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

Proceeding	91197430
Party	Defendant Innex, Inc.
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Date	12/23/2010
Attachments	Answer to Notice of Opposition-Final12.23.10.pdf ( 5 pages )(2581681 bytes )

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

Hyperkin, Inc.	)	Opposition No.: 91197430
	)	Serial No.: 77/946,248
Opposer,	)	Mark: RETROLINK
	)	
v.	)	
	)	
Innex, Inc.	)	
	)	
Applicant.	)	

Trademark Trial and Appeal Board  
United States Patent and Trademark Office  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION FOR SERIAL NO. 77/946,248**

Applicant Innex, Inc., by its attorneys, hereby submits its Answer to the Notice of Opposition filed by Opposer Hyperkin, Inc. with the following numbered paragraphs corresponding to the numbers of the paragraphs of the Notice of Opposition under the headings used in the Notice of Opposition:

1. Applicant admits that Hyperkin, Inc. is shown as the owner of U.S. Registration 3,836,100 in the records of the United States Patent and Trademark Office. Applicant further admits that the records of the United States Patent and Trademark Office show that the RETRON mark was registered as U.S. Registration No. 3,836,100 on August 17, 2010. Applicant lacks sufficient information or other belief upon which to admit the allegations set forth in paragraph 1 of the Notice of Opposition, and on that basis denies them.
2. Applicant denies that Opposer's mark is valid, subsisting and in full force and effect. Applicant lacks sufficient information or other belief upon which to admit the

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remaining allegations set forth in paragraph 2 of the Notice of Opposition, and on that basis denies them.

3. Applicant admits the allegations of Paragraph 3 of the Notice of Opposition.
4. Applicant admits that records of the United States Patent and Trademark Office show its RETROLINK application was published for opposition in the Official Gazette on July 20, 2010. Applicant lacks sufficient information or other belief upon which to admit the remaining allegations set forth in paragraph 4 of the Notice of Opposition, and on that basis denies them.
5. Applicant denies the allegations set forth in Paragraph 5 of the Notice of Opposition.
6. Applicant admits the allegations set forth in Paragraph 6 of the Notice of Opposition.
7. Applicant admits that Applicant's goods and Opposer's goods travel in some of the same channels of trade and are viewed by some of the same customers including those who buy video game consoles and related accessories. Applicant denies the remaining allegations of Paragraph 7 of the Notice of Opposition.
8. Applicant denies the allegations of Paragraph 8 of the Notice of Opposition.
9. Applicant admits that its mark includes the word "retro." The dictionary definitions cited by Opposer speak for themselves. To the extent that the remainder of Paragraph 9 requires a response, Applicant denies the remaining allegations set forth in Paragraph 9 of the Notice of Opposition.
10. Applicant admits that its video game consoles and accessories can be used to for playing 8-bit Nintendo Entertainment System video games. Applicant denies the remaining allegations set forth in Paragraph 10 of the Notice of Opposition.
11. Applicant denies the allegations of Paragraph 11 of the Notice of Opposition.
12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.

## **AFFIRMATIVE DEFENSES**

As separate affirmative defenses to the Notice of Opposition, on the grounds that such defenses are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery, Applicant further alleges as follows:

### **First Affirmative Defense**

The Opposer failed to file a timely opposition to the application for RETROLINK. Therefore, Opposer waived any alleged rights to oppose the application for RETROLINK.

### **Second Affirmative Defense**

The Notice of Opposition and each purported claim set forth therein, fails to state a claim upon which relief can be granted.

### **Third Affirmative Defense**

Applicant's conduct constituted the lawful exercise of its legal rights, which does not violate the trademark laws, unfair competition laws, or any other law.

### **Fourth Affirmative Defense**

The Notice of Opposition, and each purported claim set forth therein, is barred by the doctrine of unclean hands and the Opposer's wrongful conduct.

### **Fifth Affirmative Defense**

Opposer has not suffered injury to its business or property by reason of any conduct by Applicant that violates applicable laws or other legal duty.

### **Sixth Affirmative Defense**

Opposer's injuries and damages, if any, were caused, in whole or in part, by its own conduct and not the conduct of Applicant.

**Seventh Affirmative Defense**

Opposer's RETRON mark is invalid and unenforceable because it is likely to cause confusion with a prior RETRON mark used in connection with video games.

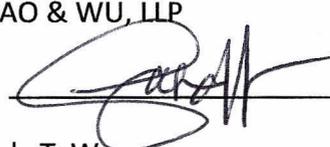
**Eighth Affirmative Defense**

Applicant asserts all affirmative defenses and reserves the right to amend those defenses during the course of discovery.

WHEREFORE, Applicant respectfully requests that the Board dismiss this opposition proceeding in its entirety, and that the United States Patent and Trademark Office issue a Certificate of Registration in application serial no. 77/946,248.

Respectfully submitted,

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By: 

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Attorneys for Applicant

Innex, Inc.

Dated: 12/23/10

**CERTIFICATE OF TRANSMITTAL**

I hereby certify that a true copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION FOR SERIAL NO. 77/946,248 is being filed electronically with the TTAB via ESTTA on this day, December 23, 2010.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 23rd day of December, 2010, the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION FOR SERIAL NO. 77/946,248 was served on counsel for the Opposer Hyperkin, Inc. by depositing same with the United States Postal Service as first class mail, postage prepaid, addressed as follows:

Audrey L. Khoo  
Chang & Cote, LLP  
19138 Walnut Dr. N., Ste. 100  
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Sandy T. Wu  
Attorney for Applicant