

ESTTA Tracking number: **ESTTA238595**

Filing date: **09/24/2008**

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	SensAble Technologies, Inc.
Granted to Date of previous extension	09/24/2008
Address	15 Constitution Way Woburn, MA 01801 UNITED STATES

Attorney information	Wanda Washington, Esq. Wanda Washington, P.C. 134 Cedar Acres Marshfield, MA 02050 UNITED STATES w@wwatlaw.com Phone:781.319.0840
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Applicant Information

Application No	77366146	Publication date	05/27/2008
Opposition Filing Date	09/24/2008	Opposition Period Ends	09/24/2008
Applicant	Racer Machinery International Inc. 25 Fleming Drive Cambridge, N1T2A9 CANADA		

Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: Metalworking machine tools

Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2083626	Application Date	06/18/1996
Registration Date	07/29/1997	Foreign Priority Date	NONE
Word Mark	PHANTOM		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 1993/12/19 First Use In Commerce: 1993/12/19 computer devices and systems, namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control

U.S. Registration No.	2720224	Application Date	11/13/1998
Registration Date	06/03/2003	Foreign Priority Date	NONE
Word Mark	PHANTOM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1993/12/19 First Use In Commerce: 1993/12/19 Computer devices and systems, namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control; computer software and hardware for use in accessing global computer information networks and interfacing with haptic interface devices		

Attachments	75120745#TMSN.gif (1 page)(bytes) NoOPPOSITION plead&exh - PHANTOM TECHNOLOGIES - Racer Machinery International Inc.pdf (8 pages)(109559 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ww/
Name	Wanda Washington, Esq.
Date	09/24/2008

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

3 In the Matter of Application Serial No. 77-366,146
4 Published in the Official Gazette on May 27, 2008

5
6 SENSABLE TECHNOLOGIES, INC.)
7 Opposer,)
8 vs.) NOTICE OF OPPOSITION
9 Racer Machinery International Inc.)
10 Applicant)
11

12 NOTICE OF OPPOSITION

13 SENSABLE TECHNOLOGIES, INC. (hereinafter "Opposer"), a corporation
14 of the State of Delaware, located at 15 Constitution Way, Woburn,
15 Massachusetts 01801, believes that it will be damaged by registration of the
16 mark shown in Serial No. 77-366,146 and hereby opposes the same. As grounds
17 for the opposition it is alleged that:

18 1. Opposer is now, and has been for many years, engaged in the
19 design, manufacture, distribution and sale in the United States and around
20 the world of computer software, hardware, and related accessories which add
21 the sense of touch to the digital world.

22 2. Among its products, Opposer offers for sale and sells haptic
23 devices used by many industries and individuals for adding the sense of touch
24 and true three-dimensional navigation to a broad range of applications
25 whether in product design, product development, medical simulation and
26 robotics, or touch-enabled training and games and entertainment (the
27 "Apparatus"). Among its uses, the Apparatus outputs files for computer
28 numerical control ("CNC") machining, milling, and tooling. The Apparatus are
29 offered for sale and sold under the trademark PHANTOM.

30 3. Among its products, Opposer offers for sale and sells haptic
31 devices used by many industries and individuals for, among other things,
32 creating three dimensional computer models (the "Apparatus Modeling

1 Components"). The Apparatus Modeling Components are offered for sale and
2 sold under the trademark FREEFORM.

3
4 4. Industries and individuals purchase both the Apparatus and the
5 Apparatus Modeling Component (the "Device(s)"). Among its uses, the Devices
6 output files for CNC machining, milling, and tooling.

7 5. Opposer commenced use and has been using the product under the
8 trademark PHANTOM since at least as early as December 19, 1993. The mark
9 PHANTOM was first used with the Apparatus in interstate commerce since at
10 least as early as December 19, 1993. Such use by Opposer has been continuous
11 up to and including the present time.

12 6. Opposer is the owner of the mark PHANTOM and U.S. Registration
13 No. 2083626 for the PHANTOM trademark, for "computer devices and systems
14 namely, haptic interfaces, haptic interface devices, and haptic displays, for
15 providing haptic feedback, namely, tactile feedback and force-feedback, with
16 respect to real or virtual objects under computer control", registered in the
17 United States Patent and Trademark Office on July 29, 1997 which registration
18 is valid, subsisting and in full force and effect. A copy of a printout of
19 said registration from TARR is attached hereto as Exhibit A.

20 7. Opposer is also the owner of the mark PHANTOM and U.S.
21 Registration No. 2720224 for the PHANTOM trademark, for "computer devices and
22 systems namely, haptic interfaces, haptic interface devices, and haptic
23 displays, for providing haptic feedback, namely, tactile feedback and force-
24 feedback, with respect to real or virtual objects under computer control;
25 computer software and hardware for use in accessing global computer
26 information networks and interfacing with haptic interface devices",
27 registered in the United States Patent and Trademark Office on June 3, 2003
28 which registration is valid, subsisting and in full force and effect. A copy
29 of a printout of said registration from TARR is attached hereto as Exhibit B.

30 8. Opposer is also the owner of Registration No. 2550418 for the
31 FREEFORM trademark, for "computer devices and systems namely, haptic
32 interfaces haptic interface devices, and haptic displays, for providing
haptic feedback, namely, tactile feedback and force-feedback, with respect to
real or virtual objects under computer control; related computer software for

1 creating three dimensional computer models, computer software and hardware
2 for use in accessing global computer information networks and interfacing
3 with haptic interface devices", registered in the United States Patent and
4 Trademark Office on March 19, 2002 which registration is valid, subsisting
5 and in full force and effect. A copy of a printout of said registration is
6 attached hereto as Exhibit C.

7 9. Opposer has devoted large sums of money and substantial time
8 and efforts to the marketing, advertising, promotion and sales of products
9 bearing the PHANTOM trademark in the United States so that this trademark has
10 become widely known as identifying products emanating from Opposer and as
11 symbolizing extensive goodwill and consumer recognition of the Devices.

12 10. Upon information and belief, Applicant is a manufacturer of
13 CNC machinery. Applicant is a corporation with a place of business at 25
14 Fleming Drive, Cambridge N1T2A9, Canada.

15 11. On January 1, 2008, Applicant filed U.S. Serial No.
16 77/366,146 for the federal trademark registration of the mark PHANTOM
17 TECHNOLOGIES for "metal working machine tools". Applicant filed the
18 application with an Intent to Use under Section 1(b) and as such does not
19 allege a date of first use.

20 12. From a date commencing long prior to Applicant's
21 application, Opposer has continuously used the mark PHANTOM to identify the
22 source of its goods.

23 13. The mark Applicant seeks to register encompasses the whole of
24 Opposer's PHANTOM mark and so resembles Opposer's trademark that the use and
25 registration thereof by Applicant is likely to cause confusion, mistake
26 and/or deception as to the source of the goods, and consumers and the trade
27 will believe that Applicant's goods are related, sponsored by or affiliated
28 with Opposer's Apparatus and Devices under its PHANTOM mark. Such confusion
29 will injure Opposer and the goodwill it now enjoys.

30 14. The mark Applicant seeks to register disclaims
31 "TECHNOLOGIES" and as such, Applicant's mark and Opposer's PHANTOM mark are
32 identical in appearance and sound. Applicant's mark and Opposer's PHANTOM

1 mark are identical and give similar commercial impression and similar
2 connotation. The use and registration thereof by Applicant is likely to
3 cause confusion, mistake and/or deception as to the source of the goods, and
4 consumers and the trade will believe that Applicant's goods are related,
5 sponsored by or affiliated with Opposer's Apparatus and Devices under its
6 PHANTOM mark. Such confusion will injure Opposer and the goodwill it now
7 enjoys.

8 15. Opposer's Apparatus and Devices and Applicant's goods are
9 used in a similar trade channels. Opposer's Apparatus and Devices and
10 Applicant's goods are so closely related that if the parties' respective
11 goods are marketed and sold under confusingly similar marks, a likelihood of
12 confusion will result.

13 16. Opposer's Apparatus and Devices and Applicant's goods are so
14 closely related that if the parties' respective goods are marketed and sold
15 under confusingly similar marks, a likelihood of confusion will result.

16 17. In view of the similarity of the parties' respective marks
17 and goods, Applicant's mark so resembles the PHANTOM mark used by and
18 associated with Opposer in the United States, and not at any time abandoned,
19 that Applicant's use of its mark is likely to cause confusion, or to cause
20 mistake or to deceive.

21 18. By reason of all of the foregoing, Opposer will be greatly
22 damaged by the registration of PHANTOM TEHCNOLOGIES by Applicant.

23 WHEREFORE, Opposer respectfully prays that the registration sought
24 by Applicant be refused, and that this Notice of Opposition be sustained.

25 The undersigned hereby appoints Wanda Washington located at 134
26 Cedar Acres, Marshfield, MA 02052, a member of the Bar of the Commonwealth of
27 Massachusetts, its attorney to prosecute this opposition proceeding, with
28 full power of substitution and revocation and to transact all business in the
29 Patent and Trademark Office connected therewith.

30 It is requested that all future communications in connection with
31 this proceeding be addressed to Wanda Washington at 134 Cedar Acres,
32 Marshfield, Massachusetts 02050 and phone (781) 319.0840.

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Respectfully submitted,

By:



Wanda Washington
Attorney for Opposer
134 Cedar Acres
Marshfield, MA 02050
w@wwatlaw.com
(781) 319-0840

Dated: 23 September 2008

Exhibits A, B and C appended hereto

Exhibit A

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PHANTOM

Word Mark PHANTOM
Goods and Services IC 099 US 021 023 026 036 038 G & S. computer devices and systems, namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control. FIRST USE: 19931219. FIRST USE IN COMMERCE: 19931219
Mark Drawing Code (S) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 75120745
Filing Date June 19, 1995
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition May 6, 1997
Registration Number 2083525
Registration Date July 29, 1997
Owner (REGISTRANT) SensAble Technologies, Inc. CORPORATION DELAWARE 15 Constitution Way Webum MASSACHUSETTS 01801
Attorney of Record Wanda Washington
Type of Mark TRADEMARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 9 (6-YR) SECTION 8(10-YR) 20570312
Renewal 1ST RENEWAL 20070312
Live/Dead indicator LIVE

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Exhibit B

[APP Status](#) [ASSIST Items](#) [TDR](#) [TDR Items](#) (Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark PHANTOM
Goods and Services IC 009, US 021 023 026 036 039, G & S, Computer devices and systems, namely, haptic interfaces, haptic interface devices, and haptic displays, for providing haptic feedback, namely, tactile feedback and force-feedback, with respect to real or virtual objects under computer control; computer software and hardware for use in accessing global computer information networks and interacting with haptic interface devices. FIRST USE: 19931219; FIRST USE IN COMMERCE: 19931219
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75583219
Filing Date November 13, 1998
Current Filing Basis 1A
Original Filing Basis 1A
Published for Opposition March 11, 2003
Registration Number 2720224
Registration Date June 3, 2003
Owner (REGISTRANT) SensAble Technologies, Inc. CORPORATION DELAWARE 215 First Street Cambridge MASSACHUSETTS 02142
Attorney of Record Wanda Washington
Prior Registrations 2083526
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,550,418

Registered Mar. 19, 2002

**TRADEMARK
PRINCIPAL REGISTER**

FREEFORM

SENSABLE TECHNOLOGIES, INC. (DELAWARE CORPORATION)
215 FIRST STREET
CAMBRIDGE, MA 02142

FOR: COMPUTER DEVICES AND SYSTEMS NAMELY, HAPTIC INTERFACES HAPTIC INTERFACE DEVICES, AND HAPTIC DISPLAYS, FOR PROVIDING HAPTIC FEEDBACK, NAMELY, TACTILE FEEDBACK AND FORCE-FEEDBACK, WITH RESPECT TO REAL OR VIRTUAL OBJECTS UNDER COMPUTER CONTROL; RELATED COMPUTER SOFTWARE FOR CREATING THREE

DIMENSIONAL COMPUTER MODELS, COMPUTER SOFTWARE AND HARDWARE FOR USE IN ACCESSING GLOBAL COMPUTER INFORMATION NETWORKS AND INTERFACING WITH HAPTIC INTERFACE DEVICES, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-14-1999; IN COMMERCE 6-14-1999.

SN 75-631,350, FILED 2-1-1999.

ANNE MADDEN, EXAMINING ATTORNEY