

02-18-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #47

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

In the matter of Application Serial No. 78/076,501
Filed: July 30, 2001
Published on August 20, 2002 at TM 445

H-D MICHIGAN, INC.

Opposer,

v.

ELECTROMECHANICA DYNA S.A.

Applicant.

§
§
§
§
§
§
§
§
§
§

Opposition No. 91154291

**APPLICANT ELECTROMECHANICA DYNA S.A.
FIRST AMENDED ANSWER TO NOTICE OF OPPOSITION**

COMES NOW, ELECTROMECHANICA DYNA S.A. ("Applicant"), and in answer to H-D MICHIGAN, INC.'S ("Opposer") Notice of Opposition, filed in Opposition No. 91154291, in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board, would respectfully show as follows:

1. Responding to the preamble of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegation that Opposer is a corporation organized and existing under the laws of the State of Michigan and maintaining a principal place of business at 315 W. Huron Street, Suite 400, Ann Arbor, Michigan, and therefore denies same. Applicant denies the remaining allegations therein.

2. Responding to Paragraph 1 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

3. Responding to paragraph 2 of Opposer's Notice of Opposition, Applicant admits that from information reasonably available Opposer appears to be the owner of United States Trademark Registration Nos. 1,953,344 and 2,632,484. Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the remaining allegations contained therein and, therefore denies same.

4. Responding to paragraph 3 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

5. Responding to paragraph 4 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

6. Responding to paragraph 5 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

7. Responding to paragraph 6 of Opposer's Notice of Opposition, Applicant denies the allegations contained therein.

8. Responding to paragraph 7 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

9. Responding to paragraph 8 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

10. Responding to paragraph 9 of Opposer's Notice of Opposition, Applicant is without knowledge and information sufficient at this time to form a belief as to the truth of the allegations contained therein and, therefore denies same.

11. Responding to paragraph 10 of Opposer's Notice of Opposition, Applicant denies the allegations contained therein.

12. Responding to the relief requested in Opposer's prayer for relief, Applicant denies that Opposer is entitled to the relief sought and denies all allegations relating thereto.

13. Any allegation set forth in Opposer's Notice of Opposition which is not specifically admitted by Applicant herein, is denied.

AFFIRMATIVE DEFENSES

14. Applicant would show there is no likelihood of confusion, mistake or deception of the purchasing public between Opposer's mark and Applicant's mark when considered in their entireties and in view of the goods and/or services the marks at issue represent.

15. Applicant would show there is no likelihood of confusion, mistake or deception of the purchasing public between Opposer's mark and Applicant's mark as Applicant's mark will be only be used in connection with limited goods, namely, "windscreen wipers and windshield wipers for vehicles." Therefore, Applicant would be entitled to a registration of its mark with a restricted identification reflecting the actual nature of its goods.

16. Applicant would show that Opposer's opposition is barred by the doctrine of laches.

17. Applicant would show that the Opposer's opposition is barred by the doctrine of acquiescence.

WHEREFORE, Applicant prays that Opposer take nothing by reason of its improper Notice of Opposition, that this Opposition be dismissed with prejudice to the refiling of same and that Applicant have judgment against Opposer for costs and for such other and further relief as the Trademark and Trial and Appeal Board may find just and proper.

Dated this 18th day of February, 2003.

Respectfully submitted,

By:



Colin P. Cahoon
Scott L. Harper
CARSTENS, YEE & CAHOON, L.L.P.
P.O. Box 802334
Dallas, TX 75380
Telephone: 972.367.2001
Facsimile: 972.367.2002

ATTORNEYS FOR
ELECTROMECHANICA DYNA S/A

CERTIFICATE OF MAILING UNDER 37 CFR § 1.10

MARK: D3G DYNA 3A GERACAO (Stylized)

SERIAL NO.: 78/076,501

OPPOSITION NO.: 91154291

**NAME OF PARTY
FILING PAPERS:** ELECTROMECHANICA DYNA S/A

TYPE OF PAPERS: FIRST AMENDED ANSWER

I hereby certify that the above-identified document is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service, Mail Label No. EV162980654US, addressed to Box TTAB, No Fee, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on February 18, 2003.



Scott L. Harper

CERTIFICATE OF SERVICE

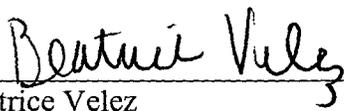
The undersigned certifies that a true and correct copy of Applicant Electromecanica Dyna S/A's First Amended Answer to Notice of Opposition has been served on Jennifer S. Anderson, Esq., 315 W. Huron, #400, Ann Arbor, Michigan 48103, attorney for Opposer, via certified mail, return receipt requested, on this 18th day of February, 2003.



Scott L. Harper

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service, Mail Label No. EV162980654US addressed to the Assistant Commissioner for Trademarks, Box TTAB – NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513, under 37 CFR 1.10, on February 18, 2003.



Beatrice Velez

Enclosures:

1. Transmittal Letter in Duplicate
2. Applicant, Electromecanica Dyna S.A.'s, **First Amended Answer**
3. Certificate of Mailing by Express Mail
4. Postcard Acknowledgement

Scott L. Harper
Telephone: 972.367.2001
Facsimile: 972.367.2002

E-Mail: harper@cyclaw.com



02-18-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #47

13760 Noel Road
Suite 900
Dallas, Texas 75240

Mailing Address
Post Office Box 802334
Dallas, Texas 75380

February 18, 2003

Via Express Mail Label No. EV162980654US

BOX TTAB

No Fee

Assistant Commissioner of Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513

Re: In the matter of Application Serial No. 78/076,501
Opposition No. 91154291
H-D MICHIGAN, INC. v. ELECTROMECHANICA DYNA S.A., filed in the United
States Patent and Trademark Office Before the Trademark Trial and Appeal
Board
Applicant's First Amended Answer
Our File: CCRUZ.00003

Dear Sir:

Enclosed is Applicant's, Electromecanica Dyna, S.A., *First Amended Answer* for filing in the above-referenced opposition.

No fee is enclosed with this filing. If it is determined that a fee is due, please charge any fee to our DEPOSIT ACCOUNT NO. 50-0392. This letter is being sent in duplicate should this be necessary.

Please date stamp and return the enclosed self-addressed, postage-prepaid postcard to confirm receipt of this filing.

If you have any questions, please contact the undersigned.

Very truly yours,

Scott L. Harper

Enclosures