

# TTAB

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

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Chicago, IL 60707

OPP NO 91160234

Trademark: AIRFRAME BUSINESS  
SOFTWARE, INC.

Opposer,

Opposition No: 91160234

vs.

Application SN: 78-233,204

Airframe Business Software, Inc.  
800 Southwood Blvd, Suite 105  
Incline Village, NV 89451

Applicant.



TTAB/FEE

06-21-2004

U.S. Patent & TMO/TM Mail Rpt Dt. #22

### MOTION TO STRIKE APPLICANT'S AFFIRMATIVE DEFENSES

NOW COMES the Opposer and moves to strike Applicant's Affirmative Defenses, and states as follows:

For striking Applicant's Affirmative Defenses - First Affirmative Defense to All Causes of Action<sup>1</sup>, Paragraph 1, the Opposer has stated a claim upon which relief may be granted in its Notice of Opposition .

Applicant's Second Affirmative Defense To All Causes of Action (Fraud), Paragraphs 1, 2, 3, 4 and 5; Applicant's Third Affirmative Defense To All Causes of Action (Unclean Hands), Paragraph 1; Applicant's Fourth Affirmative Defense To All Causes of Action (Estoppel), Paragraph 1, are deficient in that they do not allege facts which the Opposer can defend against. Secondly, they should be stricken with prejudice since there are no substantive grounds for this type of defense under the facts alleged or any facts which can be derived therefrom.

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1. The Opposer has attached a true and correct copy of Applicant's Affirmative Defenses, incorporated herein and made a part hereof.

**FRAUD MUST BE PLEAD WITH PARTICULARITY**

Fraud must be plead with particularity. Fed. R. Civ. P. 9(b). *La Maur, Inc. v. Computer Styles, Inc.*, U.S.P.Q. 495 (TTAB 1971), amended, 170 U.S.P.Q. 159 (TTAB 1971). Fraud in procuring a Trademark registration occurs when an applicant knowingly makes false, material representations of fact in connection with his application. *Torres v. Cantine Torresella S.r.l.*, 808 F. 2d 46, 48 (Fed. Cir. 1986). Fraud will be deemed to exist only when there is a deliberate attempt to mislead the Patent Office into registering the mark. *Oreck Corp. v. Thomson Consumer Electronics, Inc.*, 796 F. Supp. 1152, 1160 (S.D. Ind. 1992).

Applicant's Affirmative Defenses cannot withstand Opposer's Motion to Strike for failure to state a claim, for the Applicant failed to allege such facts that if proven, would establish that the plaintiff has abandoned its said Registration and/or committed a fraud on the Patent and Trademark Office either in the procurement and/or maintenance of its said mark.

WHEREFORE, the Opposer prays that the Board strike Applicant's Affirmative Defenses.

Respectfully submitted,



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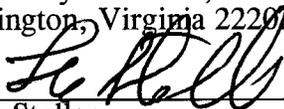
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Date: June 18, 2004

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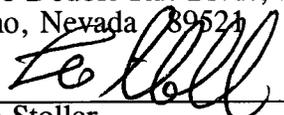


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Leo Stoller  
June 18, 2004

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Leo Stoller  
Date: June 18, 2004

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