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

Proceeding	91191016
Party	Plaintiff Intellectual Reserve, Inc.
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Submission	Reply in Support of Motion
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Date	12/11/2009
Attachments	91191016.pdf (3 pages)(51509 bytes)

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

INTELLECTUAL RESERVE, INC. Opposer/Registrant, vs. KENDAL M. SHEETS Applicant/Petitioner	Opposition No. 91191016
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**REPLY MEMORANDUM IN SUPPORT OF OPPOSER'S
MOTION TO STRIKE EVIDENTIARY MATTERS PLEADED
IN THE ANSWER AND COUNTERCLAIM**

The Board should grant Opposer/Registrant Intellectual Reserve, Inc.'s ("IRI's") motion to strike the evidentiary matters pleaded in Applicant/Petitioner Kendal M. Sheets's counterclaims for cancellation. The rules are clear that "[e]videntiary matters . . . should not be pleaded in a complaint." TBMP § 309.03(a)(2) (2d ed. Rev. 2004). Further "[e]videntiary matters . . . are... not for pleadings." *Id.* This prohibits evidentiary matters in pleadings.

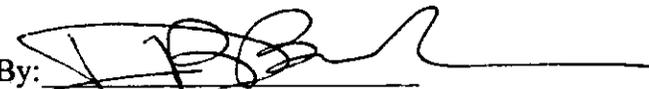
Sheets responds that IRI's motion to strike the evidentiary materials is inconsistent with its simultaneous motion to dismiss the counterclaim for lack of allegations sufficient to state a claim. This argument ignores the different Rules that apply to factual *allegations* in pleadings and *evidence* that may be submitted in accordance with the Board's scheduling order after pleadings are filed. A counterclaim must include factual statements or allegations that do more than state mere conclusions. *McDonnell Douglas Corporation v. National Data Corporation*, 228 U.S.P.Q. 45, 47 (TTAB 1985) (noting that "bald allegations in the language of the statute neither give

respondent fair notice of the basis for petitioner's claim nor set forth sufficient facts to establish the elements necessary for recovery, if proven"). It must not, however, include the evidence that could be used to prove the allegations. TBMP § 309.03(a)(2). Since Sheets has failed to identify any legitimate purpose for the evidentiary materials cited in the counterclaim, the motion to strike should be granted.

Dated: December 11, 2009

Respectfully Submitted

INTELLECTUAL RESERVE, INC.

By: 

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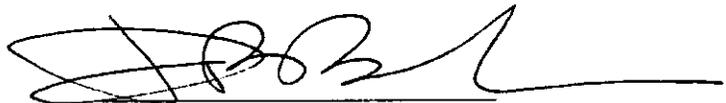
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Attorneys for Opposer/Registrant

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of December, 2009, a true and correct copy of the foregoing REPLY MEMORANDUM IN SUPPORT OF OPPOSER'S MOTION TO STRIKE EVIDENTIARY MATTERS PLEADED IN THE ANSWER AND COUNTERCLAIM was served on Applicant by first class United States mail, postage prepaid, in an envelope addressed as follows:

Kendal M. Sheets
Sheets Law Office, LLC
1855 Macarthur Drive
McLean, VA 22101

A handwritten signature in black ink, appearing to read 'DRB', with a long horizontal line extending to the right.

Douglas R. Bush