

ESTTA Tracking number: **ESTTA99742**

Filing date: **09/18/2006**

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

Proceeding	91124742
Party	Defendant INTERLINK ELECTRONICS, INC. INTERLINK ELECTRONICS, INC. ,
Correspondence Address	MARK A. CANTOR BROOKS & KUSHMAN, P.C. 1000 TOWN CENTER, 22ND FLOOR SOUTHFIELD, MI 48075-1183
Submission	Other Motions/Papers
Filer's Name	Anessa Owen Kramer
Filer's e-mail	akramer@brookskushman.com
Signature	/s/ Anessa Owen Kramer
Date	09/18/2006
Attachments	Motion re Request for Admissions.pdf ( 5 pages )(143666 bytes ) Exhibit to Motion re Request for Admissions.pdf ( 10 pages )(152475 bytes )

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

In the matter of  
Trademark Application on Serial No. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

Intuit Inc.,	)	
	)	
vs.	)	Consolidated Opposition Nos.
	)	91/124,742 and 91/124,758
Interlink Electronics, Inc.,	)	
Applicant.	)	
	)	

TTAB BOX NO FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT'S MOTION WITH RESPECT TO OPPOSER'S  
REQUEST FOR ADMISSIONS UNDER FED R. CIV. P. 36(b)**

Applicant, Interlink Electronics, Inc., respectfully moves the Trademark Trial and Appeal Board (hereinafter “the Board”) to accept the attached Responses to Opposer’s First Set of Requests for Admissions.

The grounds for this motion are as follows:

1. On July 8, 2002, Opposer served Opposer’s First Set of Requests for Admission on Applicant. On that same date, Opposer served its First Set of Interrogatories and its First Set of Requests for Production of Documents and Things. Again on that same date, Applicant served its own First Request for the Production of Documents to Opposer and First Set of Interrogatories to Opposer. Based on the mutual agreement of the parties, the parties each consented to reciprocal extensions of time based on the fact that the parties were engaged in settlement negotiations. Stipulated motions to extend and reset the trial calendar were filed with the Board on three occasions, namely, on August 9, 2002; September 11, 2002; and November 26, 2002. On February 10, 2003, again based on an agreement between the parties. The Opposer filed a stipulated motion to consolidate cases and to suspend the proceedings. Subsequently, settlement negotiations continued on and off with the discovery period ending and neither party responding to the other party’s discovery requests, and with neither party seeking to have the other do so. Abruptly, in April 2006, the settlement negotiations between the parties broke down. Shortly thereafter, on May 1, 2006, Opposer filed its Notices of Reliance.

2. Because Opposer allowed the discovery period to pass without ever responding to Applicant’s outstanding discovery requests, Applicant understood Opposer’s intention to proceed with the case without discovery. Indeed, Opposer had not discussed any further extensions nor requested any responses to outstanding discovery at any time after February 2003. Nor did Opposer ever file any motion to compel responses. As such, the clear implication

to Applicant was that the case was proceeding without discovery once Opposer filed its Notices of Reliance in May of 2006 with no mention of reliance on the unanswered discovery by the parties.

3. The Board has “considerable discretion over whether to permit withdrawal or amendment of admission.” *See, Farr Man & Co., Inc. v. M/V Rozita*, 903 F.2d 871, 876 (1<sup>st</sup> Cir. 1990). Fed. R. Civ. P. 36(b) provides that admissions may be withdrawn upon motion if “the merits of the action will be subserved thereby and the party who obtains the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits.” The timing of a motion to withdraw or amend an admission plays a significant role in the Board’s determination of whether the propounding party will be prejudiced by withdrawal or amendment. *See Trademark Trial and Appeal Board Manual Rule 525 (citing Johnston Pump/General Valve Inc. v. Chromalloy American Corp., 13 USPQ2d 1719, 1721 (TTAB 1989))*.

Courts have allowed amendment even after trial has begun. *See, id.* The first notice to Applicant that Opposer intended to rely on the admission requests it had served in this case was Opposer’s inclusion of those requests in its Notice of Reliance submitted as rebuttal testimony on August 14, 2006. Applicant promptly filed this motion in response, prior to the opening of the briefing periods in this case. Opposer therefore still has sufficient time to argue the merits of its case. Indeed, Applicant has noticed a testimonial deposition for September 19, 2006, in which it will take the testimony of its Senior Marketing Manager. Opposer will have an opportunity to cross-examine that witness on the subjects of the admission requests.

4. Clearly, the presentation of the merits will be served by accepting the answers to the requests for admission. Moreover, this will not prejudice opposer in presenting


its case on the merits. The interests of a full and fair decision on this case weigh heavily in favor of Applicant, and Applicant would be prejudiced if the Requests for Admission are deemed admitted. Specifically, the admission requests contain statements that, if deemed admitted, are simply not true.

5. Applicant has submitted responses to the request for admissions as an exhibit to this motion.

For the reasons stated above, Applicant respectfully requests the Board to grant its motion pursuant to Fed. R. Civ. P. 36(b), and accept the admission responses as attached.

Respectfully submitted,

**BROOKS KUSHMAN P.C.**

By: 

MARK A. CANTOR (P32661)

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1000 Town Center  
Twenty-Second Floor  
Southfield, Michigan 48075  
(248) 358-4400

*Attorneys for Applicant*

Dated: September 18, 2006

**CERTIFICATE OF SERVICE**

I certify that I served:

**APPLICANT'S MOTION WITH RESPECT TO OPPOSER'S  
REQUEST FOR ADMISSIONS UNDER FED R. CIV. P. 36(b)**

on September 18, 2006 by:

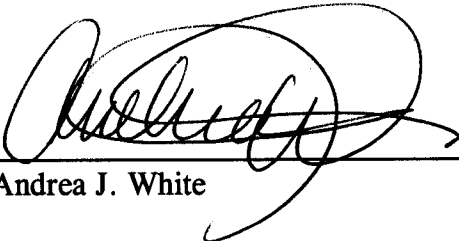
delivering (via facsimile)

mailing (via First-Class mail)

a copy to:

Sally M. Abel  
Linda G. Henry  
FENWICK & WEST LLP  
801 California Street  
Mountain View, CA 94041

*Attorneys for Opposer*

  
\_\_\_\_\_  
Andrea J. White

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of  
Trademark Application on Serial No. 76/035,136  
Mark: INTUITOUCH

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Intuit Inc.,	)	
	)	
	)	
Opposer,	)	
	)	
vs.	)	Opposition No. 124,742
	)	
Interlink Electronics, Inc.,	)	
	)	
Applicant.	)	

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**APPLICANT'S RESPONSES TO OPPOSER'S  
FIRST SET OF REQUESTS FOR ADMISSION**

## **ADMISSION REQUESTS**

### **REQUEST NO. 1**

Admit that Opposer's rights in the INTUIT mark predate any rights Applicant claims in the INTUITOUCH mark.

### **RESPONSE:**

Admitted.

### **REQUEST NO. 2**

Admit that at the time of the filing date of Applicant's Application Serial No. 76/035,136, Applicant was aware of the INTUIT mark.

### **RESPONSE:**

Applicant admits that as of the filing date of Application Serial No. 76/035,136, it was generally aware of Opposer's INTUIT mark, but denies the remaining allegations in paragraph 2.

### **REQUEST NO. 3**

Admit that Applicant markets or plans to market the INTUITOUCH Product to companies in the financial industry.

### **RESPONSE:**

Denied.



**REQUEST NO. 4**

Admit that Applicant provides or plans to provide goods under INTUITOUCH to companies in the financial industry.

**RESPONSE:**

Denied.

**REQUEST NO. 5**

Admit that Applicant markets the INTUITOUCH Product as enabling financial transactions, including but not limited to the purchasing of other parties' goods and services, and the payment of bills.

**RESPONSE:**

Denied.

**REQUEST NO. 6**

Admit that the INTUITOUCH Product can be used to enable electronic banking.

**RESPONSE:**

Denied.

**REQUEST NO. 7**

Admit that the INTUITOUCH Product can be used to enable payment by checks.

**RESPONSE:**

Denied.

**REQUEST NO. 8**

Admit that the INTUITOUCH Product can be used by End-Users to access information and news regarding financial services or the financial markets, including but not limited to stock quotes, public company news, calculation tools for investors, and other financial information.

**RESPONSE:**

Applicant admits that End-Users of its INTUITOUCH Product can access a wide variety of information and news in the same way a user of a keyboard or a mouse could use that device to access information and news. Applicant denies the remaining allegations in paragraph 8.

**BROOKS KUSHMAN P.C.**

By: 

Mark A. Cantor  
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Southfield, Michigan 48075  
(248) 358-4400

*Attorneys for Applicant*

Dated: September 18, 2006

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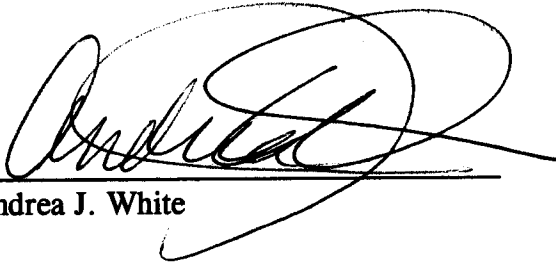
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#### **RESPONSE:**

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### **REQUEST NO. 3**

Admit that Applicant markets or plans to market the INTUIVISION Product to companies in the financial industry.

#### **RESPONSE:**

Denied.

**REQUEST NO. 4**

Admit that Applicant provides or plans to provide goods under INTUIVISION to companies in the financial industry.

**RESPONSE:**

Denied.

**REQUEST NO. 5**

Admit that Applicant markets the INTUIVISION Product as enabling financial transactions, including but not limited to the purchasing of other parties' goods and services, and the payment of bills.

**RESPONSE:**

Denied.

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**RESPONSE:**

Denied.

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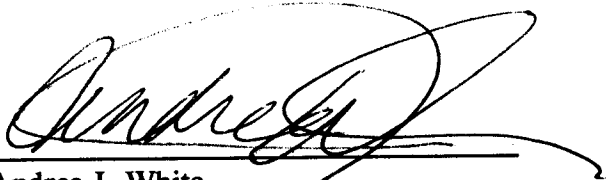
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