

ESTTA Tracking number: **ESTTA179718**

Filing date: **12/10/2007**

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

Proceeding	91178890
Party	Defendant Siemens Medical Solutions USA, Inc.
Correspondence Address	Lawrence E. Abelman Abelman, Frayne & Schwab 666 Third Avenue New York, NY 10017-5621 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Marie Anne Mastrovito
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Signature	/MAM/
Date	12/10/2007
Attachments	20071210154830989.pdf ( 8 pages )(511175 bytes )

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

**In the Matter Of: Trademark Application No. 78/743112 for the mark VVI in the  
United States**

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<b>ED VANVLIET</b>	:	
	:	
<b>Opposer,</b>	:	
	:	
v.	:	<b>Opp. No. 91178890</b>
	:	
<b>SIEMENS MEDICAL SOLUTIONS USA INC.,</b>	:	
	:	
<b>Applicant.</b>	:	

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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT'S RESPONSE TO NOTICE OF DEFAULT  
AND MOTION TO ACCEPT LATE FILED ANSWER**

Applicant hereby submits that it has good cause for its failure to timely file an Answer to the Notice of Opposition in the captioned proceeding and requests acceptance of the attached Answer to the Notice of Opposition.

Applicant submits that the failure to timely file the Answer to the Notice of Opposition was not the result of willful conduct or gross neglect on the part of the Applicant. Rather, the failure to file the Answer was the result of an unforeseen computer error or human error in the entry of the September 22, 2007 deadline into the firm's computerized docketing system. Applicant's attorney received the Notice of Opposition and the paper was promptly forwarded to the docketing paralegal. The paralegal stamped all deadlines related to the Opposition on the front page of the scheduling order and then entered the deadlines into the law firm's computerized docketing system. Despite, the stamping of the paper and entry of the date, the deadline did not appear on the docket of

firm deadlines printed out at the end of August and distributed to the responsible attorney. As a result, the attorney handling the matter was not aware of the deadline.

Whether the docketing paralegal unknowingly saved the docketed date incorrectly or whether the computer system malfunctioned cannot be ascertained at this time. The error was nevertheless unintentional and unanticipated.

Second, Applicant submits that Opposer will not be substantially prejudiced by the delay in filing the Answer. The discovery period is not scheduled to close until February 29, 2008 and can be readily extended should the Opposer require additional time in which to conduct discovery.

Finally, Applicant submits that it has a meritorious defense in this case. The Opposer's Mark was initially cited against the Applicant's Mark, however, the Applicant overcame the refusal based on arguments focusing on the significant differences in the goods of the parties and the high degree of care and deliberation which will be exercised in the purchase of Applicant's highly sophisticated and specialized software. The Examining Attorney found no likelihood of confusion between the marks and the Applicant believes that the Board will reach the same conclusion.

Applicant stresses that it is the policy of law to decide cases on their merits and therefore Applicant requests that it be permitted to proffer its defense to the Notice of Opposition in this case.

Wherefore, Applicant requests that the Board withdraw the Notice of Default and enter the attached Answer into the record.

Respectfully submitted,



**LAWRENCE E. ABELMAN  
MARIE-ANNE MASTROVITO**

**ABELMAN, FRAYNE & SCHWAB  
666 THIRD AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-9022**

*Attorneys for Applicant,  
Siemens Medical Solutions USA, Inc.*

Date: December 10, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **APPLICANT'S RESPONSE TO NOTICE OF DEFAULT** was served by first class mail, postage prepaid, this 10<sup>TH</sup> day of December, 2007 upon Opposer:

Ed VanVliet  
President  
VVI  
311 Adams Avenue  
State College, PA 16803

  
**MARIE-ANNE MASTROVITO**

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

**In the Matter Of: Trademark Application No. 78/743112 for the mark VVI in the  
United States**

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<b>ED VANVLIET</b>	:	
	:	
<b>Opposer,</b>	:	
	:	
v.	:	<b>Opp. No. 91178890</b>
	:	
<b>SIEMENS MEDICAL SOLUTIONS USA INC.,</b>	:	
<b>Applicant.</b>	:	

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Commissioner for Trademarks  
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Alexandria, VA 22313-1451

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant, Siemens Medical Solutions USA, Inc., hereby Answers the Notice of Opposition filed by Ed VanVliet as follows:

A.1. Applicant denies Opposer’s oversimplified characterization of the goods with which Applicant is using Applicant’s mark. Applicant denies that Applicant’s goods conflict with Opposer’s defined goods and services. With respect to the remaining allegations in paragraph A.1 of the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations, and therefore denies same.

B.1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph B.1 concerning what the Opposer believes to be true or untrue and therefore denies same. Applicant denies the remaining allegations in paragraph B.1 of the Notice of Opposition including the allegations that the mark will cause market confusion or confusion at the USPTO.

C.1. Applicant admits that it owns a pending intention to use application for VELOCITY VECTOR IMAGING covering goods classified in Class 9 and admits that the current application for VVI covers goods classified in Class 10. Applicant denies the remaining allegations in paragraph C.1 of the Notice of Opposition.

C.2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph C.2 of the Notice of Opposition, and therefore denies same.

C.3. Applicant admits the allegation in paragraph C.3 of the Notice of Opposition that the description of goods in the Applicant's intention to use application covers software sold as a component of ultrasound equipment. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph C.3 of the Notice of Opposition (which are mostly expressions of Opposer's personal opinions), and therefore denies same.

C.4. Applicant denies the allegations in paragraph C.4 of the Notice of Opposition.

C.5. Applicant denies the allegations in paragraph C.5 of the Notice of Opposition.

S.1. Applicant denies the allegations in paragraph S.1 of the Notice of Opposition.

S.2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph S.2 of the Notice of Opposition and therefore denies same.

S.3. Applicant submits that this paragraph is purely argumentative or Opposer's personal commentary rather than an allegation to which a response can be directed. Nevertheless, to the extent that this paragraph is viewed as including any discernible allegations, Opposer is without knowledge or information sufficient to form a belief as to the truth of the allegations and therefore denies same.

WHEREFORE, Applicant requests that the Opposition be dismissed in its entirety.

Respectfully submitted,



**LAWRENCE E. ABELMAN  
MARIE-ANNE MASTROVITO**

**ABELMAN, FRAYNE & SCHWAB  
666 THIRD AVENUE  
NEW YORK, NEW YORK 10017  
(212) 949-9022**

*Attorneys for Applicant,  
Siemens Medical Solutions USA, Inc.*

Date: December 10, 2007

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