

ESTTA Tracking number: **ESTTA319296**

Filing date: **11/30/2009**

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

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Multistack, LLC		
Entity	LLC	Citizenship	Minnesota
Address	1065 Maple Ave Spart, WI 54656 UNITED STATES		

Attorney information	Beata Bukranova Orum & Roth, LLC 53 W. Jackson Blvd. Suite 1616 Chicago, IL 60604 UNITED STATES email@orumroth.com Phone:312.922.6262		
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### Applicant Information

Application No	77772302	Publication date	11/24/2009
Opposition Filing Date	11/30/2009	Opposition Period Ends	12/24/2009
Applicant	AAF-McQuay Inc. Suite 600 10300 Ormsby Park Place Louisville, KY 40223 UNITED STATES		

### Goods/Services Affected by Opposition

Class 011. All goods and services in the class are opposed, namely: HVAC units, namely, compressor chillers
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### Grounds for Opposition

Deceptiveness	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)

### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3278206	Application Date	05/22/2006
Registration Date	08/07/2007	Foreign Priority Date	NONE
Word Mark	MAGLEV		

Design Mark	<h1>MAGLEV</h1>
Description of Mark	NONE
Goods/Services	Class 011. First use: First Use: 2005/12/02 First Use In Commerce: 2005/12/02 Air-Conditioning refrigeration units; air-conditioning modular refrigeration units; air-conditioning systems primarily comprising motor and compressor units, chillers, evaporators, heat-exchangers, and control systems

Attachments	78889334#TMSN.jpeg ( 1 page )( bytes ) Notice of Opposition to 77772302.pdf ( 4 pages )(86005 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/ Beata Bukranova/
Name	Beata Bukranova
Date	11/30/2009

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

In the matter of Trademark Application Serial No. 77772302

Filed: July 1, 2009

Mark: Magnitude

Published on: November 24, 2009

MULTISTACK LLC	)	
	)	
Opposer,	)	
v.	)	Opposition No:
	)	
AAF-McQUAY INC.	)	
	)	
Applicant.	)	

**NOTICE OF OPPOSITION**

NOW COMES, MULTISTACK LLC., through its counsel Beata Bukranova of Orum & Roth LLC, and for its opposition against AAF-McQUAY trademark application no. 77772302 states as follows:

**Standing**

1. Opposer, Multistack LLC ("Opposer"), is a Minnesota corporation with its principal place of business located at 1065 Maple Ave., Sparta, Wisconsin 54656.

2. Applicant, AAF-McQuay Inc ("AAF"), is a Delaware corporation with its principal place of business located at 10300 Ormsby Park Place, Louisville, Kentucky.

3. Since December of 2005, Opposer has used and is now using the trademark 'Maglev' in interstate commerce in the United States in connection with products identical to those identified in the AAF's Trademark Application Ser. No. 77772302 for mark 'Magnitude'.

NOTICE OF OPPOSITION TO 77772302

4. Opposer is the owner of a U.S. Trademark Registrations for mark 'MagLev' namely, U.S. Reg. No. 3278206 in class 11.

5. Opposer believes that it will be damaged by registration of the 'Magnitude' mark, Application No: 77772302.

**Priority**

6. The Opposer asserts priority in the use of its mark. The Applicant has filed its application on an intent-to-use basis while the Opposer used the MagLev mark in U.S. commerce since December 2, 2005.

**Grounds**

7. On August 7, 2007, the U.S. Patent and Trademark Office issued to Opposer U.S. Registration no. 3278206 for its trademark MagLev for use in connection with, among others, "air conditioning units, compressor units and chillers" in class 11.

8. On July 1, 2009, the Applicant filed a U.S. Trademark Application Serial No. 77772302 seeking to register "Magnitude" as a trademark for use in connection with "HVAC units, namely compressor chillers" in class 11.

9. The Applicant proposes to use the mark in the same international class of goods as the Opposer.

10. The Applicant's goods in connection with which applicant proposes to use the mark are identical to the Opposer's goods.

11. The Opposer's and Applicant's mark are similar in spelling, sound and visual appearance.

NOTICE OF OPPOSITION TO 77772302

12. Upon information and belief, the goods in connection with which Applicant proposed to use "Magnitude" mark will be (or are likely to be) marketed, promoted, distributed, offered for sale and sold in the same or similar channels of trade as the goods the Opposer sells, markets, promotes, distributes, or is likely to offer for sale.

13. The Applicant's mark so resembles the mark registered by the Opposer, as to be likely, when used on or in connection with the goods set forth in the application, to cause confusion, or to cause mistake, or to deceive as to the source or origin of said services.

14. The Applicant's mark so resembles the Opposer's registered mark that if used in connection with the goods set forth in the application, the mark is likely to dilute the distinctive quality of the Opposer's famous mark.

15. The Applicant's trademark so closely resembles the Opposer's trademark that it is likely to cause confusion within the meaning of 15 U.S.C. § 1052(d) as to the affiliation, connection or association, falsely suggesting a connection of the Applicant to the Opposer, in the form of origin, sponsorship, or approval of the Applicant's goods by the Opposer.

16. The registration and use of Applicant's proposed mark would disparage the registered mark and its source.

17. The registration of the Applicant's proposed mark, for the above stated reasons, would reflect upon and injure the Opposer's reputation, marketability and revenues. As a result, the Opposer would be damages.

NOTICE OF OPPOSITION TO 77772302

18. Further, the Opposer will be damaged by the registration of the Applicant's mark within the meaning of 15 U.S.C. § 1063(a) because the registration would provide the Applicant with a 'color of right' to use the mark while infringing on the superior rights of the Opposer.

19. Further, the Applicant's proposed mark is false and misleading and likely to cause confusion with the Opposer's registered mark in violation of 15 U.S.C. §125(a) causing damage to Opposer within the meaning of 15 U.S.C. §1063(a).

WHEREFORE the Opposer, MULTISTACK LLC, through its counsel Beata Bukranova of Orum & Roth LLC prays this Trademark Trial and Appeal Board to sustain the opposition, reject Applicant's U.S. Application Serial No.77772302 and refuse the registration of Applicant's proposed mark "Magnitude" in international class 11.

This the 30<sup>th</sup> Day of November, 2009.

Respectfully submitted,

By:

/s/ Beata Bukranova  
Beata Bukranova, attorney for the Opposer

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