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

Proceeding	92050114
Party	Defendant Unicom Systems, Inc.
Correspondence Address	Unicom Systems, Inc. 1032 Cove Way Beverly Hills, CA 90210 UNITED STATES
Submission	Answer
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Date	12/08/2008
Attachments	6065876.pdf ( 9 pages )(76242 bytes )

**United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

Our Ref: 1143-025.002

In re Trademark:  
Reg. No.: 3019561  
Trademark: PIE

Pie Digital, Inc.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92050114
	)	
UNICOM Systems, Inc.,	)	
	)	
Respondent.	)	
	)	

**Answer to Petition to Cancel**

Respondent, UNICOM Systems, Inc. (also referred to herein as “Registrant”), by and through its counsel, Gordon E. R. Troy, Esq., hereby answers the Petition to Cancel Registration No. 3019561 and alleges as its affirmative defenses as follows:

First Unnumbered Paragraph: Respondent believes that Petitioner is a legal entity organized under the laws of Delaware, with its principal place of business at 160 Sansome St., Suite 200, San Francisco, CA 94104, however, leaves Petitioner to its proofs at the trial of the within matter to establish same.

Second Unnumbered Paragraph: UNICOM Systems, Inc. is a California corporation, with its principal place of business at UNICOM Plaza, Suite 310, 15535 San Fernando Mission Blvd., Mission Hills, CA 91345. Registrant is the record title owner of Registration No. 3019561, is the owner and user thereof of the mark represented by said registration.

1. Respondent admits the averments contained in Paragraph 1 of the Petition to Cancel Registration, except denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Registration No. 3019561. Respondent further answers by stating as to all references to the official records of the United States Patent and Trademark Office in the Petition to Cancel Registration, and in particular to the records pertaining to Registration No. 3019561, Registration No. 2675912, and Cancellation Action No. 92043279 that the contents of each of those official records shall control where they are inconsistent with any averments made by Petitioner.

2. Respondent admits the averments contained in Paragraph 2 of the Petition to Cancel Registration, namely that an Office Action issued on March 30, 2003 wherein the examiner raised two (2) issues therein, namely, 1) Refusal under Section 2(d) – Likelihood of Confusion on the basis of U.S. Registration No. 2675912 for the mark PIE and design covering “computer software for the integration of business applications, in particular in the financial and telecommunications industry” in class 9, and “telecommunications services, namely, the integration of business applications installed in remote locations and electronic transmission of related data over a global computer network” in class 38; and 2) a request by the Examining Attorney pursuant to 37 C.F.R. §2.61(b) concerning Meaning or Significance: “The applicant must indicate whether the letters “PIE” have any significance in the relevant trade or industry or as applied to the applicant’s computer software”. Respondent denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Registration No. 3019561, and furthermore denies the characterization in the Petition to Cancel of the Section 2(d) refusal as an “initial refusal”.

3. Respondent admits the averments contained in Paragraph 3 of the Petition to Cancel Registration except denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Registration No. 3019561.

4. Respondent admits the averments contained in Paragraph 4 of the Petition to Cancel Registration except denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Registration No. 3019561.

5. Respondent admits the averments contained in Paragraph 5 of the Petition to Cancel Registration except denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Registration No. 3019561.

6. Respondent admits the averments contained in Paragraph 6 of the Petition to Cancel Registration except denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Cancellation No. 92043279.

7. Respondent admits the averments contained in Paragraph 7 of the Petition to Cancel Registration except denies any such averments which may be inconsistent with the official records of the United States Patent and Trademark Office for Registration No. 3019561.

8. Respondent admits the averments contained in Paragraph 8 of the Petition to Cancel Registration.

9. Respondent is aware of Application Serial Nos. 78/716,088, 78/716,089, 78/716,091 and 78/716,092 and the official electronic records for said applications as

indicated in the United States Patent and Trademark Office. Respondent leaves Petitioner to its proofs at the trial of the within matter to prove the contents thereof, and therefore denies the allegations contained in Paragraph 9.

10. Respondent hereby incorporates by reference its answers to paragraphs 1 through 9 above as though fully set forth herein.

11. Respondent denies the averments contained in Paragraph 11 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

12. Respondent states that it completely and properly complied with the laws, rules and regulations of the United States Patent and Trademark Office when it stated in its Office Action Response of September 30, 2003 "... that the letters "PIE" have no known significance in the relevant trade or industry or as applied to the applicant's computer software except as a trademark of the applicant." Respondent further answers by stating that the computer industry has not, nor does it use the term "PIE" as an acronym for "Productivity Integrated Environment" nor is "PIE" readily understood within the computer software industry as meaning "Productivity Integrated Environment." Respondent therefore denies the averments contained in Paragraph 12 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

13. Respondent states that no answer is required as to Paragraph 13 of the Petition to Cancel Registration as legal precedent and conclusions of law are stated therein; to the extent that an answer is required, Respondent denies the averments contained in Paragraph 13.

14. Respondent admits that the “PIE” mark was developed as an acronym from a number of different terms, including “Productivity Integrated Environment”, however denies that the computer industry uses the term “PIE” as an acronym for “Productivity Integrated Environment” nor is “PIE” readily understood within the computer software industry as meaning “Productivity Integrated Environment.” Rather, and as properly stated in Respondent’s Office Action response of September 30, 2003, within the mainframe computer software industry, “PIE” is understood to refer to Respondent’s trademark consisting of a suite of products offered by Respondent. Respondent denies the remaining averments contained in Paragraph 14 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

15. Respondent denies the averments contained in Paragraph 15 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

16. Respondent denies the averments contained in Paragraph 16 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

17. Respondent denies the averments contained in Paragraph 17 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

18. Respondent denies the averments contained in Paragraph 18 of the Petition to Cancel Registration.

19. Respondent hereby incorporates by reference its answers to paragraphs 1 through 18 above as though fully set forth herein.

20. Respondent denies the averments contained in Paragraph 20 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

21. Respondent admits that the registration of a mark pursuant to the Trademark Statute constitutes prima facie evidence of “of the validity of the registered mark and of the registration of the mark, of the registrant’s ownership of the mark, and of the registrant’s exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate” (See: 15 U.S.C. §1057); Respondent denies that the mark is descriptive, and denies the remaining averments contained in Paragraph 21 of the Petition to Cancel Registration and leaves Petitioner to its proofs at the trial of the within matter.

22. Respondent denies the averments contained in Paragraph 22 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

23. Respondent denies the averments contained in Paragraph 23 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

24. Respondent denies the averments contained in Paragraph 24 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

25. Respondent denies the averments contained in Paragraph 25 of the Petition to Cancel Registration.

26. Respondent hereby incorporates by reference its answers to paragraphs 1 through 25 above as though fully set forth herein.

27. Respondent denies the averments contained in Paragraph 27 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

28. Respondent denies the averments contained in Paragraph 28 of the Petition to Cancel Registration and leaves the Petitioner to its proofs at the trial of the within matter.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

For its first affirmative defense, Respondent states that Petitioner fails to state a claim upon which relief may be granted.

#### **Second Affirmative Defense**

For its second affirmative defense, Respondent states that it has paramount rights over any rights that Petitioner may claim.

#### **Third Affirmative Defense**

For its third affirmative defense, Petitioner lacks standing to bring the within petition.

#### **Fourth Affirmative Defense**

For its fourth affirmative defense, Respondent has unclean hands.



### **Fifth Affirmative Defense**

For its fifth affirmative defense, Respondent states that even if its PIE mark were descriptive as alleged by Petitioner, through the long, continuous, uninterrupted and exclusive use of its PIE mark, the mark has acquired distinctiveness.

### **Sixth Affirmative Defense**

For its sixth affirmative defense, Respondent states that even if Respondent had a duty to advise the United States Patent and Trademark Office that the PIE mark consists of an acronym of the words “Productivity Integrated Environment” as alleged by Petitioner, such omission is not a material misrepresentation of fact to deny Respondent of its right to register and use its PIE mark.

### **Seventh Affirmative Defense**

For its seventh affirmative defense, Respondent fails to sufficiently state its claim of fraud.

WHEREFORE, Respondent respectfully prays that the within cancellation be denied in all respects.

Respectfully submitted:  
GORDON E. R. TROY, PC

/s/ Gordon E R. Troy

By: \_\_\_\_\_  
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December 8, 2008

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Answer has been served on counsel for Petitioner by depositing same with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

Tsan Abrahamson, Esq.  
Cobalt LLP  
819 Bancroft Way  
Berkeley, CA 94710

on: December 8, 2008

Respectfully submitted:  
GORDON E. R. TROY, PC

/s/ Gordon E R. Troy

By: \_\_\_\_\_

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