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

Proceeding	92047002
Party	Defendant Open Design Alliance
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Date	12/17/2008
Attachments	ODA Answer to 1st Am Consolidated Petition for Cancellation filed 12-17-08.pdf ( 5 pages )(574372 bytes )

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

3 In the matter of  
4 Trademark Registration Nos. 2517750, 2563976, 2656757, 2672409, 2719529, 2920269  
5 Marks: OPENDWG and OPENDWG and Design

6 AUTODESK, INC.

7 Petitioner,

8 vs.

9 OPEN DESIGN ALLIANCE

10 Respondent.

Cancellation No. 92047002

**RESPONDENT OPEN DESIGN  
ALLIANCE'S ANSWER TO PETITIONER  
AUTODESK, INC.'S FIRST AMENDED  
CONSOLIDATED PETITION FOR  
CANCELLATION**

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12  
13  
14 Open Design Alliance, by and through its attorneys, hereby admits, denies and pleads to  
15 the First Amended Consolidated Petition for Cancellation ("FACP") as follows:

16 1. Respondent is without sufficient knowledge or information to form a belief as to  
17 the averments contained in Paragraph 1 and, accordingly, denies these averments.

18 2. Respondent admits that it is a nonprofit corporation, that it is registered with the  
19 Washington Secretary of State as Open Design Alliance and that it now does business under this  
20 name.

21 3. Respondent admits that DWG is Petitioner's name for the proprietary file format  
22 and technology underlying many of its key computer-assisted design (CAD) software products.

23 4. Respondent is without sufficient knowledge or information to form a belief as to  
24 the averments contained in Paragraph 4 and, accordingly, denies these averments.

25 5. Respondent is without sufficient knowledge or information to form a belief as to  
26 the averments contained in Paragraph 5 and, accordingly, denies these averments.

27 6. Respondent is without sufficient knowledge or information to form a belief as to  
28 the averments contained in Paragraph 6 and, accordingly, denies these averments.

1           7.       Respondent is without sufficient knowledge or information to form a belief as to  
2 the averments contained in Paragraph 7 and, accordingly, denies these averments.

3           8.       Respondent admits that the public records show this registrant, mark, address,  
4 registration date, International Class, and description of services for Registration No. 2517750.

5           9.       Respondent admits the identification of services in Registration No. 2517750.

6           10.      Respondent admits that the public records show this registrant, mark, address,  
7 registration date, International Class, and description of services for Registration No. 2563976.

8           11.      Respondent admits that the public records show this registrant, mark, address,  
9 registration date, International Class, and description of services for Registration No. 2656757.

10          12.      Respondent admits that the public records show this registrant, mark, address,  
11 registration date, International Class, and description of goods for Registration No. 2672409.

12          13.      Respondent admits that the public records show this registrant, mark, address,  
13 registration date, International Class, and description of goods for Registration No. 2719529.

14          14.      Respondent admits that the public records show this registrant, mark, address,  
15 registration date, International Class, and description of services for Registration No. 2920269.

16          15.      Respondent admits that it voluntarily surrendered Registration Nos. 2563976,  
17 7656757, 2672409 and 2920269, and therefore denies ownership of these registrations.

18 Respondent admits that it owns Registration Nos. 2517750 and 2719529.

19          16.      Respondent admits that on or about October 29, 2003 it distributed the press  
20 release attached to the FACP as Exhibit A, announcing its change of name from OpenDWG  
21 Alliance to Open Design Alliance.

22          17.      Respondent denies each and every averment contained in Paragraph 17.

23          18.      Respondent denies each and every averment contained in Paragraph 18.

24          19.      Respondent denies that Registration No. 2563976 has been abandoned.  
25 Respondent admits that Registration No. 253976 has been voluntarily surrendered.

26          20.      Respondent denies each and every averment contained in Paragraph 20.

27          21.      Respondent denies each and every averment contained in Paragraph 21.

28          22.      Respondent denies that Registration No. 2656757 has been abandoned.

1 Respondent admits that Registration No. 2656757 has been voluntarily surrendered

2 23. Respondent denies each and every averment contained in Paragraph 23.

3 24. Respondent denies each and every averment contained in Paragraph 24.

4 25. Respondent denies that Registration No. 2672409 has been abandoned.

5 Respondent admits that Registration No. 2672409 has been voluntarily surrendered.

6 26. Respondent denies each and every averment contained in Paragraph 26.

7 27. Respondent denies each and every averment contained in Paragraph 27.

8 28. Respondent denies each and every averment contained in Paragraph 28.

9 29. Respondent denies that Registration No. 2920269 has been abandoned.

10 Respondent admits that Registration No. 2920269 has been voluntarily surrendered.

11 30. Respondent denies each and every averment contained in Paragraph 30.

12 31. Respondent denies each and every averment contained in Paragraph 31.

13 32. Respondent denies each and every averment contained in Paragraph 32.

14 **FIRST AFFIRMATIVE DEFENSE**

15 33. Respondent avers that the FACP fails to allege facts sufficient to entitle Petitioner  
16 to the remedy sought.

17 **SECOND AFFIRMATIVE DEFENSE**

18 34. Respondent avers that Respondent's use of the trademark OPENDWG as set forth  
19 in the Registrations does not create a likelihood of confusion with Petitioner's alleged use of any  
20 DWG mark it avers it owns, and the FACP is therefore without merit.

21 **THIRD AFFIRMATIVE DEFENSE**

22 35. Respondent avers that Petitioner is barred from challenging Respondent's marks  
23 by the doctrine of equitable estoppel.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 36. Respondent avers that Petitioner is barred from challenging Respondent's marks  
26 by laches.

27 **FIFTH AFFIRMATIVE DEFENSE**

28 37. Respondent avers that Petitioner has acquiesced to Respondent's use of the marks.



**CERTIFICATE OF SERVICE**

The undersigned declares as follows:

I am a citizen of the United States and employed in Santa Clara County, State of California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date set forth below, I served the within

**ANSWER TO FIRST AMENDED CONSOLIDATED PETITION FOR CANCELLATION**

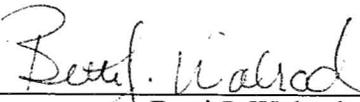
on the interested parties in the subject action by placing a true copy thereof, as indicated below, addressed as follows:

Susan Bower  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

- BY US MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- BY OVERNIGHT COURIER:** by placing the document(s) listed above in a sealed envelope with a prepaid shipping label for express delivery and causing such envelope to be transmitted to an overnight delivery service for delivery by the next business day in the ordinary course of business.
- BY PERSONAL DELIVERY:** by causing to be personally delivered the document(s) listed above to the addressee(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California and the United States that the above is true and correct.

Date: December 18, 2008

  
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Betti J. Walrod