

ESTTA Tracking number: **ESTTA173887**

Filing date: **11/09/2007**

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

| | |
|------------------------|---|
| Proceeding | 91178164 |
| Party | Plaintiff TechSmith Corporation |
| Correspondence Address | James R. Duby, Jr. DUBY & ASSOCIATES, PLC 3511 Coolidge Road, Suite 200 East Lansing, MI 48823 UNITED STATES jim@dubylaw.com |
| Submission | Withdrawal of Opposition |
| Filer's Name | James R. Duby, Jr. |
| Filer's e-mail | Jim@Dubylaw.com |
| Signature | /James R. Duby, Jr./ |
| Date | 11/09/2007 |
| Attachments | Proof of Service and Concurrent Use Agreement.pdf (10 pages)(766726 bytes) |

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

In re Trademark Application

Opposition No: 91178164

Serial No. 78/900,133

Trademark: MORAY

TechSmith Corporation,)
)
 Opposer,)
)
 v.)
)
 Harris Corporation)
)
 Applicant.)

WITHDRAWAL OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

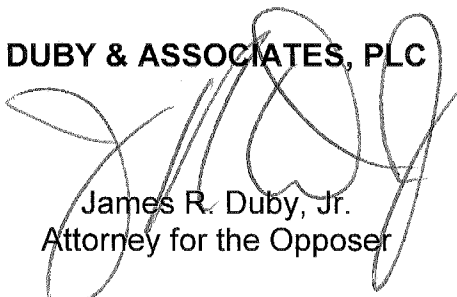
Sir:

Opposer, TechSmith Corporation ("TechSmith"), organized under the laws of the State of Michigan, having a principal place of business at 2405 Woodlake Drive, Okemos, Michigan, U.S., hereby files this document to clarify that the withdrawal filed on August 30, 2007 with proof of service, as evidenced by the attached, is with prejudice with regard to the opposition filed in connection

with the mark MORAY shown in U.S. Trademark Application Serial NO.
78/900133.

Respectfully filed by,

DUBY & ASSOCIATES, PLC



James R. Duby, Jr.
Attorney for the Opposer

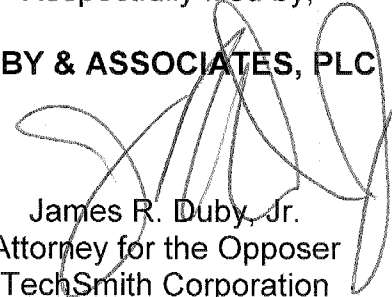
Certificate of Service

The undersigned hereby certifies that a copy of the above captioned "Withdrawal of Opposition" filed electronically with the Trademark Trial and Appeal Board in this proceeding on August 30, 2007 and now again on November 9, 2007 has been served on counsel for the Applicant at the address of record via first class U.S. mail, postage prepaid on this November 9, 2007.

Date: November 9, 2007

Respectfully filed by,

DUBY & ASSOCIATES, PLC



James R. Duby, Jr.
Attorney for the Opposer
TechSmith Corporation

DUBY & ASSOCIATES, PLC
3511 Coolidge Road, Suite 200
East Lansing, MI 48823
Tel: (517) 371-9835
Fax: (517)371-9840
E-mail: Jim@Dubylaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

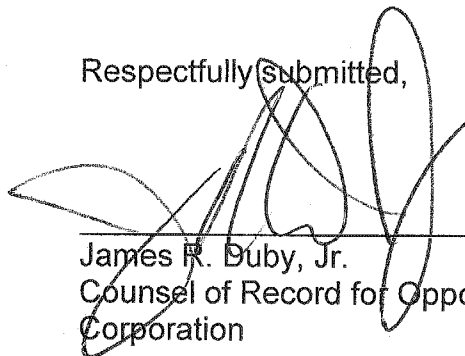
TechSmith Corporation,)
)
 Opposer,)
)
 v.)
)
 Harris Corporation,)
)
 Applicant)
)
 _____)

Opposition No. 91178164
Trademark: MORAY
Serial No.: 78/900,133

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the enclosed "Withdrawal of Opposition" filed electronically with the Trademark Trial and Appeal Board in this proceeding on August 30, 2007 has been served on counsel for Opposer at the address of record via first-class U.S. mail, postage prepaid on August 30, 2007.

Respectfully submitted,



Date: August 30, 2007

James R. Duby, Jr.
Counsel of Record for Opposer TechSmith
Corporation

James R. Duby, Jr.
DUBY & ASSOCIATES, PLC
3511 Coolidge Road, Suite 200
East Lansing, MI 48823
Telephone: (517) 371-9835
Facsimile: (517) 371-9840
E-mail: Jim@DubyLaw.com

Enclosure: copy of Withdrawal as filed

CONCURRENT USE AGREEMENT

This Concurrent Use Agreement ("Agreement"), is made and entered into, commencing on the later of the respective dates indicated beneath the signatures appearing on the last page hereof, by and between TechSmith Corporation, a Michigan Corporation, with a place of business at 2405 Woodlake Drive, Okemos, MI 48864 ("TechSmith") and Harris Corporation, a Delaware corporation with a place of business at 1025 West NASA Blvd, Melbourne, FL 32919 ("Harris").

WHEREAS, TechSmith is the owner of the mark Morae and several trademark and service mark registrations therefore in block format and various stylized and design formats and specifically TechSmith is the owner of the Registration Nos. for which are as follows: U.S. Registration No. 2,979,296, Japanese Registration No. 5023006, Benelux Registration No. 789535, EU Application No. 5044150, Korean Application No. 40-2006-0031299, and Chinese Application No. 5080143 (the "Morae Mark");

WHEREAS, TechSmith uses the Morae Mark in connection with computer software, namely, a recorder that automatically records video, text from screen, keyboard text, audio via microphone and system events on an internal database that indexes recorded content for a server and retrieval and search/browser tool, and services relating to said computer software (the "TechSmith Products").

WHEREAS, Harris is the owner of the published U.S. Intent-to-Use Application No. 78/900133 filed June 5, 2006 seeking U.S. for Registration for the mark MORAY (the "133 Application");

WHEREAS, Harris uses, or has a bonafide intent to use, its MORAY mark in

connection with computer software namely, application software for conducting surveillance and gathering information for use by military, law enforcement and other authorized government agencies, and services relating to said computer software (the "Harris Products").

WHEREAS, TechSmith has filed a Notice of Opposition opposing the '133 Application, Opposition No. 91178164

WHEREAS, the parties wish to avoid a likelihood of confusion arising as to the source origin, sponsorship or approval of the TechSmith Products, and Harris Products, respectively;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES BELOW, HARRIS AND TECHSMITH AGREE AS FOLLOWS:

1. TechSmith and Harris agree that the TechSmith Products and the Harris Products are sufficiently unrelated to one another, and that the Morae Mark of TechSmith and the MORAY mark of Harris are sufficiently different from one another, that the morae mark can be used by TechSmith in connection with the TechSmith Products and the MORAY mark can be used by Harris in connection with the Harris Products without giving rise to any likelihood of confusion, even if such respective uses are concurrent and/or wholly or partially geographically overlapping.
2. Harris agrees that it will not expand its use of the mark MORAY to any other computer software product other than that which is contained in the '133 Application, the Harris Products.

3. The parties shall not use their respective marks, or otherwise conduct themselves, in any manner likely to cause confusion as to the relationship of the parties and/or as to the source, origin, sponsorship or approval of Harris Products offered by Harris under its MORAY mark on one hand and TechSmith Products offered by TechSmith under its Morae Mark on the other hand. In the event any such likelihood of confusion arises, the parties shall cooperate to take prompt reasonable steps to eliminate such likelihood of confusion and to minimize prospects of its reoccurrence.
4. Harris agrees not to oppose, object to, or interfere with the use and registration of the Morae Mark by TechSmith in connection with any of the TechSmith Products. TechSmith agrees not to oppose, object to or interfere with the use and registration of the MORAY mark by Harris in connection with any of the Harris Products and without limiting the foregoing TechSmith agrees to withdraw its opposition to the '133 Application describing the Harris Products. Provided, however, that Harris is expressly prohibited and barred from attempting to protect or register the mark MORAY in connection with any other computer software products or service.
5. Each party agrees to cooperate reasonably to provide the other party with evidence of its consent to registration and use, as the case may be, of MORAY by Harris in connection with Harris Products, or the Morae Mark by TechSmith in connection with TechSmith Products or any other computer software products or services pursuant to this Agreement if such evidence of

consent is reasonably required to support either party's registration or maintenance of its respective mark, provided that such registration is in compliance with the terms of this Agreement. Such consent shall be at the requesting party's expense. Either party may disclose this Agreement publicly, or to any third party, at any time for any purpose not inconsistent with any of the terms or conditions of this Agreement upon obtaining the other party's prior written consent, such consent shall not be unreasonably withheld.

6. This Agreement does not constitute, or include, any form of express or implied license granted by either party to the other party under any trademark, service mark, trade name or other intellectual property rights. The relationship of Harris and TechSmith is and shall remain at all times solely that of independent contractors. Without limiting the foregoing, nothing in this Agreement, or any course of performance under this Agreement, shall be construed to constitute Harris and TechSmith as partners, joint venturers, principals, agents, masters and/or servants of one another or to create any other form of relationship other pursuant to which one party could be liable for any act or omission of the other party or pursuant to which one party could have any express or implied power or authority to legally bind the other party or to incur any debt, liability or other legal or equitable obligation on behalf of the other party.

7. This Agreement sets forth the entire Agreement and understanding between the parties as to the subject matter of this Agreement and supersedes all prior discussions, representations, and amendments or understandings of every kind and nature between them.
8. Except as otherwise provided in this Agreement, this Agreement may not be amended, altered, or any of its provisions waived on behalf of either party, except in writing executed by a duly authorized representative of each party.
9. Either party may assign this Agreement and the rights and duties under this Agreement in connection with any transfer of its respective MORAY mark in the case of Harris, or Morae Mark in the case of TechSmith.
10. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
11. All notices and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given if mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, to the parties at the following addresses, or to another changed address as the party shall have given by written notice:

To TechSmith:

Donald J. Nourse
TechSmith Corporation
2405 Woodlake Drive
Okemos, MI 48864

To Harris:

Harris Corporation
1025 West NASA Boulevard
Melbourne, FL 32919

Attn: Ronald S. Blum, II
Counsel, Intellectual Property

12. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto shall be determined, in accordance with the laws of the State of Michigan, to the extent federal law is not applicable and shall apply to use and registration of the marks, which are the subject matter of this Agreement, anywhere in the world unless expressly stated in this Agreement to the contrary. The forgoing provision relates solely to choice of applicable law, not to choice of forum or venue. Choice of law shall neither determine, nor be considered a factor in determining, any issue relating to forum or venue concerning any dispute relating to this agreement, nor shall it be construed or otherwise interpreted as availment by either party to the Personal Jurisdiction of any State for any matters.
13. This Agreement may be executed in one or more counterparts, each of which shall constitute an original hereof for all purposes, but which individually and collectively constitute one and the same Agreement.
14. Captions contained in this Agreement are inserted for reference and in no way define, limit, extend or describe the scope of the Agreement or intent of any provision in the Agreement.
15. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision; provided,


however, that no such severability shall be effective if it materially changes the economic benefit of the Agreement to the other party.

16. Each party warrants and represents to the other party that this Agreement shall be binding upon it once executed by both parties, and that the individual executing this document on its behalf is duly authorized, and is fully and unconditionally possessed of all necessary authority and full legal capacity, to do so.

17. This Agreement shall be enforceable upon the exchange of facsimile signatures and shall be effective commencing on the date the later of the respective dates indicated beneath the signatures below

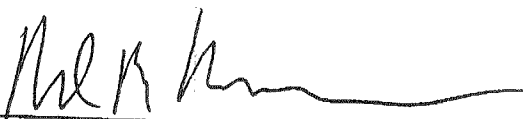
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized representatives whose signatures appear below.

TECHSMITH CORPORATION

By: 
Donald J. Nourse,
Vice President of Finance and
Administration

Dated: 27 AUG 07

HARRIS CORPORATION

By: 
Mark Andersson
Vice President of Programs
Proprietary Programs Business Area

Dated: 22 AUG 07