

ESTTA Tracking number: **ESTTA361895**

Filing date: **08/06/2010**

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

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|------------------------|--|
| Proceeding | 91191016 |
| Party | Plaintiff Intellectual Reserve, Inc. |
| Correspondence Address | Dale E. Hulse Kirton & McConkie 60 East South Temple, Suite 1800 P.O. Box 45120 Salt Lake City, UT 84145-0120 UNITED STATES dhulse@kmclaw.com |
| Submission | Motion to Dismiss - Rule 12(b) |
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| Signature | /Douglas R. Bush/ |
| Date | 08/06/2010 |
| Attachments | Sheets motion.pdf (2 pages)(43155 bytes) |

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE
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| <p>INTELLECTUAL RESERVE, INC.</p> <p style="text-align:center"><i>Opposer/Registrant,</i></p> <p style="text-align:center">vs.</p> <p>KENDAL M. SHEETS</p> <p style="text-align:center"><i>Applicant/Petitioner.</i></p> | <p style="text-align:center">Opposition No. 91191016</p> |
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MOTION TO DISMISS APPLICANT'S AMENDED COUNTERCLAIMS

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Section 503 of the Trademark Trial and Appeal Board Manual of Procedure, Opposer hereby moves to dismiss the amended counterclaims filed by Applicant in the above referenced proceeding for failure to state a claim on which relief can be granted.

As shown in the accompanying memorandum, the amended counterclaims still fail to state a claim because Applicant has not properly plead any valid grounds for cancellation of Opposer's registrations. Indeed, one of Applicant's counterclaims was directly precluded by the Board's prior order in this case. Further, Applicant's counterclaims lack the required specificity and elements necessary for the causes of action alleged. Accordingly, Applicant's counterclaims should be dismissed for failure to state a claim on which relief can be granted.

Respectfully submitted,

INTELLECTUAL RESERVE, INC.

By 

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2010, a true and correct copy of the foregoing MOTION TO DISMISS APPLICANT'S AMENDED COUNTERCLAIMS was served on Applicant by first class United States mail, postage prepaid, in an envelope addressed as follows:

Kendal M. Sheets
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Douglas R. Bush