

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 26, 2006

Opposition No. **91172492**

Proline Sistemas Ltda.

v.

The Nunez/Martinez
Partnership

Rochelle Ricks, Paralegal Specialist:

The answer and counterclaim filed by applicant on October 2, 2006 is noted. Applicant states that the counterclaim is to cancel **any** registration that may issue from opposer's application Serial No. 78739312 for the mark "EMAGRECESIM". Because the application is still pending and has not registered, applicant's counterclaim is premature, improper and is hereby stricken. *See Pyttronic Industries Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 n.2 (TTAB 1990).

In view thereof, application Serial No. 78739312 will not be considered as a counterclaim in this Opposition No. 91172492.

The \$300.00 fee will be refunded in due course.

Trial dates remain as previously set by the Board on August 22, 2006.

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