

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

In the Matter of Application Serial Nos. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

Intuit Inc.,  
Opposer,  
v.  
Interlink Electronics, Inc.,  
Applicant.

Consolidated Opposition Nos.  
91/124,742 and 91/124,758

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I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.  
Phyllis O'Sullivan  
(Type or Print Name of Person Mailing Paper or Fee)  
Phyllis O'Sullivan  
(Signature of Person Mailing Paper or Fee)

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

Opposer, Intuit Inc., hereby opposes Applicant's Motion with Respect to Opposer's Request for Admissions under Fed R. Civ. P.36(b) ("this Motion" or "Applicant's Motion") and requests that the Trademark Trial and Appeal Board ("the Board"), pursuant to Rule 36(b) of the Federal Rules of Civil Procedure and TBMP 525, deny Applicant's motion to withdraw matters deemed admitted for failure to timely respond to requests for admissions. As grounds for its opposition to Applicant's Motion, Opposer submits that (1) Applicant's failure to

timely respond was not the result of excusable neglect, and (2) withdrawal of the admissions will not subserve the merits of the consolidated proceeding, but will instead prejudice Opposer in maintaining Opposer's case. Fed. R. Civ. P. 36(b) and Trademark Trial and Appeal Board Manual ("TBMP") Rule 525.

### **Statement of Facts**

On July 8, 2002, Opposer served its discovery requests, consisting of interrogatories, requests for production of documents, and requests for admission. By letter from Applicant's trademark counsel dated August 9, 2002, the parties confirmed their agreement to extend the opposition proceedings and specifically confirmed an extension of time to respond to all outstanding discovery requests. Similarly, by letters dated September 10, 2002 and November 27, 2002, the parties, through their respective trademark counsels, confirmed their agreement to extend the opposition proceedings and again specifically confirmed extensions of time to respond to all outstanding discovery requests. Therefore, on three separate occasions, the parties specifically agreed to extend the period to respond to outstanding discovery requests. However, after November 2002, Applicant failed to request any extension of time to respond to any outstanding discovery requests, including Opposer's requests for admission. Instead, Applicant let the deadline pass. Moreover, Opposer relied on the matters deemed admitted by Applicant and geared its investigative efforts and subsequent prosecution of the consolidated opposition proceeding on such admissions.

### **Arguments**

Applicant has requested that the Board permit withdrawal of matters deemed admitted for Applicant's failure to respond 4 years ago to Opposer's requests for admissions.

First, Applicant appears to argue that it should be relieved of the untimeliness of its responses on the grounds that it was excusable neglect. TBMP 411.02 (If a party on which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted unless the party is able to show that its failure to timely respond was the result of excusable neglect.) However, Applicant's failure to respond to the requests for admissions was not the result of excusable neglect. See Fed. R. Civ. P. 6(b).

In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993), the Supreme Court set forth four factors to determine whether a party's neglect of a matter is excusable. Those factors are: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the moving party; and, (4) whether the moving party has acted in good faith. In subsequent applications of this test by the Circuit Courts of Appeal, several courts have stated that the third factor must be considered the most important factor in a particular case. See, *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 at fn.7 (TTAB 1997); and TBMP 509(b)(1).

In this case, as to the first *Pioneer* factor, the danger of prejudice to Opposer would be significant because there is no longer any means by which Opposer can obtain and submit the evidence required to prove the matters that were deemed admitted by Applicant. Opposer's discovery and testimony periods have long since closed. See, *Pumpkin Ltd.*, 43 USPQ2d at 1587 (prejudice if evidence has become unavailable as a result of the delay in the proceedings); TBMP 509(b)(1) ("prejudice to nonmovant" is prejudice to the nonmovant's

ability to litigate the case, e.g., where the movant's delay has resulted in a loss or unavailability of evidence or witnesses which otherwise would have been available to the nonmovant.”).

As to the second *Pioneer* factor, Applicant has delayed for four years and the potential impact of such delay on the judicial proceedings is significant. “The Board, and parties to Board proceedings generally, clearly have an interest in minimizing the amount of the Board's time and resources that must be expended on matters, such as most contested motions to reopen time, which come before the Board solely as a result of a sloppy practice or inattention to deadlines on the part of litigants or their counsel. The Board's interest in deterring such sloppy practice weighs heavily against a finding of excusable neglect, under the second *Pioneer* factor.” *Pumpkin Ltd.*, 43 USPQ2d at 1588 (delay of three and one-half *months* held significant). As to the fourth Pioneer factor, Applicant has not acted in good faith because it failed to take the appropriate steps during the assigned discovery period.

With respect to the third Pioneer factor, i.e. the reason for the delay and whether it was within Applicant's control, there is no doubt that Applicant was fully aware of the proceeding schedule. On three separate occasions, the parties extended the period to respond to outstanding discovery requests. However, after November 2002, Applicant failed to request any extension of time to respond to outstanding discovery requests. Applicant clearly knew of the response deadline, but let it pass. *See, Pumpkin Ltd.*, 43 USPQ2d at 1586 (motion denied; failure of docketing system considered wholly within petitioner's reasonable control).

Next, Applicant argues that it allowed its response deadline to pass because Opposer did not respond to Applicant's outstanding discovery requests and Applicant “understood” that Opposer's wanted to proceed with the case without discovery. This makes no

sense. If Applicant wanted Opposer to respond to discovery, the appropriate recourse would have been for Applicant to file a motion to compel. 37 CFR §2.120(e) and TBMP 523.01. In addition, if Applicant was unclear as to the status of the discovery requests, Applicant could have contacted Opposer to ask about its intentions, responded to the requests for admissions in a timely manner, or sought an extension of time to respond. *See, Atlanta-Fulton County Zoo Inc. v. De Palma*, 45 UAPQ2d 1858 (TTAB 1998) (mere existence of settlement negotiations did not justify party's inaction or delay.) Again, Applicant's failure to respond to the requests for admissions was not the result of excusable neglect.

Similarly, Applicant again blames Opposer, arguing that Applicant did not respond to discovery requests because Opposer did not file a motion to compel. Opposer has no duty to file a motion to compel. *See, 37 CFR §2.120(e)*. Moreover, Applicant would have the Board believe that it was Opposer's responsibility to remind Applicant of the response deadline and to instruct Applicant of the potential dangers of not responding to outstanding requests for admissions. This is simply not the law. *See, Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 UAPQ2d 1848, 1851 (TTAB 2000) (counsel's misreading of relevant rule are wholly within counsel's control).

Accordingly, Applicant has provided no showing, let alone a persuasive showing, that its failure to timely respond to Opposer's requests for admissions was the result of excusable neglect. Therefore, the matters are deemed admitted.

In cases where matters are deemed admitted, Fed. R. Civ. P. 36 provides that an admission may be withdrawn or amended but only when (1) the presentation of the merits of the action will be subserved thereby and (2) the party who obtained the admission fails to satisfy the

court that withdrawal or amendment will prejudice him in maintaining his action. *See* TBMP 525. Applicant has failed to show that the presentation of the merits of this opposition will be subserved by allowing Applicant to withdraw its admissions. Applicant merely alleges that “[c]learly, the presentation of the merits will be served by accepting the answers to the requests for admission.” Further, allowing Applicant to withdraw its admissions will severely prejudice Opposer in maintaining its action.

The Board has ruled that ambiguous and conclusory admission requests can be withdrawn because they do not advance the presentation of the case. *Hobie Designs Inc. v. Fred Hayman Beverly Hills Inc.*, 14 USPQ2d 2064, 2065 (TTAB 1990). However, Opposer’s requested admissions were not ambiguous or conclusory in nature. Opposer’s requested admissions did not, for example, request that Applicant admit that the marks are confusingly similar, that the goods are competing goods, or that the channels of trade overlap. Instead, Opposer’s requests for admission were specific and factual in nature, requesting, for example that Applicant admit that the goods at issue can be used to access information and news regarding financial services. *See* Declaration of Linda Henry in Support Opposer’s Opposition to Applicant’s Motion with Respect to Opposer’s Request for Admissions under Fed R. Civ. P. 36(b), ¶¶ 2 and 3.

Similarly, courts have held that the presentation of the merits will be subserved by allowing the withdrawal or amendment of admissions when the admission was made inadvertently or new evidence was discovered (*McClanahan v. Aetna Life Ins. Co.*, 144 F.D.R. 316, 320 (W.D. Va. 1992)), or when the admission is no longer true because of changed circumstances (*Ropfogel v. U.S.*, 138 F.D.R. 579 (D. Kan. 1991)). However, Applicant has not

shown that any of these circumstances apply.

Further, withdrawal of the admissions will severely prejudice Opposer. The prejudice relates to the difficulty Opposer will face as a result of the “sudden need to obtain evidence to prove the matter it had previously relied upon as answered.” *Gutting v. Falstaff Brewing Corp.*, 710 F.2d 1309, 1314 (8<sup>th</sup> Cir. 1983). “The test is whether that party is now any less able to obtain the evidence required to prove the matter which was admitted than he would have been at the time the admission was made.” *Adventis, Inc. v. Big Lots Stores, Inc.*, 2006 U.S. Dist. LEXIS 68332, \*8 (WD Vir. 2006).

In this case, Opposer will not be able to obtain the evidence required to prove the matters that were deemed admitted by Applicant. Contrary to Applicant’s assertions, Opposer does not have sufficient time to argue the merits of its case. Discovery closed four years ago. Therefore, there is no time for Opposer to serve additional discovery requests.

In addition, once trial begins, a more restrictive standard applies to relieving a party of an admission. *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1721 (TTAB 1989), citing *999 v. C.I.T. Corporation*, 776 F.2d 866, 869 (9<sup>th</sup> Cir. 1985). In fact, courts are more likely to find prejudice when the motion for withdrawal is made in the middle of trial. *See, Adventis* at \*14, citing *Hadley v. U.S.* 45 F.3d 1345, 1348 (9<sup>th</sup> cir. 1995). In this case, not only are the parties in the middle of the trial phase, but Opposer’s testimony period closed months ago. Accordingly, Opposer has no opportunity to submit evidence to prove the admissions that Applicant now wants to withdraw.

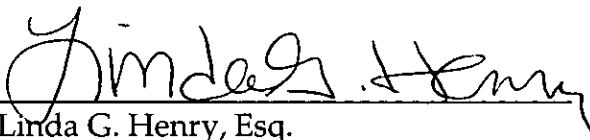
Applicant argues that Opposer will not be prejudiced by allowing Applicant to withdraw its admissions because Opposer could cross-examine Applicant’s testimony witness.

First, the September 19 testimonial deposition that Applicant relies on in its motion did not occur. In fact, Applicant already knew that such deposition would not take place when it filed its motion on September 18 because on September 15 it cancelled the deposition. Further, it is up to Applicant as to whether it will actually take testimonial depositions and, if so, who it will depose. Opposer cannot require Applicant to notice any testimonial depositions and, if any are noticed, Opposer cannot dictate who Applicant will depose. Therefore, requiring Opposer to rely on Applicant's testimonial witnesses, if any, to prove Opposer's case clearly prejudices Opposer.

It is clear that the interests of justice are best served by allowing Opposer to rely on the matters deemed admitted by Applicant's failure to timely respond to requests for admissions. Accordingly, Opposer respectfully requests that the Board deny Applicant's Motion, and reject Applicant's proposed admission responses.

Respectfully submitted,

Dated: October 10, 2006



Linda G. Henry, Esq.  
Attorneys for Opposer  
Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, California 94041  
(650) 988-8500

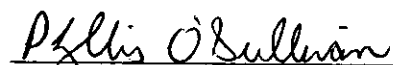


PROOF OF SERVICE BY MAIL

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date set forth below, I served the following: **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION WITH RESPECT TO OPPOSER'S REQUEST FOR ADMISSIONS UNDER FED R. CIV. P. 36(b)** on the interested parties in this action by placing a copy thereof in a sealed envelope and placing the envelope for collection and mailing at the above address, following ordinary business practices, addressed as follows:

Mark A. Cantor, Esq.  
Anessa O. Kramer, Esq.  
Brooks & Kushman P.C.  
1000 Town Center  
Twenty-Second Floor  
Southfield, Michigan 48075

I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the U.S. Postal Service. This correspondence would be deposited with the U.S. Postal Service this same day in the ordinary course of business. I declare under the penalties of perjury that the above is true and correct, and that this declaration was executed at Mountain View, California this 10<sup>th</sup> day of October 2006.

  
\_\_\_\_\_  
Phyllis O'Sullivan

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OPPOSER'S OPPOSITION TO APPLICANT'S MOTION WITH RESPECT TO  
OPPOSER'S REQUEST FOR ADMISSIONS UNDER FED R. CIV. P. 36(b)  
Consolidated Opp. Nos. 91/124,742 and 91/124,758

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

In the Matter of Application Serial Nos. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

Intuit Inc.,

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v.

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Applicant.

Consolidated Opposition Nos.  
91/124,742 and 91/124,758

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Express Mail mailing label No. <u>EV518444900 US</u>
Date of Deposit: <u>10/10/06</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.
<u>Phyllis O'Sullivan</u>
(Type or Print Name of Person Mailing Paper or Fee)
<u>Phyllis O'Sullivan</u>
(Signature of Person Mailing Paper or Fee)

**DECLARATION OF LINDA G. HENRY IN SUPPORT OF OPPOSER'S OPPOSITION  
TO APPLICANT'S MOTION WITH RESPECT TO OPPOSER'S REQUEST FOR  
ADMISSIONS UNDER FED R. CIV. P. 36(b)**

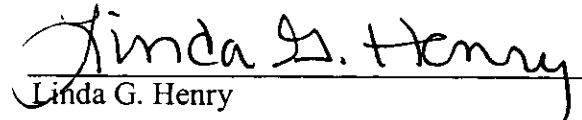
I, Linda G. Henry, declare as follows:

1. I am an attorney at law admitted to practice in the courts of the State of California. I am Senior Counsel in the law firm of Fenwick & West LLP, counsel for Opposer Intuit Inc. ("Intuit") in this Opposition proceeding. I make the following statements based upon my own personal knowledge and, if called as a witness, I could and would testify competently to the facts set forth herein.

2. On July 8, 2002, Intuit served Opposer's First Set of Requests for Admission on Applicant Interlink Electronics, Inc. ("Applicant") in Opposition No. 91/124,742 regarding Applicant's trademark application number 76/035,136 for the term INTUITOUCH. A true and correct copy of Opposer's First Set of Requests for Admission in Opposition No. 124,742 is attached hereto as Exhibit A.

3. On July 8, 2002, Intuit served Opposer's First Set of Requests for Admission on Applicant Interlink Electronics, Inc. ("Applicant") in Opposition No. 91/124,758 regarding Applicant's trademark application number 76/035,135 for the term INTUIVISION. A true and correct copy of Opposer's First Set of Requests for Admission in Opposition No. 124,758 is attached hereto as Exhibit B.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed this 10th day of October 2006, at Mountain View, California.

  
Linda G. Henry

20797/00070/DOCS/1662629.1

**EXHIBIT A**

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

In the matter of  
Trademark Application Serial No. 76/035,135  
Published: July 31, 2001  
Mark: INTUIVISION

Intuit Inc.

Opposer,

vs.

Interlink Electronics, Inc.

Applicant.

Opposition No. 124,758

**OPPOSER'S FIRST SET OF  
REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Intuit Inc. ("Opposer") requests that Applicant Interlink Electronic, Inc. ("Applicant") answer separately and fully, in writing, under oath, the following requests for admission within thirty-five (35) days of the date of service, as noted on the Proof of Service by Mail.

**DEFINITIONS**

The following terms, as used herein, have the following meanings:

1. "You," "your" or "Applicant" means the named Applicant Interlink Electronics, Inc. and its present and former agents, employees, officers, directors,

attorneys, investigators, consultants, experts, and all other persons acting on Applicant's behalf.

2. "Opposer" means the named Opposer Intuit Inc., its predecessors in interest, its present and former officers, directors, agents, representatives and employees.

3. "Person" or "Persons" includes, but is not limited to, any natural persons, companies, corporations, sole proprietorships, governmental entities, partnerships, associations, banks and other financial institutions, and all other entities similar to any of the foregoing, however denominated.

4. "Mark" means any word, name, symbol, design, shape, number, slogan or device, or any combination thereof, that is used by a Person to identify and distinguish the Person's goods and services from the goods and services of others.

5. The terms "refer to," "relate to," "relating" and "relates" shall mean comprising, constituting, containing, embodying, identifying, stating, dealing with, directly or indirectly mentioning or describing, pertaining or referring to, being connected with, reflecting upon or resulting from the stated subject matter.

6. "INTUIVISION" means the mark used or intended to be used by Applicant on or in connection with goods and/or services, including as set forth in U.S. Application Serial No. 76/035,135.

7. "INTUIVISION Product" refers to any and all goods, services, solutions, and systems that Applicant has advertised, marketed, distributed, offered for sale, sold or otherwise caused to be provided or that Applicant intends to advertise, market, distribute, offer for sale, sell or otherwise cause to be provided in the United States under or in connection with the designation INTUIVISION.

8. Each paragraph herein shall be construed independently and not by reference to any other paragraph for the purpose of limitation.

## INSTRUCTIONS

1. If any of the following requests for admission cannot be answered fully and completely after you have made reasonable inquiries of your agents, employees, attorneys, investigators, consultants, experts and others acting on your behalf, answer such requests for admission to the fullest extent possible, specifying the reasons for your inability to answer the remainder of such requests for admission, and stating whatever information or knowledge you possess concerning the unanswered portions thereof.
2. If you object to any of the following requests for admission or portions thereof, please state fully the grounds of such objection and identify any person, document or communication upon which you rely in support of such objection. If you object only to a portion of a request, in addition to the foregoing, please answer fully the portion of the request to which no objection is made.
3. If in answering these requests for admission you claim that there is any ambiguity in either a particular request for admission or a definition or instruction applicable thereto, such claim shall not be used by you as a basis for refusing to respond, but you shall set forth as part of your response the language deemed to be ambiguous and the interpretation chosen or used in responding to the particular request for admission.
4. If you assert a claim of privilege with respect to the information requested by any of the following requests for admission or portions thereof, which

prevents your responding to such request for admission either in whole or in part, please state fully the grounds of the privilege with sufficient particularity that existence of the privilege may be determined on a motion to compel responses under Rule 37(a) of the Federal Rules of Civil Procedure and identify any person, document or communication upon which you rely in support of the assertion of said privilege. If only a portion of the information requested by a request for admission is claimed to be privileged, in addition to the foregoing, please answer fully the portion of the request for admission to which no privilege is asserted.

### REQUESTS

REQUEST NO. 1: Admit that Opposer's rights in the INTUIT mark predate any rights Applicant claims in the INTUIVISION mark.

REQUEST NO. 2: Admit that at the time of the filing date of Applicant's Application Serial No. 76/035,135, Applicant was aware of the INTUIT mark.

REQUEST NO. 3: Admit that Applicant markets or plans to market the INTUIVISION Product to companies in the financial industry.

REQUEST NO. 4: Admit that Applicant provides or plans to provide goods under INTUIVISION to companies in the financial industry.

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.



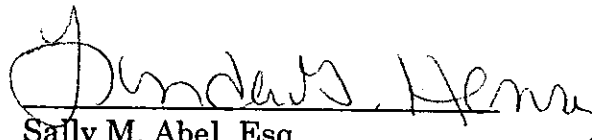
REQUEST NO. 6: Admit that the INTUIVISION Product can be used to enable electronic banking.

REQUEST NO. 7: Admit that the INTUIVISION Product can be used to enable payment by checks.

REQUEST NO. 8: Admit that the INTUIVISION 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.

Dated: July 8, 2002

Respectfully submitted,



Sally M. Abel, Esq.

Linda G. Henry, Esq.

Attorneys for Opposer

FENWICK & WEST LLP

Two Palo Alto Square, Suite 800

Palo Alto, CA 94306

(415) 494-0600

PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Two Palo Alto Square, Suite 800, Palo Alto, California 94306. On the date set forth below, I served the within **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION**, on the interested parties in this action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, and causing it to be placed for U.S. Express Mail delivery by the U.S. Postal Service, which envelope was addressed as follows:

Mark A. Cantor  
Anessa Owen Kramer  
Brooks & Kushman P.C.  
1000 Town Center, 22<sup>nd</sup> Floor  
Southfield, MI 48075

I declare under the penalties of perjury that the above is true and correct, and that this declaration was executed at Palo Alto, California this 8<sup>th</sup> day of July, 2002.

Phyllis O'Sullivan  
Phyllis O'Sullivan

20797/00070/DOCS/1280706.1

**EXHIBIT B**

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

In the matter of  
Trademark Application Serial No. 76/035,136  
Published: July 31, 2001  
Mark: INTUITOUCH

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

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6. "INTUITOUCH" means the mark used or intended to be used by Applicant on or in connection with goods and/or services, including as set forth in U.S. Application Serial No. 76/035,136.

7. "INTUITOUCH Product" refers to any and all goods, services, solutions, and systems that Applicant has advertised, marketed, distributed, offered for sale, sold or otherwise caused to be provided or that Applicant intends to advertise, market, distribute, offer for sale, sell or otherwise cause to be provided in the United States under or in connection with the designation INTUITOUCH.

8. Each paragraph herein shall be construed independently and not by reference to any other paragraph for the purpose of limitation.

## INSTRUCTIONS

1. If any of the following requests for admission cannot be answered fully and completely after you have made reasonable inquiries of your agents, employees, attorneys, investigators, consultants, experts and others acting on your behalf, answer such requests for admission to the fullest extent possible, specifying the reasons for your inability to answer the remainder of such requests for admission, and stating whatever information or knowledge you possess concerning the unanswered portions thereof.

2. If you object to any of the following requests for admission or portions thereof, please state fully the grounds of such objection and identify any person, document or communication upon which you rely in support of such objection. If you object only to a portion of a request, in addition to the foregoing, please answer fully the portion of the request to which no objection is made.

3. If in answering these requests for admission you claim that there is any ambiguity in either a particular request for admission or a definition or instruction applicable thereto, such claim shall not be used by you as a basis for refusing to respond, but you shall set forth as part of your response the language deemed to be ambiguous and the interpretation chosen or used in responding to the particular request for admission.

4. If you assert a claim of privilege with respect to the information requested by any of the following requests for admission or portions thereof, which

prevents your responding to such request for admission either in whole or in part, please state fully the grounds of the privilege with sufficient particularity that existence of the privilege may be determined on a motion to compel responses under Rule 37(a) of the Federal Rules of Civil Procedure and identify any person, document or communication upon which you rely in support of the assertion of said privilege. If only a portion of the information requested by a request for admission is claimed to be privileged, in addition to the foregoing, please answer fully the portion of the request for admission to which no privilege is asserted.

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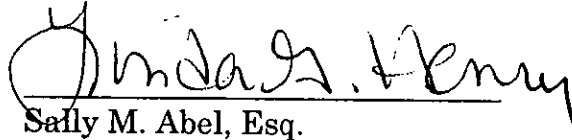
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REQUEST NO. 8: Admit that the INTUITOUCH Product can be used by End-Users to access information and news regarding financial services or the financial markets, including but not limited to stock quotes, public company news, calculation tools for investors, and other financial information.

Dated: July 8, 2002

Respectfully submitted,



Sally M. Abel, Esq.

Linda G. Henry, Esq.

Attorneys for Opposer

FENWICK & WEST LLP

Two Palo Alto Square, Suite 800

Palo Alto, CA 94306

(415) 494-0600



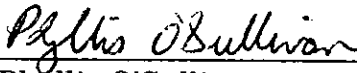
PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Two Palo Alto Square, Suite 800, Palo Alto, California 94306. On the date set forth below, I served the within **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION**, on the interested parties in this action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, and causing it to be placed for U.S. Express Mail delivery by the U.S. Postal Service, which envelope was addressed as follows:

Mark A. Cantor  
Anessa Owen Kramer  
Brooks & Kushman P.C.  
1000 Town Center, 22<sup>nd</sup> Floor  
Southfield, MI 48075

I declare under the penalties of perjury that the above is true and correct, and that this declaration was executed at Palo Alto, California this 8<sup>th</sup> day of July, 2002.

  
\_\_\_\_\_  
Phyllis O'Sullivan

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