

ESTTA Tracking number: **ESTTA379098**

Filing date: **11/17/2010**

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	Hyperkin, Inc.
Granted to Date of previous extension	11/17/2010
Address	2650 River Avenue, Unit #C Rosemead, CA 91770 UNITED STATES

Attorney information	Audrey L. Khoo Chang & Cote, LLP 19138 E. Walnut Dr. N., Ste. 100 Rowland Heights, CA 91748 UNITED STATES akhoo@changcote.com
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**Applicant Information**

Application No	77946248	Publication date	07/20/2010
Opposition Filing Date	11/17/2010	Opposition Period Ends	11/17/2010
Applicant	Innex, Inc. 16622 East Johnson Drive City of Industry, CA 91745 UNITED STATES		

**Goods/Services Affected by Opposition**

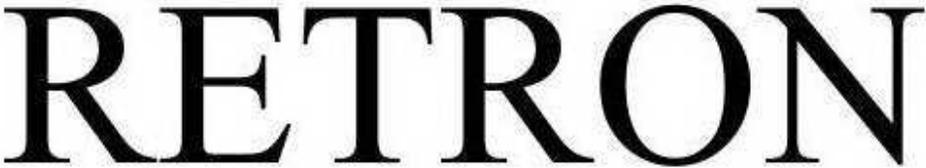
Class 009. First Use: 2009/01/00 First Use In Commerce: 2009/01/00 All goods and services in the class are opposed, namely: Video game controllers; accessories for video game systems, namely, AC adapters, electric cables, protective cases, batteries and kits comprised of cartridge cases, ear phones, protective cases for hardware, cleaning cloth, car charger
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3836100	Application Date	07/13/2009
Registration Date	08/17/2010	Foreign Priority Date	NONE

Word Mark	RETRON
Design Mark	
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2010/05/10 First Use In Commerce: 2010/05/10 Video game consoles for use with an external display screen or monitor

Related Proceedings	Cancellation no. 92053158 Central District of California, Western Division, Case no. CV10 - 5449 RGK (VBKx)
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Attachments	77780149#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition.pdf ( 4 pages )(164325 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Audrey Khoo/
Name	Audrey L. Khoo
Date	11/17/2010

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

HYPERKIN, INC.,

*Opposer,*

v.

INNEX, INC.,

*Applicant.*

Mark: RETROLINK

Serial No.: 77/946,248

Filed: February 26, 2010

Published: July 20, 2010

Opposition No.: \_\_\_\_\_

NOTICE OF OPPOSITION

Hyperkin, Inc. (“Hyperkin” or “Opposer”), a California corporation, located and doing business at 2650 River Avenue, Unit C Rosemead, California 91770, believes that it will be damaged by registration by Innex, Inc. (“Innex” or “Applicant”) of the mark shown in Application Serial No. 77/946,248, and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Opposer is owner of U.S. Registration No. 3,836,100 for the mark RETRON (“Opposer’s Mark”) filed in the United States Patent and Trademark Office (“PTO”) on July 13, 2009 based on its bona fide intention to use Opposer’s Mark. On June 10, 2010, Opposer filed proof with the PTO of its use of Opposer’s Mark with “video game consoles for use with an external display screen or monitor” (“Opposer’s Goods”) and an Amendment to Allege Use of Opposer’s Mark with a date of first use of May 10, 2010. The PTO accepted Opposer’s proof of use and the Amendment to Allege Use. Opposer’s Mark was registered as U.S. Registration No. 3,836,100 on August 17, 2010.

2. Opposer has used Opposer’s Mark in association with Opposer’s Goods in commerce since at least as early as May 10, 2010 and Opposer’s Mark is currently in use in

commerce with Opposer's Goods. Opposer's Mark is valid, subsisting, and in full force and effect.

3. Innex filed a trademark application assigned Application Serial No. 77/946248 in the PTO on February 26, 2010 ("Application") to register the mark RETROLINK ("Applicant's Mark") for use in connection with "video game controllers; accessories for video game systems, namely, AC adapters, electric cables, protective cases, batteries and kits comprised of cartridge cases, ear phones, protective cases for hardware, cleaning cloth, car charger" in International Class 9 ("Applicant's Goods").

4. The Application for Applicant's Mark was published for opposition in the Official Gazette on July 20, 2010. Opposer timely filed a 30-day Request for Extension of Time to Oppose the Application for Applicant's Mark, which was granted until September 18, 2010. Opposer also timely filed a 60-day Request for Extension of Time to Oppose for Good Cause, which was granted until November 17, 2010.

5. Applicant's RETROLINK Mark so resembles Opposer's previously registered RETRON Mark as to be likely to cause confusion, mistake, or deception when used in connection with Applicant's Goods, such that consumers are likely to believe that Applicant and/or Applicant's Goods are in some way legitimately connected or affiliated with, sponsored, approved, endorsed, or licensed by Opposer when, in fact, they are not. The likelihood of confusion, mistake, or deception would also arise from concurrent use and registration of Applicant's Mark with Opposer's use and registration of Opposer's Mark.

6. Applicant's Goods are closely related to and/or are in the natural zone of expansion of Opposer's Goods. Opposer's Goods are advertised and sold online on Opposer's websites and by third parties. Applicant's Goods are the same or substantially similar to those goods provided by Opposer on Opposer's websites.

7. Opposer's Goods and Applicant's Goods travel in the same channels of trade and are viewed by the same customers including those who buy video game consoles and related

accessories. Applicant's Goods are therefore substantially similar to Opposer's Goods with which Opposer's Mark is used.

8. Purchasers familiar with Opposer's Goods are likely to mistakenly believe that the Applicant's Goods are sponsored by, authorized, endorsed, affiliated with or otherwise approved by Opposer because the RETROLINK Mark sought to be registered and used by the Applicant is identical to or confusingly similar to Opposer's RETRON Mark.

9. As alternative grounds for opposition, Opposer alleges Applicant's Mark is merely descriptive when used on or in connection with Applicant's Goods. Applicant's Mark consists of the word "retro", which is defined as "relating to, reviving, or being the styles and especially the fashions of the past<sup>1</sup>" and "of or designating the style of an earlier time<sup>2</sup>".

10. Applicant's use of Applicant's RETROLINK Mark in connection with immediately describes Applicant's Goods. Applicant's Goods consist of retro video game consoles and accessories for playing 8-bit Nintendo Entertainment System video games, in the style of the early video game consoles and accessories originally designed to play 8-bit Nintendo Entertainment System video games. As applied to Applicant's Goods, Applicant's RETROLINK Mark describes its retro-style video game consoles and accessories.

11. As alternative grounds for opposition, Opposer further alleges fraud in the procurement of Applicant's Mark. By failing to disclose the descriptive nature of Applicant's RETROLINK Mark and the true nature of Applicant's Goods, Applicant intentionally withheld information from the PTO that would otherwise bar registration of Applicant's Mark.

12. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes it would be damaged thereby.

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<sup>1</sup> retro. Merriam-Webster. Merriam-Webster, Incorporated. <http://www.merriam-webster.com/dictionary/retro> (accessed: November 17, 2010).

<sup>2</sup> retro. Dictionary .com. Dicionary.com Unabridged. Random House, Inc. <http://dictionary.reference.com/browse/retro> (accessed: November 17, 2010).

WHEREFORE, Opposer respectfully requests that registration of the mark shown in Application Serial No. 77/946,248 be refused and that this Opposition be sustained in favor of Opposer.

This Notice of Opposition is being filed electronically pursuant to the ESTTA system.

Dated: November 17, 2010

CHANG & COTÉ, LLP

By: 

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Attorneys for Opposer,  
Hyperkin, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served on Applicant and its counsel this 17<sup>th</sup> day of November, 2010, by sending the same via First Class mail, postage prepaid, to the following:

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Audrey L. Khoo