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

Proceeding	91191309
Party	Plaintiff David K. Aberizk
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Submission	Opposition/Response to Motion
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Date	09/24/2009
Attachments	Opposition (2).pdf ( 4 pages )(338035 bytes )

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

**In the Matter of Trademark: ICI ICI SERVICES**  
**Serial No.: 77/592,570**  
**File Date: October 14, 2008**

David K. Aberizk,	)	Opposition No. 91191309
	)	
Opposer,	)	
	)	OPPOSER'S OPPOSITION TO
vs.	)	APPLICANT'S MOTION TO DISMISS
	)	
ICI Services, LLC,	)	
	)	
Applicant.	)	
	)	
	)	

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**VIA ELECTRONIC SYSTEM FOR  
TRADEMARK TRIALS AND APPEAL (ESTTA)**

**OPPOSITION TO MOTION TO DISMISS AND  
LEAVE TO FILE AN AMENDED NOTICE OF OPPOSITION**

Opposer, David K. Aberizk, through his undersigned counsel, submits this Opposition to Applicant's Motion to Dismiss, which was filed on September 4, 2009, concurrently with Applicant's Answer to the Notice of Opposition.

The sole basis for Applicant's Motion to Dismiss for Failure to State a Claim is Applicant's assertion that the Board should dismiss the present opposition on the basis that any alleged facts in the opposition filed by Opposer, even if proved, would not establish that Opposer is entitled to the relief sought, and that no valid ground for denying the registration sought has been asserted. No other factual or legal basis is asserted.

Opposer filed the Notice of Opposition in Pro Per without the benefit of counsel. To the extent there exists any defect in the Notice of Opposition as filed, Opposer respectfully requests leave to amend the Notice of Opposition to correct any such defect.

Notwithstanding the foregoing, Opposer submits that the Notice of Opposition as filed adequately asserts the basis for opposition to application Serial No. 77/592,570. The Notice of Opposition was filed against the aforesaid pending application in each class of services sought. As a basis for the Opposition, Opposer has asserted its U.S. registration No. 3,107,760 for the mark ICI INTEGRATED CONSULTANTS INCORPORATED, reciting a date of first use of June 1, 1999, registered in Class 42 for technical consultation in the field of electrical, mechanical, and nuclear engineering which is overlapping with the Applicant's services identified in its pending application. Moreover, Opposer has asserted priority of use and likelihood of confusion as the basis for opposition. Opposer's date of first use recited in its issued registration is earlier than the date of first use cited in the Applicant's pending application. To that extent, the Notice of Opposition is not defective, adequately pleads a basis for relief, and Applicant's Motion to Dismiss for Failure to State a Claim should be denied.

A Motion to Dismiss for Failure to State a Claim on Which Relief Can Be Granted is a motion filed by a defendant that essentially tests the sufficiency of the complaint. The allegations in the Notice of Opposition are accepted as true for purposes of the motion and all doubts are construed in favor of the plaintiff as the non-moving party. This motion is well taken only where the plaintiff's allegations, if proved, would nevertheless not entitle the plaintiff to the relief sought. Opposer submits that in the present case, the allegations in Opposer's Notice of Opposition with respect to priority of use, registration and likelihood of confusion accepted as true for purposes of the motion, construing all doubts in favor of plaintiff as the non-moving

party would entitle plaintiff to the relief sought and therefore, the motion to dismiss is not well taken, and should be denied.

Secondly, Opposer moves the Board for Leave to Amend the Notice of Opposition to delete extraneous matters included by Opposer, as in pro per, which does not comprise allegations requiring a response, and to amend the Notice of Opposition to include allegations of Opposer's common law rights with respect to "ICI", the dominant element of Opposer's subject matter registration and as an additional ground for maintaining the Notice of Opposition. Having filed the initial Notice of Opposition as an in pro per, Opposer did not have the benefit of counsel in the drafting of the Notice of Opposition to allege all grounds upon which relief is sought, and hereby requests leave to amend at this early stage of the proceedings so full and complete adjudication on the merits can be achieved.

Accordingly, Opposer respectfully requests that the Motion to Dismiss for Failure to State a Claim be denied and that Opposer be granted leave to file an Amended Notice of Opposition, whether the Motion to Dismiss is granted or denied, for purposes of amending the Notice of Opposition to state all bases on which relief is sought.

Respectfully submitted,



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Barry F. Soalt  
Attorney for Opposer,  
David K. Aberizk

Dated: September 24, 2009

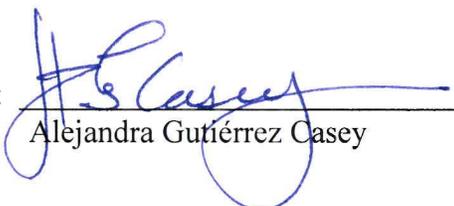
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO DISMISS** is being mailed on September 24, 2009, by First Class Mail to Applicant as follows:

Thomas F. Bergert  
Williams Mullen, P.C.  
321 E. Main Street, Suite 400  
Charlottesville, VA 22902

Dated: September 24, 2009

By:   
Alejandra Gutiérrez Casey