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02-01-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #58

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

In the Matter of Trademark Application Serial No. 75/863,261

Filed: December 3, 1999

Mark: Graphic Logo

Published in the Official Gazette: December 4, 2001, Page TM 206

AVX Corporation

Opposer,

v.

SIEMENS AKTIENGESELLSCHAFT CORPORATION,

Applicant.

Opposition No: _____

02-01-2002
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NOTICE OF OPPOSITION

Opposer, AVX Corporation, believes that it will be damaged by registration of the triangular-shaped Graphic mark shown in Serial No. 75/863,261, which was published in the Official Gazette on December 4, 2001, and hereby opposes same.

As grounds for this opposition, it is alleged that:

1. Siemens Aktiengesellschaft Corporation (hereafter "Applicant") is a corporation of the Federal Republic of Germany, having offices in Munich, Germany.
2. AVX Corporation (hereafter "Opposer") is a Delaware corporation having corporate headquarters in Myrtle Beach, South Carolina. Opposer has offices at various locations in the United States, and at other locations around the world.

5. Upon information and belief, the subject mark has not been used in commerce (as "commerce" is defined in 15 U.S.C. § 1127) prior to July 16, 1999, by Applicant or by another on behalf of Applicant.

6. On April 24, 2001, Opposer filed an application to register its stylized "A" Graphic logo mark for **capacitors**, alleging a date of first use and first use in commerce of April 16, 1999. Opposer's application was assigned Serial No. 76/245,660 (hereafter "Opposer's application").

7. Prior to the 16 July 1999 filing date of the German priority application to the subject application, Opposer has used Opposer's stylized "A" Graphic logo mark on capacitors in commerce (as "commerce" is defined in 15 U.S.C. § 1127) and has not abandoned such usage. Prior to the filing date of the German priority application to the subject application, Opposer's capacitors branded with Opposer's stylized "A" Graphic logo mark have been used in a variety of industries in the United States.

8. Since at least April 16, 1999, through the present, Opposer has been identified in some manner with its Stylized "A" Graphic logo mark. On information and belief, Opposer has developed valuable goodwill in respect to its stylized "A" Graphic logo mark by virtue of its efforts, the expenditure of sums for promotional activities, and the excellence of Opposer's products.

9. Through widespread and longstanding use, Opposer has developed substantial common law rights in relation to its stylized "A" Graphic logo mark. These common law rights of Opposer predate the filing date of the German priority application to the subject application. The stylized "A" Graphic logo mark possesses a high degree of distinctiveness, and is well-known and recognized as identifying goods that have their

source with Opposer, and serves to distinguish those goods from the goods of others. The common law rights of Opposer in the stylized "A" Graphic logo mark represent a valuable asset and symbol of the goodwill of the business that Opposer has built over the years.

10. Opposer has superior rights in and to its stylized "A" Graphic logo mark than Applicant has in and to Applicant's triangular-shaped graphic mark because Opposer's usage of Opposer's stylized "A" Graphic logo mark predates the 16 July 1999, filing date of the alleged German priority application allegedly claimed in the subject application to register Applicant's triangular-shaped graphic mark.

11. On information and belief, the goods set forth in the subject application are intended to move through channels of trade established in the electronic industry, and these channels are the same as or at least intersect the channels of trade in which the goods of Opposer move under Opposer's stylized "A" Graphic logo mark. On information and belief, Applicant intends to market its capacitors and other related electronic components bearing the Applicant's triangular-shaped graphic mark in the same channels of trade as Opposer markets its capacitors branded with Opposer's stylized "A" Graphic logo mark.

12. Applicant's triangular-shaped graphic mark has been deemed by the Trademark Office to bear sufficient resemblance to Opposer's stylized "A" Graphic logo mark such that in a communication mailed on July 16, 2001, Opposer was informed that Opposer's application was suspended pending the disposition of the subject application, which the Office indicated may be cited against Opposer's application when the subject application registers. Thus, on information and belief, Applicant's triangular-shaped graphic mark so resembles Opposer's stylized "A" Graphic logo mark previously used

In view of the above, Applicant is not entitled to federal registration of the triangular-shaped Graphic logo mark of the subject application.

WHEREFORE, Opposer prays that the subject application be denied and refused, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

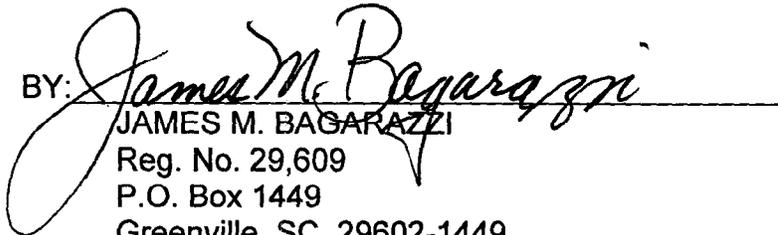
The requisite \$300 fee and two copies of this Notice are submitted herewith.

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: Feb. 1, 2002

BY:

A large, stylized handwritten signature in black ink, reading "James M. Bagarazzi". The signature is written over a horizontal line that serves as a separator between the signature and the printed name below it.

JAMES M. BAGARAZZI

Reg. No. 29,609

P.O. Box 1449

Greenville, SC 29602-1449

(864) 271-1592