in the Answer (attached as Exhibit B), Applicant asserts that there is no likelihood of confusion and there are different classes of goods involved in the Applicant's application. There are clear meritorious defenses to Applicant's case which should be considered by setting aside a motion for default.

Applicant herewith provides its Answer attached as Exhibit B to be deemed filed with the request that the Board set aside default judgment.

Wherefore, the Applicant respectfully moves the Board to grant judgment in its favor and to set aside the default judgment and deem the Answer (attached as Exhibit B) to be timely filed.

By:

Jess M. Collen
Thomas P. Gulick
COLLEN *IP*
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
(914) 941-5668
Attorney for Applicant

Dated: February 6, 2007
Encl. – Declaration of Jess M. Collen
Exhibits A & B

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE UNITED STATE PATENT AND TRADEMARK OFFICE.

COLLEN *IP*, THE HOLYOKE-MANHATTAN BUILDING, 80 SOUTH HIGHLAND AVENUE, OSSINING, NEW YORK 10562

Jennifer Ahrens Date: 2/6/07

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

WACOM CO., LTD. AND WACOM TECHNOLOGY CORPORATION,	:	
Opposers,	:	
V.	:	Opposition No. 91173354
	:	Mark: INTUIX
LINX S.A.,	:	Serial No. 76/554068
Applicant.	:	

DECLARATION OF JESS M. COLLEN IN SUPPORT OF APPLICANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT AND MOTION TO DEEM ANSWER TIMELY FILED

I, Jess M. Collen, declare as follows:

1. I am a partner at Collen IP, attorneys of record for Applicant Linx, S.A.. ("Applicant"). The facts set forth in this Declaration are personally known to me and I have firsthand knowledge thereof. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

2. This Declaration is made in support of Applicant's Motion to Set Aside Default Judgment and Motion to Deem Answer Timely Filed.

3. On January 17, 2007, Dexxon Digital Storage retained Collen IP regarding a trademark litigation suit in the Northern District of California regarding the INTUIX mark (captioned Intuit, Inc. v. Dexxon Digital Storage, Inc.).

4. After becoming involved, as counsel for Dexxon, counsel became aware of an opposition to the INTUIX mark, Opposition No. 91/174,897, opposed by Intuit, Inc. the same company involved in the federal trademark litigation.

5. This opposition (Opposition No. 91/173354) was only learned of later after another search revealed an additional opposition to the INTUIX mark.

6. Subsequently, on January 30, 2007, Applicant sent a power of attorney for Collen IP for representation in the Trademark Trial and Appeal Board in the opposition proceedings. See Exhibit A to the Motion to Set Aside Default Judgment.

I, declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed February 6, 2007, at Ossining, New York.

Jess M. Collen
COLLEN IP
The Holyoke-Manhattan Building
80 South Highland Ave.
Ossining, NY 10562
Tel: (914) 941-5668
Fax: (914) 941-6091
Attorney for Applicant
Linx, S.A.

EXHIBIT A

INTUIX S.A.

(Formerly LINX S.A.)

2A, Rue des CAPUCINS.

L-1313 Luxembourg

Tél : (352) 26.20.11.20 & 26.20.11.30
Fax : (352)46.67.76

ATTORNEY DOCKET NO.: G204

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	Linx S.A.
Serial No.	76/554,068
Filed	October 24, 2003
Mark	INTUIX

Law Office : Examiner :

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

POWER OF ATTORNEY AND APPOINTMENT OF DOMESTIC REPRESENTATIVE

Sir:

Applicant hereby appoints: **Jess M. Collen** and **Jane F. Collen**, members of the New York Bar, at the address **COLLEN *IP* Intellectual Property Law, P.C., The Holyoke-Manhattan Building, 80 South Highland Avenue, Town of Ossining, Westchester County, New York 10562**
Telephone no: **(914) 941-5668** to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the Certificate of Registration, revoking all prior powers and appointments.

JESS M. COLLEN whose postal address is **The Holyoke-Manhattan Building, 80 South Highland Avenue, Town of Ossining, Westchester County, New York 10562,** is hereby designated applicant's representative upon whom notices or process in proceedings affecting the mark may be served.

INTUIX SA (formerly LINX SA)

M. Patrick Aflalo (director)

M. Leon Rijnbeek (director)

Dated: January 30th, 2007

COLLEN *IP*
Intellectual Property Law, P.C.
The Holyoke-Manhattan Building
80 South Highland Avenue
Town of Ossining
Westchester County, New York 10562

EXHIBIT B

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

Wacom Co., Ltd. and WACOM TECHNOLOGY CORPORATION, Opposers, V. LINX S.A., Applicant.	Opposition No. 91173354 Mark: INTUIX Serial No. 76/554068

ANSWER TO NOTICE OF OPPOSITION

Applicant answers the Notice of Opposition as follows:

1. Applicant admits.

2. Denied.

3. Applicant is without knowledge or sufficient information to form a belief as to the truth of the statements contained in this paragraph.

4. Applicant admits insofar as the U.S.P.T.O website indicates that Wacom Co., limited is listed as the owner of a trademark registration for the mark INTUOS which registered in January of 2000 as applied to computer peripherals, namely a graphics tablet and electronic stylus. However, Applicant is without knowledge or sufficient information to form a belief as to the truth of the statements contained in this paragraph.

5. Applicant is without knowledge or sufficient information to form a belief as to the truth of the statements contained in this paragraph.

6. Applicant is without knowledge or sufficient information to form a belief as to the truth of the statements contained in this paragraph.

7. Applicant is without knowledge or sufficient information to form a belief as to the truth of the statements contained in this paragraph.

8. Applicant is without knowledge or sufficient information to form a belief as to the truth of the statements contained in this paragraph.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

AFFIRMATIVE DEFENSES

1. Laches.

2. Acquiescence.

3. Waiver.

4. Estoppel.

5. Lacks sufficient allegations to support a claim.

6. The Notice of Opposition fails to set forth a basis for the Opposition sufficient to deny registration of Applicant's mark.

7. The Notice of Opposition fails to set forth a basis for the Opposition sufficient to deny registration of Applicant's mark with respect to Applicant's goods in International Class 003.

8. Applicant is the senior user of the mark.

9. Equitable doctrine of unclean hands.

10. Applicant's mark and Opposer's mark are not likely to cause confusion.

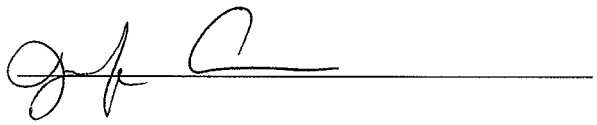
11. The goods and services provided by the Applicant are not likely to cause confusion with the goods listed under the Opposer's mark.

Wherefore, the Applicant respectfully moves the Board to grant judgment in its favor and to dismiss the Notice of Opposition with prejudice.

By:

Jess M. Collen
Thomas P. Gulick
COLLEN *IP*
The Holyoke-Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
(914) 941-5668
Attorney for Applicant

Dated: February 6, 2007

CERTIFICATE OF SERVICE

I, Jennifer Ahrens hereby certify that the Motion To Set Aside Default Judgment And Motion To Deem Answer Timely Filed has been served upon Joseph W. Berenato, III, at address Berenato, White and Stavish LLC, 6550 Rock Spring Drive, Suite 240 Bethesda, MD, 20817, by First Class Mail, postage prepaid, and facsimile to 301-896-0607, on February 6, 2007.