

ESTTA Tracking number: **ESTTA733605**

Filing date: **03/15/2016**

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	Elo Touch Solutions, Inc.
Granted to Date of previous extension	03/19/2016
Address	1033 McCarthy Blvd. Milpitas, CA 95035 UNITED STATES

Attorney information	Charles P. Bacall Verrill Dana, LLP One Portland Square P.O. Box 586 Portland, ME 04112-0586 UNITED STATES cbacall@verrilldana.com Phone:207-774-4000
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Applicant Information

Application No	86723393	Publication date	01/19/2016
Opposition Filing Date	03/15/2016	Opposition Period Ends	03/19/2016
Applicant	Lazea, Peter 9450 SW Gemini Dr #31402 Beaverton, OR 970087105 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 009. First Use: 2015/01/01 First Use In Commerce: 2015/01/11 All goods and services in the class are opposed, namely: Protective display screen covers adapted for use with mobile phones and tablets; Fitted plastic films known as skins for covering and providing a scratch proofbarrier or protection for electronic devices, namely, MP3 players, mobile telephones, smart telephones, digital cameras, global positioning systems and personal digital assistants; Bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; Carrying cases for cell phones; Cases for mobile phones; Cell phone battery chargers; Cell phone cases; Cell phone covers; Cell phone faceplates; Earphones and headphones; Adjustable smartphone and PC tablet stabilizers and mounts; Audio speakers; Computer stylus; Monopods used to take photographs by positioning a smartphone or camera beyond the normal range of the arm; data cables; Armbands specially adapted for personal electronic devices, namely, mobile-phones</p>
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution by blurring	Trademark Act section 43(c)

Other	Trademark Act Section 43(a), 15 U.S.C. Section 1125(a)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2594753	Application Date	04/19/1999
Registration Date	07/16/2002	Foreign Priority Date	NONE
Word Mark	ITOUCH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1999/07/17 First Use In Commerce: 1999/07/17 [CRT and] flat panel displays in which the display surface functions as a touch sensor; and software drivers, controllers and user manuals sold as a unit therewith		

Attachments	I-TOUCHI.Notice.Opp.031516.pdf(171371 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	/Charles P. Bacall/
Name	Charles P. Bacall
Date	03/15/2016

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

Applicant: Peter Lazea)
Serial No.: 86/723,393)
Filing Date: August 13, 2015)
Mark: I-TOUCHI)
Published: January 19, 2016)
_____)

Elo Touch Solutions, Inc., Opposer

v.

Peter Lazea, Applicant

Opposition No. _____

NOTICE OF OPPOSITION

Opposer: Elo Touch Solutions, Inc.
a Delaware Corporation
1033 McCarthy Blvd
Milpitas, CA 95035

The above-identified Opposer believes that it will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for the opposition are as follows:

1. This is an opposition by Elo Touch Solutions, Inc. ("Elo"), an internationally recognized provider of computer and interactive touch screen displays and equipment, to stop another from registering the trademark "I-TOUCHI," which is confusingly similar to Elo's common law and federally registered "ITOUCH" trademark.

2. Elo uses the ITOUCH mark on its touch screen displays, software and components and on materials promoting its goods to consumers. The goods are sold to consumers and

businesses, including restaurants, retailers, medical providers and others, and used by consumers throughout the United States and worldwide.

3. Elo, through its predecessors in interest, first began selling its touch screen displays, software and controls under the ITOUCH trademark at least as early as 1999, and has continued such use on the goods. Since that time, Elo has spent significant time and money promoting that trademark to customers nationwide and worldwide. Customers have come to know the ITOUCH mark as a symbol of Elo's quality products. Elo derives substantial goodwill from such identification by consumers. The ITOUCH mark had become distinctive and famous before Applicant's alleged first use of the I-TOUCHI mark, or any other date on which Applicant may seek to rely for purposes of priority.

4. Elo owns United States Trademark Registration No. 2,594,753, dated July 16, 2002, for the word mark "ITOUCH" for "Flat panel displays in which the display surface functions as a touch sensor; and software drivers, controllers and user manuals sold as a unit therewith" in International Class 009. Copies of the TESS electronic database of the USPTO and Registration Certificate for Registration No. 2,594,753, are attached as Exhibit 1.

5. Elo's incontestable registration for the "ITOUCH" mark is valid and subsisting, unrevoked and uncanceled, and constitutes *prima facie* evidence of the validity of Elo's exclusive right to use the mark in commerce in connection with the goods described in the registration, without condition or limitation. Elo's registration for the "ITOUCH" mark constitutes constructive notice of Elo's ownership of the mark for the goods described in the registration.

6. Elo also owns nationwide common law trademark rights in the "ITOUCH" mark in connection with the goods in the above registration by virtue of its widespread, continuous and exclusive use of the mark throughout the United States. Upon information and belief, Elo established such common law rights in its "ITOUCH" mark prior to Applicant's alleged date of first use or any priority date upon which Applicant can rely in relation to the mark I-TOUCHI.

7. On August 13, 2015, Peter Lazea (“Applicant”) filed the instant application to register the trademark I-TOUCHI. The application requests registration for “Protective display screen covers adapted for use with mobile phones and tablets; Fitted plastic films known as skins for covering and providing a scratch proof barrier or protection for electronic devices, namely, MP3 players, mobile telephones, smart telephones, digital cameras, global positioning systems and personal digital assistants; Bags and cases specially adapted for holding or carrying portable telephones and telephone equipment and accessories; Carrying cases for cell phones; Cases for mobile phones; Cell phone battery chargers; Cell phone cases; Cell phone covers; Cell phone faceplates; Earphones and headphones; Adjustable smartphone and PC tablet stabilizers and mounts; Audio speakers; Computer stylus; Monopods used to take photographs by positioning a smartphone or camera beyond the normal range of the arm; data cables; Armbands specially adapted for personal electronic devices, namely, mobile phones” in International Class 009. The application is based on the Applicant’s alleged first use of the mark on January 1, 2015, and alleged use in commerce in the U.S on January 11, 2015.

8. Elo’s rights in the ITOUCH mark predate the Applicant’s rights (if any) in the I-TOUCHI mark.

9. The I-TOUCHI mark so closely resembles Elo’s ITOUCH mark when applied to the goods covered by the Application as to cause confusion, mistake or deception as to the source of Applicant’s goods. The mark I-TOUCHI, as set forth in the Application, is highly similar in sight, sound, connotation and commercial impression to Elo’s ITOUCH mark. The words “I-TOUCHI” and “ITOUCH” share the same first six letters and, as such, are confusingly similar on their whole. There is a strong likelihood that the consuming public will believe that the Applicant’s goods offered under the I-TOUCHI mark emanate from, are associated with, are connected to or are sponsored by Elo.

10. Applicant's use of the I-TOUCHI mark will infringe and/or dilute Elo's prior rights in the ITOUCH mark.

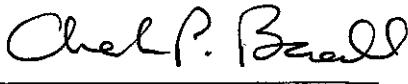
11. Applicant's registration and/or use of I-TOUCHI will interfere with Elo's use of its ITOUCH mark and will harm Elo.

Therefore, Elo respectfully requests that the Board refuse registration of the I-TOUCHI mark.

The filing fee of \$300.00 for this Notice of Opposition is filed herewith.

Respectfully submitted,

VERRILL DANA, LLP

By: 

Charles P. Bacall
Attorney for Opposer
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

Dated: March 15, 2016

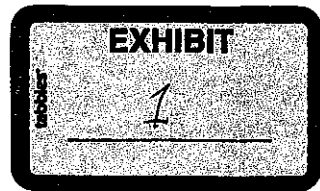
CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition has been served on Applicant on March 15, 2016 by mailing the true and complete copy via First Class Mail, postage prepaid, to:

Mr. Peter Lazea
9450 SW Gemini Dr. #31402
Beaverton, OR 97008-7105



Charles P. Bacall
Attorney for Opposer



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Typed Drawing

Word Mark	ITOUCH
Goods and Services	IC 009. US 021 023 026 036 038. G & S: [CRT and] flat panel displays in which the display surface functions as a touch sensor; and software drivers, controllers and user manuals sold as a unit therewith. FIRST USE: 19990717. FIRST USE IN COMMERCE: 19990717
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75686717
Filing Date	April 19, 1999
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	May 15, 2001
Registration Number	2594753
International Registration Number	1230746
Registration Date	July 16, 2002
Owner	(REGISTRANT) Elo TouchSystems, Inc. CORPORATION TENNESSEE 301 Constitution Drive Menlo Park CALIFORNIA 94025 (LAST LISTED OWNER) ELO TOUCH SOLUTIONS, INC. CORPORATION DELAWARE 301 CONSTITUTION DRIVE MENLO PARK CALIFORNIA 94025
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Charles P. Bacall
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20120710.
Renewal	1ST RENEWAL 20120710 LIVE

**Live/Dead
Indicator**

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Int. Cl.: 9

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

Reg. No. 2,594,753

United States Patent and Trademark Office

Registered July 16, 2002

**TRADEMARK
PRINCIPAL REGISTER**

ITOUCH

ELO TOUCHSYSTEMS, INC. (TENNESSEE COR-
PORATION)
6500 KAISER DRIVE
FREMONT, CA 94555

UNIT THEREWITH, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).

FIRST USE 7-17-1999; IN COMMERCE 7-17-1999.

FOR: CRT AND FLAT PANEL DISPLAYS IN
WHICH THE DISPLAY SURFACE FUNCTIONS AS
A TOUCH SENSOR; AND SOFTWARE DRIVERS,
CONTROLLERS AND USER MANUALS SOLD AS A

SN 75-686,717, FILED 4-19-1999.

GLENN CLARK, EXAMINING ATTORNEY