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

Proceeding	92074268
Party	Defendant Elipse Software Ltda.
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Attachments	ELSFT.001N-Answer.pdf(523538 bytes )

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

ABB POWER GRIDS AUSTRALIA PTY LIMITED	)	Cancellation No.: 92074268
	)	
Petitioner,	)	Reg. No.: 5,975,570
	)	
v.	)	Mark: ELIPSE E3
	)	
ELIPSE SOFTWARE LTDA.,	)	
	)	
Registrant.	)	
	)	

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**ANSWER TO PETITION TO CANCEL**

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

ELIPSE SOFTWARE LTDA. (“Elipse”) hereby answers the Petition to Cancel (“Petition”) filed by ABB POWER GRIDS AUSTRALIA PTY LIMITED (“Petitioner”), against Registrant’s U.S. Registration No. 5,975,570 for the mark ELIPSE E3®.

Answering the unnumbered first paragraph of the Petition, Elipse denies that Petitioner will be damaged by continued registration of Registrant’s ELIPSE E3 mark.

The numbered paragraphs of this Answer correspond to the numbered paragraphs of the Petition.

1. Answering Paragraph 1 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

2. Answering Paragraph 2 of the Petition, Elipse acknowledges that Exhibit A purports to be a printout from the USPTO database. Elipse lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 2 of the Petition and on that basis denies them.

3. Answering Paragraph 3 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

4. Answering Paragraph 4 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

5. Answering Paragraph 5 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

6. Answering Paragraph 6 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

7. Answering Paragraph 7 of the Petition, Elipse admits the allegations contained therein.

8. Answering Paragraph 8 of the Petition, Elipse admits the allegations contained therein.

9. Answering Paragraph 9 of the Petition, Elipse denies the allegations contained therein.

10. Elipse incorporates the answers in the above paragraphs as if fully set forth herein.

11. Answering Paragraph 11 of the Petition, Elipse admits that Petitioner's ELLIPSE Marks have filing dates that precede the filing date of Elipse's E3 Registration. Elipse also admits that the alleged dates of first use shown on the face of the Registration Certificates for the ELLIPSE Marks precede the dates of first use shown on the face of Elipse's E3 Registration Certificate. Elipse denies that Petitioner's ELLIPSE Marks have priority over Elipes' E3 Mark, and further denies the remaining allegations contained in this paragraph.

12. Answering Paragraph 12 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

13. Answering Paragraph 13 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

14. Answering Paragraph 14 of the Petition, Elipse admits that "ELLIPSE" and "Elipse" share the letters "E", "L", "I", "P", "S", and "E". Elipse denies any remaining allegations in this paragraph.

15. Answering Paragraph 15 of the Petition, Elipse admits that Petitioner's ELLIPSE Marks contain two "L"s and Elipse's ELIPSE E3 mark contains one "L". Elipse denies any remaining allegations in this paragraph.

16. Paragraph 16 of the Petition is not an allegation of fact and purports to set forth a legal conclusion to which no response is required, and is therefore denied.

17. Answering Paragraph 17 of the Petition, Elipse admits that it stated "[t]he word 'elipse,' as it is used in the mark, is the Portuguese spelling of 'ellipse,' which is a term used in geometry . . . ." during the prosecution of the application that resulted in the ELIPSE E3 Registration. Elipse denies the remaining allegations in this paragraph.

18. Paragraph 18 of the Petition is not an allegation of fact and purports to set forth a legal conclusion to which no response is required, and is therefore denied.

19. Paragraph 19 of the Petition is not an allegation of fact and purports to set forth a legal conclusion to which no response is required, and is therefore denied.

20. Answering Paragraph 20 of the Petition, Elipse admits that the ELIPSE E3 Registration states that the ELIPSE E3 Mark “consists of standard characters without claim to any particular font style, size, or color.” Elipse denies the remaining allegations in this paragraph.

21. Answering Paragraph 21 of the Petition, Elipse denies the allegations contained therein.

22. Answering Paragraph 22 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

23. Answering Paragraph 23 of the Petition, Elipse denies the allegations contained therein.

24. Answering Paragraph 24 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

25. Answering Paragraph 25 of the Petition, Elipse lacks sufficient knowledge or information to form a belief as to the truth of the allegations in this paragraph and on that basis denies them.

26. Paragraph 26 of the Petition is not an allegation of fact and purports to set forth a legal conclusion to which no response is required, and is therefore denied. Elipse further denies that Petitioner has priority of rights in its ELLIPSE Marks.

27. Answering Paragraph 27 of the Petition, Elipse denies the allegations contained therein.
28. Answering Paragraph 28 of the Petition, Elipse denies the allegations contained therein.
29. Elipse incorporates the answers in the above paragraphs as if fully set forth herein.
30. Answering Paragraph 30 of the Petition, Elipse admits the allegations contained therein.
31. Answering Paragraph 31 of the Petition, Elipse denies the allegations contained therein.
32. Answering Paragraph 32 of the Petition, Elipse denies the allegations contained therein.
33. Answering Paragraph 33 of the Petition, Elipse denies the allegations contained therein.
34. Answering Paragraph 34 of the Petition, Elipse denies the allegations contained therein.
35. Answering Paragraph 35 of the Petition, Elipse denies the allegations contained therein.
36. Answering Paragraph 36 of the Petition, Elipse denies the allegations contained therein.
37. Answering Paragraph 37 of the Petition, Elipse denies the allegations contained therein.
38. Answering Paragraph 38 of the Petition, Elipse denies the allegations contained therein.

39. Answering Paragraph 39 of the Petition, Elipse denies the allegations contained therein.

40. Answering Paragraph 40 of the Petition, Elipse denies the allegations contained therein.

41. Answering Paragraph 41 of the Petition, Elipse denies the allegations contained therein.

### **AFFIRMATIVE DEFENSES**

Elipse alleges the following affirmative defenses. There may be additional affirmative defenses to the Petition that are currently unknown to Elipse. Therefore, Elipse reserves the right to amend its Answer to allege any additional affirmative defenses, in the event that discovery of additional information indicates that they are appropriate. Elipse also reserves the right to file counterclaims if grounds for counterclaims are learned by Elipse during the course of this cancellation action.

#### **FIRST AFFIRMATIVE DEFENSE**

The Petition and the relief sought therein are barred by the abandonment and loss of Petitioner's alleged rights due to the failure to police its alleged marks.

#### **SECOND AFFIRMATIVE DEFENSE**

Petitioner has not been damaged in any amount or manner by reason of any act alleged against Elipse in the Petition, or at all, and therefore the relief prayed for in the Petition cannot be granted.

#### **THIRD AFFIRMATIVE DEFENSE**

The Petition for Cancellation fails to state a claim upon which relief can be granted as Elipse has prior, continuous, and senior use of the ELIPSE mark.

**FOURTH AFFIRMATIVE DEFENSE**

The Petition for Cancellation and causes of action are barred by the doctrine of laches, estoppel, acquiescence and/or waiver.

**FIFTH AFFIRMATIVE DEFENSE**

Petitioner's claims are barred by the Eighth *du Pont* factor given the substantial amount of time under which there has been concurrent use without evidence of actual confusion.

Respectfully submitted,

**KNOBBE, MARTENS, OLSON & BEAR, LLP**

Dated: July 28, 2020

By: /jhh/

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ELIPSE SOFTWARE LTDA.



**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **ANSWER TO PETITION TO CANCEL** has been served on Petitioner's counsel of record on July 28, 2020 via electronic mail to:

Christopher B Lay, Esq.  
IPHORGAN LTD  
clay@iphorgan.com, j bathke@iphorgan.com, mail@iphorgan.com

/jhh/  
Jonathan A. Hyman

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