

7/27/01

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 10
HRW

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Shuttle Technology Group Ltd.

v.

Smart Storage Solutions Corporation

Opposition No. 112,337
to application Serial No. 75/327,292
filed on June 30, 1997

J. Suzanne Siebert of Majestic, Parsons, Siebert & Hsue
PC for Shuttle Technology Group Ltd.

Bill B. Berryhill for Smart Storage Solutions
Corporation.

Before Hanak, Quinn and Wendel, Administrative Trademark
Judges.

Opinion by Wendel, Administrative Trademark Judge:

Smart Storage Solutions Corporation has filed an
application to register the mark SMART SHUTTLE for

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"computer equipment, specifically computer hardware for changing the hard drive of a computer."¹

Shuttle Technology Group Ltd. filed an opposition to registration of the mark on the ground of likelihood of confusion under Section 2(d) of the Trademark Act.

Opposer alleges use of the mark SHUTTLE TECHNOLOGY and design since long prior to applicant's filing date of June 30, 1997; ownership of a registration for the mark² for "computer equipment, namely, computer hardware and peripherals; computer software for the control of computer peripherals, including archival storage devices; computer software for control of computer networks and accompanying operating manuals therefor; and parallel to SCSI adapters"; and likelihood of confusion if applicant were to use its mark with the recited goods.

¹ Serial No. 75/327,292, filed June 30, 1997, based on an allegation of a bona fide intention to use the mark in commerce. A disclaimer has been made of the word SMART.

² Registration No. 1,862,322, issued November 15, 1994. As of this date, there is no Office record of the filing of a Section 8 affidavit. The mark is registered in the format depicted below and a disclaimer has been made of the word TECHNOLOGY.

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Applicant, in its answer, denied the salient allegations of the notice of opposition. Applicant has taken no action in the case since the filing of its answer.

The record consists of the file of the involved application and opposer's notice of reliance upon opposer's first set of requests for admissions and first set of interrogatories, accompanied by the declaration of opposer's counsel to the effect that applicant provided no answers or objections to the discovery requests. Counsel states in this declaration that a telephone voice message was left for counsel for applicant noting that no answers or objections had been received to the discovery and, as a result, the requests for admission would be deemed admitted and that no response was received from applicant's counsel to this call.

Opposer has filed a brief, after the time to do so was reopened by order of the Board, but no oral hearing was requested.

Opposer argues that there are no issues in dispute in this opposition; that because of applicant's failure to respond to the requests for admission, the matters

therein are deemed admitted and thus are conclusively established.

The requests upon which opposer relies are as follows:

Request for Admission No. 5

Admit that Applicant knew before June 30, 1997 that Opposer had used the mark "SHUTTLE TECHNOLOGY + DESIGN" for Opposer's Goods.

Request for Admission No. 6

Admit that Applicant's mark "SMART SHUTTLE" so resembles the mark "SHUTTLE TECHNOLOGY + DESIGN" for Opposer's Goods and which Opposer has registered in the U.S. Patent and Trademark Office in Registration No. 1,862,322 issued November 15, 1994, as to be likely,

when used on in [sic] connection with the goods of Applicant, to cause confusion, or to cause mistake, or to deceive.

Request for Admission No. 7

Admit that Applicant's mark "SMART SHUTTLE" so resembles the mark "SHUTTLE TECHNOLOGY + DESIGN" for Opposer's Goods and which Opposer has registered in the U.S. Patent and Trademark Office in Registration No. 1,862,322 issued November 15, 1994, as to be likely, when used on in [sic] connection with the following goods of Applicant, to cause confusion, or to cause mistake, or to deceive: computer equipment, specifically, computer hardware for changing the hard drive of a computer.

Request for Admission No. 8

Admit that Applicant's mark "SMART SHUTTLE" so resembles the mark "SHUTTLE TECHNOLOGY + DESIGN" used by Opposer, as to be likely, when used on in [sic] connection with the following goods of Applicant, to cause confusion, or to cause mistake, or deceive: computer equipment, specifically, computer hardware for changing the hard drive of a computer.

Request for Admission No. 9

Admit that Applicant's mark "SMART SHUTTLE" so resembles the mark "SHUTTLE TECHNOLOGY + DESIGN" used by Opposer before June 30, 1997, as to be likely, when used on or in connection with the following goods of Applicant to cause confusion, or to cause mistake, or to deceive: computer equipment, specifically, computer hardware for changing the hard drive of a computer.

In the absence of filing any evidence of prior use, applicant is entitled only to the constructive use date or the filing date of its intent-to-use application, namely, June 30, 1997. Applicant has admitted prior use by opposer. Accordingly, opposer's priority has been established.

Applicant has also admitted a likelihood of confusion because of the similarity of the respective marks if applicant were to use its mark SMART SHUTTLE on the recited goods. In view thereof, we find the elements of a claim under Section 2(d) have been established.³

Decision: The opposition is sustained and registration is refused to applicant.

³ We find applicant's admissions of opposer's prior use and registration of the mark SHUTTLE TECHNOLOGY + DESIGN for

opposer's goods sufficient to establish opposer's standing to bring this opposition.