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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. ,
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Date	10/26/2006
Attachments	Reply to Opposition to Motion re Admissions.pdf (5 pages)(186997 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., Opposer, vs.	)	Consolidated Opposition Nos. 91/124,742 and 91/124,758
Interlink Electronics, Inc., Applicant.	)	

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

Applicant, Interlink Electronics, Inc. ("Interlink") hereby submits the following reply to Opposer's Opposition to Applicant's Motion with Respect to Opposer's Request for Admissions Under Fed. R. Civ. P. 36(b) ("Opposer's Opposition").

The essential facts relating to the instant motion are not in dispute. In short, the parties served reciprocal discovery in the form of written interrogatories and document requests, and in Opposer's case, requests for admission. The parties agreed to various extensions of the response deadlines due to ongoing settlement negotiations. After some time, the business principals for each side began direct settlement negotiations without the

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involvement of counsel, and the formal agreements to defer discovery responses ceased. Then, nearly four years later when settlement negotiations abruptly broke down just before the opening of Opposer's testimony period, the parties moved forward with their cases.

Opposer states in its "Statement of Facts," however, that after November 2002, Applicant failed to request any extension of time to respond to outstanding discovery. *See Opposer's Opposition* p. 2. Opposer fails to mention that it, too, failed to request such an extension. The significance is that BOTH parties considered the direct settlement negotiations between the parties to defer the time for responding to discovery. There was an implicit understanding, which is confirmed by the fact that Opposer never responded to Applicant's discovery requests, that discovery was deferred.

Opposer also states that it "relied on the matters deemed admitted" and "geared its investigative efforts and subsequent prosecution of the consolidated opposition proceeding on such admissions." *Id.* Applicant finds this extremely hard to believe, given that there were no "investigative efforts" by Opposer or "subsequent prosecution" of the case. Settlement negotiations terminated abruptly, just before the testimony period opened. Perhaps most telling, it was not until Opposer's rebuttal testimony period that Opposer submitted its Notice of Reliance Pursuant to Rule 2.120(j) on Admissions. After nearly four years of inactivity in these consolidated proceedings, Opposer could have raised the issue of the outstanding discovery prior to, or even during, its testimony period or notified Applicant that it intended to rely on the admission requests at that time.

Opposer also misstates the applicable legal standard, by indicating that Applicant must establish that its failure to respond to discovery was the result of "excusable

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neglect." Not until page 5 of Opposer's Opposition does Opposer recognize the appropriate legal standard for a motion to withdraw admissions under Fed. R. Civ. P. 36(b), namely that: (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.

Opposer argues that Applicant has not established that the merits of the action will be subserved by withdrawal of the admissions. Applicant disagrees. As stated in Applicant's Motion, the admissions request admission of facts in dispute that are not true. They are not simply admission requests intended to streamline prosecution of the case, but rather, if admitted, contain substantive false statements. As such, Opposer is asking that the Board make its final determination in this case based in part of misstatements of fact regarding Applicant's services and channels of trade. Clearly, that does not subserve the merits of the action.

Opposer states that it will be prejudiced, because it will not be able to obtain the evidence needed to prove its case. Applicant finds it hard to believe that Opposer put its entire case in jeopardy relying on the hope that admission requests it had served nearly four years before would be deemed admitted. Notably, Opposer does not support its statement that it relied on Applicant's admissions in the declaration of Linda Henry submitted with Opposer's Opposition. In any event, if Opposer wanted certainty, Opposer could have raised this issue early in its testimony period coupled with a motion to extend the testimony period to provide the Board time to rule on the admission requests. Instead, Opposer waited until its

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rebuttal testimony period to submit its Notice of Reliance, clearly contradicting the contention that Opposer is relying on the admissions in support of its case in chief.

For the reasons stated above, Applicant respectfully requests the Board to grant its motion pursuant to Fed. R. Civ. P. 36(b), withdraw the admissions, and accept the admission responses as attached to Applicant's Motion with Respect to Opposer's Request for Admissions Under Fed. R. Civ. P. 36(b).

Respectfully submitted,

BROOKS KUSHMAN P.C.

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CERTIFICATE OF SERVICE

I certify that I served:

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

on October 26, 2006 by:

___ delivering (via facsimile)

_✓_ mailing (via First-Class mail)

a copy to:

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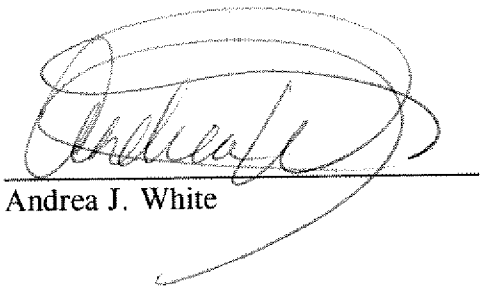

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