

ESTTA Tracking number: **ESTTA291181**

Filing date: **06/22/2009**

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

Proceeding	92050789
Party	Defendant Hewlett-Packard Development Company, L.P.
Correspondence Address	Hewlett-Packard Development Company, L. . 11445 Compaq Center Drive West Houston, TX 77070 UNITED STATES trademarks@howardrice.com, ddigennaro@howardrice.com
Submission	Answer
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Date	06/22/2009
Attachments	TOUCHSMART Ans to petition to cancel.pdf ( 5 pages )(143418 bytes )

I hereby certify that this correspondence is being deposited electronically with the Trademark Trial and Appeal Board on the date shown below.

By and through Opposer's attorney, the Trademark office is authorized by Jeffrey E. Faucette, Attorney for Opposer, to charge the requisite filing fees to the Deposit Account of Howard Rice Nemerovski Canady Falk & Rabkin, Account No. 08-2792. Please deduct any additional fees that may be due, or credit any overpayment, to the same Deposit Account.

Jeffrey E. Faucette

Dated: June 22, 2009

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

In re Trademark Registration No. 3,600,880

Registered: April 7, 2009

Trademark: TOUCHSMART

NARTRON CORPORATION

Petitioner

v.

HEWLETT-PACKARD  
DEVELOPMENT COMPANY, L.P.,

Respondent.

Cancellation No. 92050789

**ANSWER TO PETITION TO CANCEL**

Respondent Hewlett-Packard Development Company, L.P. ("Respondent") does hereby answer Petitioner Nartron Corporation ("Petitioner") as follows:

Answering the preamble on page 1 of the Petition to Cancel, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Petitioner's organization, location, and/or belief that it will be damaged by the continued registration of the TOUCHSMART mark, and therefore denies same.

1. Admitted.
2. Respondent lacks knowledge or information sufficient to form a belief as to

ANSWER TO PETITION TO CANCEL

the truth of the allegations of Paragraph 2 and therefore denies same.

3. Respondent admits that Petitioner is the owner of United States Trademark Registration No. 1,681,891 for SMART TOUCH covering “electronic proximity sensors and switching devices” in International Class 9, which was registered on April 7, 1992. Respondent admits that the document attached as Exhibit 1 to the Petition to Cancel appears to be a true and correct copy of a printout from the USPTO website for Registration No. 1,681,891. Except as expressly stated herein, Respondent denies each and every allegation of Paragraph 3.

4. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies same.

5. Respondent admits that it filed U.S. Trademark Application Serial No. 77/197,146 on June 7, 2007 with a claimed first use in commerce date of January 29, 2007. Except as expressly stated herein, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies same.

6. Denied.

7. To the extent that Paragraph 7 purports to set forth a conclusion of law, no responsive pleading is required. Respondent denies the remaining allegations of Paragraph 7.

8. To the extent that Paragraph 8 purports to set forth a conclusion of law, no responsive pleading is required. Respondent denies the remaining allegations of Paragraph 8.

9. Denied.

10. To the extent that Paragraph 10 purports to set forth a conclusion of law, no responsive pleading is required. Respondent denies the remaining allegations of

Paragraph 10.

**AFFIRMATIVE DEFENSES**

Respondent sets forth its affirmative defenses below. By setting forth these affirmative defenses, Respondent does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Petitioner. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Petitioner's allegations.

**FIRST AFFIRMATIVE DEFENSE  
(Waiver or Estoppel)**

Petitioner's action is barred by the doctrine of waiver or estoppel.

**SECOND AFFIRMATIVE DEFENSE  
(Laches or Acquiescence)**

Petitioner's action is barred by the doctrine of laches or acquiescence.

**THIRD AFFIRMATIVE DEFENSE  
(Unclean Hands, Trademark Misuse)**

Petitioner's action is barred because Petitioner has acted with unclean hands.

**FOURTH AFFIRMATIVE DEFENSE  
(Additional Affirmative Defenses)**

Respondent hereby gives notice that it intends to rely on any additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its answer to assert such additional affirmative defenses.

**PRAYER FOR RELIEF**

WHEREFORE, Respondent prays that Petitioner's Petition to Cancel United States Trademark Registration No. 3,600,880 for the mark TOUCHSMART be denied.

DATED: June 22, 2009

Respectfully Submitted

By: 

JEFFREY E. FAUCETTE  
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Attorneys for Respondent  
HEWLETT-PACKARD  
DEVELOPMENT COMPANY, L.P.

**PROOF OF SERVICE BY MAIL**

The undersigned declares and says as follows: my business address is Three Embarcadero Center, Seventh Floor, San Francisco, CA 94111-4024. I am employed in the City and County of San Francisco; I am over the age of 18 years, and I am not a party to this cause. I am readily familiar with this business' practices for collection and processing of correspondence for mailing with the United States Postal Services. On the same day that a sealed envelope is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Date of Deposit: June 22, 2009

I served the within ANSWER TO PETITION TO CANCEL on Applicant/Registrant and counsel for Applicant/Registrant at the following address:

Hope V. Shovein  
Brooks Kushman P.C.  
1000 Town Center, 22nd Floor  
Southfield, MI 48075

by placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for deposit in the United States mail for collection and mailing on this day following ordinary business practices of Howard, Rice, Nemerovski, Canady, Falk & Rabkin.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration is executed in San Francisco, California, this 22nd day of June 2009.

By:  Janet G. Beverly