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Filing date: **12/17/2009**

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

Proceeding	91192832
Party	Defendant AAF-McQuay Inc.
Correspondence Address	KYLE T. PETERSON PATTERSON, THUENTE, SKAAR & CHRISTENSEN 80 S 8TH ST STE 4800 MINNEAPOLIS, MN 55402-5300 trademark@ptslaw.com
Submission	Answer
Filer's Name	Kyle T. Peterson
Filer's e-mail	trademark@ptslaw.com
Signature	/Kyle T. Peterson/
Date	12/17/2009
Attachments	Answer to Opposition MAG.PDF (5 pages)(106437 bytes)

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

In the matter of Application Serial No.
77/772302
Filed: July 1, 2009
Mark: Magnitude
Published: November 24, 2009

Multistack, LLC

Opposer,

**ANSWER TO NOTICE OF
OPPOSITION**

v.

Opposition No. 91192832

AAF-McQuay, Inc.,

Applicant.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

For its answer to the Notice of Opposition filed by Multistack, LLC, Applicant, AAF-McQuay, Inc., admits, denies and alleges as follows. Each and every allegation contained in the Notice of Opposition, to the extent not specifically admitted, denied or qualified herein, is expressly denied.

1. Applicant lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Notice of Opposition, and therefore denies the same.

2. Admitted.

3. Applicant lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Admitted.

5. Applicant lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Notice of Opposition, and therefore denies the same.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Applicant lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Notice of Opposition, and therefore denies the same.

11. Denied.

12. Applicant lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Notice of Opposition, and therefore denies the same.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.
19. Denied.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief can be granted.
2. Opposer has conceded that Opposer's MAGLEV mark is descriptive of "Magnetic Levitation", and in view of this admission, Opposer's mark is narrow in scope.
3. On information and belief, and contrary to the specific allegations in Paragraph 7 of the Notice of Opposition, Opposer had not used, and does not have a present intention to use, the mark on all of the goods covered by the registration, and therefore, the registration is invalid, and cannot form the basis for the present opposition.
4. Opposer is not entitled to the relief requested on the grounds of Opposer's unclean hands.
5. Opposer is not entitled to the relief requested because its registration is invalid and unenforceable.

WHEREFORE, Applicant requests an order providing that:

1. The Notice of Opposition be dismissed with prejudice;
2. Applicant's Application Serial No. 77/704,590 pass to registration; and
3. Applicant be awarded such other and further relief as may be just and proper.

Respectfully submitted,

PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.

Dated: December 17, 2009

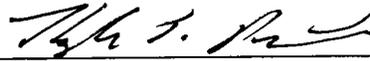
By: 
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ATTORNEYS FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2009, I served the attached Answer to Notice of Opposition on the following attorneys of record for Opposer by first class mail to the address listed below:

Beata Bukranova
Orum & Roth, LLC
53 W. Jackson Blvd. Suite 1616
Chicago, IL 60604



Kyle T. Peterson