

ESTTA Tracking number: **ESTTA269885**

Filing date: **03/03/2009**

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

Proceeding	91186473
Party	Defendant Apex Pavers, Inc
Correspondence Address	Leslie A. Burgk Leslie A. Burgk, P.A. 900 East Ocean Blvd, Suite D-130 Stuart, FL 34994 UNITED STATES leslie@leslieburgk.com
Submission	Motion to Strike
Filer's Name	Leslie A. Burgk, Esq.
Filer's e-mail	leslie@leslieburgk.com
Signature	/LAB/
Date	03/03/2009
Attachments	MTS No. 10.pdf ( 3 pages )(144556 bytes )



“Response,” when it is technically a “Reply” brief in opposition to *Applicant’s Response to Opposer’s Motion for a thirty (30) day extension of time to respond*.

4. The foregoing technicality aside, the time period for responding is 20 days with mailing and pursuant to TBMP § 502.02(b), the time for filing a reply brief will not be extended. The Opposer failed to timely file its “response”/reply brief within the time period, which was set for February 17, 2009. Therefore, pursuant to TBMP § 517, the Applicant respectfully requests that the Board strike Opposer’s filing or that the filing be given no consideration.

5. The Applicant further notes that Opposer’s counsel dated its “response”/reply brief February 17, 2009. However, the TTAB records clearly reflect that counsel did not file the response until February 25, 2009. Further, Opposer’s counsel certified its brief was served on the Applicant’s counsel on February 23, 2009 but the envelope is postmarked February 26, 2009 and was not received by the undersigned until March 2, 2009.

6. Alternatively, in the event the Board is inclined to give any consideration to the Opposer’s untimely filed brief, the Applicant would respectfully request an opportunity to rebut the factual allegations contained therein.

WHEREFORE, the Applicant respectfully requests that the Board STRIKE *Opposer’s Response to Applicant’s Response to Opposer’s Motion to Extend* (TTABVue Prosecution History Docket #10).

Dated: March 3, 2009

Respectfully Submitted,

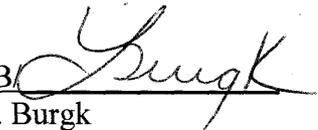
LESLIE A. BURGK, P.A.

By:   
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### CERTIFICATE OF ELECTRONIC FILING

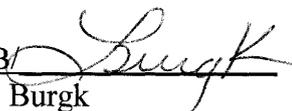
I HEREBY CERTIFY that the foregoing Answer and Affirmative Defenses is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 3rd day of March 2009.

By: /LAB/   
Leslie A. Burgk

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the correspondent of record for the Opposer this 4th day of March 2009 via First Class U.S. Postal Mail:

Ms. Gwenn Roos, Esq.  
Apex, LLC  
100 Main Street  
Pawtucket, Rhode Island 02860

By: /LAB/   
Leslie A. Burgk