

ESTTA Tracking number: **ESTTA31614**

Filing date: **04/27/2005**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Vantage Controls, Inc.
Granted to Date of previous extension	04/27/2005
Address	1061 South 800 East Orem, UT 84097 UNITED STATES

Correspondence information	Grant R. Clayton Clayton, Howarth & Cannon, P.C. P.O. Box 1909 Sandy, UT 84091 UNITED STATES docketclerk@chepat.com Phone:801-255-5335
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Applicant Information

Application No	78391084	Publication date	12/28/2004
Opposition Filing Date	04/27/2005	Opposition Period Ends	04/27/2005
Applicant	Touch Easy LLC 21066 Alexander Court Hayward, CA 94545		

UNITED STATES

Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: Computer touch screen monitors and components for computer touch screen monitors

Attachments	Notice of Opposition-electronic.pdf (14 pages)
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Signature	/Grant R. Clatyon/
Name	Grant R. Clayton
Date	04/27/2005

GRANT R. CLAYTON (Registration No. 32,462)
TERRENCE J. EDWARDS (Registration No. 50,254)
CLAYTON, HOWARTH & CANNON, P.C.
1225 East Fort Union Boulevard, Suite 300
Midvale, Utah 84047
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
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Attorneys for Opposer,
VANTAGE CONTROLS, INC.

Opposed Mark: TOUCHEASY
U.S. Trademark Application Serial Number: 78/391,084
Published: December 28, 2004

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

VANTAGE CONTROLS, INC., a Utah Corporation,)	
)	
Opposer)	NOTICE OF OPPOSITION
)	
v.)	Opposition No. _____
TOUCH EASY, LLC, a California Limited Liability Company; JOHN DOES 1-5; and JANE DOES 1-5,)	
)	
Applicants.)	

NOTICE OF OPPOSITION

As grounds for opposing U.S. Trademark Application Serial No. 78/391,084, it is alleged that:

PARTIES

1. Opposer, Vantage Controls, Inc. is a Utah corporation having a business address of 1061 South 800 East, Orem, Utah 84097 (hereinafter referred to as “Opposer” or “Vantage”), and is a manufacturer, distributor and seller of automation and lighting control systems for home and office use, including EasyTouch control products.

2. Vantage is the owner of, *inter alia*, U.S. Trademark Application Serial No. 78/500,477 filed on October 15, 2004 for the mark EASYTOUCH used in connection with, *inter alia*, keypad stations, namely, electronic keypads including a plurality of touch buttons each shaped to make activations thereof easy for the user, the keypads used to receive user input to control building lighting and automation systems. The record of Vantage’s U.S. Trademark Application Serial No. 78/500,477 from the Trademark Electronic Search System (“TESS”) is attached hereto as Exhibit A.

3. Vantage has a date of first use of the EASYTOUCH mark anywhere at least as early as September, 2001, and a date of first use in commerce at least as early as September, 2001. *See* Exhibit A.

4. Vantage believes it will be damaged by registration of the TOUCHEASY mark shown in U.S. Trademark Application Serial Number 78/391,084 for use in connection with computer touch screen monitors and components for computer touch screen monitors (hereinafter referred to as “the ‘084 Application”), and hereby opposes registration of the mark contained in the ‘084 Application.

5. Upon information and belief, and according to the Trademark Electronic Search System (“TESS”), Applicant Touch Easy, LLC is a California limited liability company having

an address of 21066 Alexander Court, Hayward, California 94545 (hereinafter referred to as “Applicant” or “Touch Easy”).

6. Touch Easy is the named Applicant of the ‘084 Application for the mark TOUCHEASY. A printout of U.S. Trademark Application Serial No. 78/391,084 from the TESS database is attached hereto as Exhibit B.

7. The ‘084 Application was filed on March 25, 2005 as an intent to use application under § 1(b) of the Lanham Act.

8. The ‘084 Application was published for opposition on December 28, 2004.

9. On December 29, 2004, Vantage obtained an extension of time to file this Notice of Opposition until April 27, 2005. This Notice of Opposition is therefore considered timely, since it is being filed on or before April 27, 2005.

10. Upon information and belief, John Does 1-5 and Jane Does 1-5 (collectively referred to herein with Touch Easy as “Applicants”), including Touch Easy, are believed to be individuals, corporations or other business entities having a potential interest in and to the TOUCHEASY mark, for which a trademark application has been filed seeking registration of said mark, namely the ‘084 Application, used in connection with “computer touch screen monitors and components for computer touch screen monitors.”

FIRST CLAIM FOR RELIEF
(Likelihood of Confusion Under § 2(d) of the Lanham Act)

11. Vantage repeats and incorporates by this reference each and every allegation contained in the previous paragraphs of this Notice of Opposition.

12. Applicant filed the '084 Application under § 1(b) of the Lanham Act for the TOUCHEASY mark on March 25, 2004, and upon information and belief Applicant has not used the TOUCHEASY mark prior to Vantage's use of the EASYTOUCH mark.

13. Since before the filing date of the '084 Application, Vantage has used the trademark EASYTOUCH in connection with "keypad stations, namely, electronic keypads including a plurality of touch buttons each shaped to make activations thereof easy for the user, the keypads used to receive user input to control building lighting and automation systems," and as such Vantage is the senior user.

14. Applicant's TOUCHEASY mark so resembles Vantage's EASYTOUCH mark previously used in the United States by Vantage and not abandoned, as to be likely, when associated with the goods identified in the '084 Application, to cause confusion, or to cause mistake, or to deceive.

15. The TOUCHEASY mark used in connection with "computer touch screen monitors and components for computer touch screen monitors" implies a connection, sponsorship, or approval of the goods bearing such mark by Vantage and will mislead the consuming public as to the sponsorship, connection or approval of goods sold in association with the TOUCHEASY mark.

16. As a result, the mark contained in the '084 Application should be refused registration pursuant to Section 2(d) of the Lanham Act.

SECOND CLAIM FOR RELIEF
(Applicant's Mark is Merely Descriptive Under § 2(e)(1) of the Lanham Act)

17. Vantage repeats and incorporates by this reference each and every allegation contained in the previous paragraphs of this Notice of Opposition.

18. The TOUCHEASY mark is merely descriptive of the goods identified in the '084 Application, namely "computer touch screen monitors and components for computer touch screen monitors," and has not acquired secondary meaning or become distinctive of the goods identified in the '084 Application.

19. As a result, the mark contained in the '084 Application should be refused registration pursuant to Section 2(e)(1) of the Lanham Act.

PRAYER FOR RELIEF

WHEREFORE, Vantage prays that the registration sought by Applicant in the '084 Application be refused registration and that this Opposition be sustained in favor of Opposer, Vantage Controls, Inc.

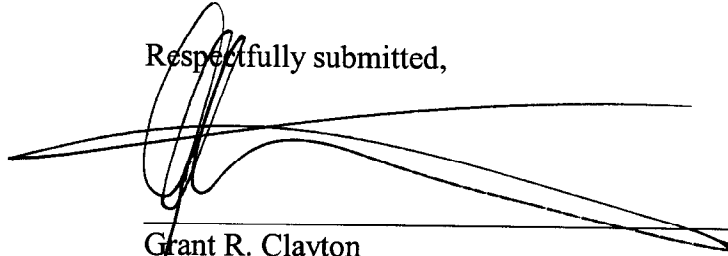
Any deficiency in the fee submitted can be charged to Deposit Account No. 50-0836.

All correspondence and telephonic communications should be directed to:

Grant R. Clayton
Terrence J. Edwards
Attorney Docket No. T10531
CLAYTON, HOWARTH & CANNON, P.C.
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

DATED this 26 day of April, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Grant R. Clayton", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail that extends to the right.

Grant R. Clayton

Terrence J. Edwards

CLAYTON, HOWARTH & CANNON, P.C.

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Sandy, Utah 84091-1909

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Facsimile: (801) 255-5338

Attorneys for Opposer

VANTAGE CONTROLS, INC.

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EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-04-26 11:27:24 ET

Serial Number: 78500477

Registration Number: (NOT AVAILABLE)

Mark

EASYTOUCH

(words only): EASYTOUCH

Standard Character claim: Yes

Current Status: A non-final action has been mailed. This is a letter from the examining attorney requesting additional information and/or making an initial refusal. However, no final determination as to the registrability of the mark has been made.

Date of Status: 2004-11-30

Filing Date: 2004-10-15

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Supplemental

Law Office Assigned: LAW OFFICE 110

Attorney Assigned:
PERKINS ELLEN J Employee Location

Current Location: 450 -Petitions Office

Date In Location: 2005-01-25

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Vantage Controls, Inc.

Address:

Vantage Controls, Inc.
1061 South 800 East
Orem, UT 84097
United States

Legal Entity Type: Corporation**State or Country of Incorporation:** Utah**Phone Number:** (801) 229-2800

GOODS AND/OR SERVICES

International Class: 009

Keypad stations, namely, electronic keypads including a plurality of touch buttons each shaped to make activations thereof easy for the user, the keypads used to receive user input to control building lighting and automation systems

First Use Date: 2001-09-00**First Use in Commerce Date:** 2001-09-00**Basis:** 1(a)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-11-30 - Non-final action mailed

2004-11-29 - Non-Final Action Written

2004-11-23 - Case file assigned to examining attorney

2004-11-18 - Petition to Commissioner - Granted

2004-11-04 - Petition To Commissioner Received

2004-10-22 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Grant R. Clayton (Attorney of record)

GRANT R. CLAYTON
CLAYTON, HOWARTH & CANNON, P.C.
PO BOX 1909
SANDY UT 84091-1909

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EXHIBIT B

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-04-26 12:02:46 ET

Serial Number: 78391084

Registration Number: (NOT AVAILABLE)

Mark

TOUCHEASY

(words only): TOUCHEASY

Standard Character claim: Yes

Current Status: A request for an extension of time to file an opposition has been filed at the Trademark Trial and Appeal Board.

Date of Status: 2004-12-29

Filing Date: 2004-03-25

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 103

Attorney Assigned:
DUKOVIC JOANNA M Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2004-11-15

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Touch Easy LLC

Address:

Touch Easy LLC
21066 Alexander Court
Hayward, CA 94545
United States

Legal Entity Type: Ltd Liab Co

State or Country Where Organized: California

Phone Number: (925) 259-0622

Fax Number: (925) 259-0625

GOODS AND/OR SERVICES

International Class: 009

Computer touch screen monitors and components for computer touch screen monitors

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b)

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

USPTO Reference Number: Z1230974

International Registration Number: 0828016

International Registration Date: 2004-06-02

Original Filing Date with USPTO: 2004-06-02

International Registration Status: Application For IR Registered By IB

Date of International Registration Status: 2004-07-29

International Registration Renewal Date: 2014-06-02

Irregularity Reply by Date: (DATE NOT AVAILABLE)

Madrid History:

07-29-2004 - 13:28:36 - Application For IR Registered By IB

06-07-2004 - 16:48:16 - Manually Certified

06-07-2004 - 12:51:49 - New Application For IR Received

PROSECUTION HISTORY

2004-12-29 - Extension Of Time To Oppose Received

2004-12-28 - Published for opposition

2004-12-08 - Notice of publication

2004-10-20 - Law Office Publication Review Completed

2004-10-18 - Assigned To LIE

2004-10-13 - Approved for Pub - Principal Register (Initial exam)

2004-10-07 - Case file assigned to examining attorney

2004-04-06 - New Application Entered In Tram

CORRESPONDENCE INFORMATION

Correspondent

Robert L. Taylor (Attorney of record)

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