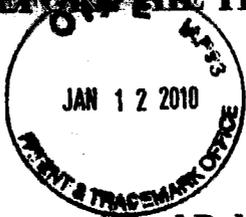


Tm

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



**TTAB**

**Oskar International Polska, Sp. z. o.o.**

**: Serial Number: 77/653,259**

**Plaintiff**

**VS.**

**: Opposition No. \_\_\_**

**Oskar Air Products, Inc.**

**Defendant**

**January 7, 2010**

**PRO702T1**

**TRANSMITTAL LETTER**

Commissioner for Patents and Trademarks  
P.O. BOX 1450  
Alexandria, Virginia 22313-1450

**SIR:**

Transmitted herewith for filing is:

**NOTICE OF OPPOSITION** dated December 24, 2009 (in triplicate)

**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**

**EXHIBIT D**

**FORM PTO-2038**

The Commissioner is hereby authorized to charge any fees under 37 CFR. 1.16, 1.17 and 1.18 or any additional fees which may be required during the entire pendency of the application, or credit any over-payment, to Acct. No.11-0224. A duplicate copy of this sheet is enclosed. If and only if(r) account funds should be insufficient, immediately contact our associate, Lisa Zumwalt, at (703) 415-0579, who will pay immediately to avoid deprivation of rights.

< > Please charge my Deposit Account No.11-0224 in the amount of \$\_\_\_\_\_. A duplicate copy of this sheet is enclosed.

A signature or signatures required for the above-recited document(s) is (are) provided here-below. Such signature(s) also provide(s) ratification for any required signature appearing to be defective in the above-recited document(s).



**01-12-2010**

*Horst M. Kasper*

Horst M. Kasper, 13 Forest Drive, Warren, N.J. 07059  
Reg. No. 28,559 Tel.(908) 526-1717

**CERTIFICATE OF MAILING under 37 CFR 1.8:**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patent and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450 on: 08 JAN 2010

Signature: *H. Kasper*  
%am/

Date: 08 JAN 2010



of the application is attached hereto and incorporated as EXHIBIT B.

4. Plaintiff has expended significant amounts of money promoting and advertising its products sold in connection with its trademark.
5. As a result of these activities, the Plaintiff's mark is well known and has come to be associated with our client and its high quality products in the minds of the purchasing public.
6. A company, Industrial Air Quality Inc., incorporated in North Carolina and doing business at 102 Ag Drive, Youngsville, NC 27569 appears to be owned by Ed Sithes, the owner of Oskar Air Products Inc., the present Defendant.
7. Industrial Air Quality Inc., was a distributor of Plaintiff's goods marked with the mark "OSKAR air products and Design" in the United States. A copy of a Distribution Agreement, dated November 1, 2002, between the Plaintiff and Air Quality Inc. is attached hereto and incorporated herein as EXHIBIT C.
8. In the Distribution Agreement (Section IX, Point 9.1) Industrial Air Quality Inc. recognized and admitted that any trade mark, trade name or other identifying mark used by Oskar International Polska, Spolka. z o.o. is the exclusive property of Oskar International Polska, Spolka z o.o.
9. In the Distribution Agreement (Section IX, Point 9.3) Industrial Air Quality Inc. acknowledged that such company is granted no other rights except the right to market, promote, sell and distribute the products delivered by the Plaintiff.
10. In the Distribution Agreement (Section IX, Point 9.4) Industrial Air Quality Inc. agreed that such company shall not, either directly or indirectly, contest or aid in contesting the ownership or validity of any intellectual property rights in existence or thereafter obtained by Oskar International Polska, Spolka z o.o.
11. Section X, Point 10.2 of the Distribution Agreement prohibits the use of the Plaintiff's mark, or any modification thereof or any other trade mark, trade name

or identifying mark of "OSKAR", by Industrial Air Quality Inc., its parent, subsidiaries or affiliates, and other entities associated with that company, without a written permission of the Plaintiff.

12. In January 2007, Oskar Air Products, Inc., the Defendant, was incorporated in North Carolina by Ed Sithes, that became an exclusive source of the Plaintiff's goods in North America.
13. On January 21, 2009, the Defendant in bad faith applied, under Serial No. 77/653,259, for registration of the Plaintiff's mark "OSKAR" in the United States without permission or knowledge of the Plaintiff.
14. On January 21, 2009, the Defendant in bad faith applied, under Serial No. 77/653,259, for registration of the Plaintiff's mark "OSKAR" with knowledge that the mark originates, is owned and used by the Plaintiff.
15. Defendant in bad faith applied the Plaintiff's mark "OSKAR air products and Design" on goods manufactured in Taiwan, with knowledge that the mark can be used only on the goods manufactured and delivered to the Defendant by the Plaintiff.
16. On December 29, 2009, the Defendant's trademark application, serial number 77/653,259, to register a trademark "OSKAR" was published in the Trademark Official Gazette of the U.S. Patent and Trademark Office.
17. The drawing of the Defendant's mark attached to this publication, a copy of which is attached hereto and incorporated herein as EXHIBIT D, is nothing but a bare copying of the Plaintiff's mark.
18. Defendant has described the goods with which the applied for trademark is to be associated with as: "Fume extraction and filtration equipment for welding, soldering, grinding, automotive, powders and chemical fumes, namely, exhaust fans, exhaust air filtration devices and dust collectors, namely, air filters for

**industrial installations."**

19. There is a serious likelihood of confusion between the Plaintiff's trademark and the mark applied for by the Defendant in the following respects:
  - a. The goods used with the Plaintiff's mark and the goods intended to be used by the Defendant are nearly identical;
  - b. The respective fields of commerce are also nearly identical: namely the fields of fume extraction and filtration apparatus and equipment for welding, soldering, grinding, automotive, powders and chemical fumes.
20. Clearly consumers that encounter the trademark of the Plaintiff "OSKAR air products and Design" and the mark "OSKAR", applied for by the Defendant, in the marketplace would surely be confused, believing that the mark of the Plaintiff "OSKAR air products and Design" and the mark applied for by the Defendant are similar and that the goods sold under the trademarks are connected or are manufactured by the same company.
21. As a result of the confusion, the Plaintiff's business activities and reputation would be seriously damaged by the mark applied for by the Defendant.
22. The mark sought to be registered by the Defendant so resembles a mark registered in the Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods or services proposed by the Defendant, to cause confusion, or to cause mistake, or to deceive.
23. There was no bona fide use in commerce of the mark sought to be registered prior to the filing of the intent to use-based application of the Defendant for its registration under Section 1(b) of the Act.
24. Defendant did not have a bona fide intent to use the mark in connection with the

identified goods as of the filing date of the trademark application.

WHEREFORE, Plaintiff requests that the Trademark Office grant Plaintiffs  
Opposition and not register the Defendant' mark as set forth above.

Respectfully submitted,  
Oskar International Polska Sp. z. z.o

By:



\_\_\_\_\_  
Horst M. Kasper, its attorney  
13 Forest Drive, Warren, N.J. 07059  
Tel.: (908)526-1717; Reg. No. 28,559  
Attorney's Docket No.: PRY702NO

Rep/am

## CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, I, the undersigned Attorney, certify that on the 8<sup>th</sup> day of JANUARY 2010, a true copy of the foregoing NOTICE OF OPPOSITION was placed in an envelope, deposited or caused to be deposited with the United States Postal Service as first class mail and addressed to the following attorneys for Applicant:

John M. Fuscoe  
Wyrick Robbins Yates & Ponton, LLP  
4101 Lake Boone TRL STE 300  
Raleigh, NC 27607-7506  
Phone No. 919-781-4000  
Fax No. 919-781-4865

Date: 08 JAN 2010



Horst M. Kasper, Esq.  
13 Forest Drive  
Warren, NJ 07059  
Phone No. 908-526-6100

%PRO702(December 24, 2009(am

**EXHIBIT A**

URZĄD PATENTOWY  
RZECZYPOSPOLITEJ POLSKIEJ

## ŚWIADECTWO OCHRONNE

Na podstawie przepisów ustawy z dnia 30 czerwca 2000 r. Prawo własności przemysłowej (tekst jednolity: Dz. U. z 2003 r. Nr 119, poz. 1117 z późn. zm.) zostało udzielone na rzecz:

Oskar International Polska Spółka z o.o., Gdańsk, Polska.

## PRAWO OCHRONNE

NR 204918

NA ZNAK TOWAROWY

*przedstawiony w niniejszym świadectwie*

Prawo ochronne  
trwa od: 2004-09-08

Warszawa, 2008-12-08

Z upoważnienia Prezesa

*M. Zakrzewski*

mgr Marcin Zakrzewski  
NACZELNIK WYDZIAŁU

# ZNAK TOWAROWY



**Klasyfikacja elementów graficznych: 26.1.5 27.5.1 29.1.4 29.1.6**

**Kolory znaku towarowego: biały granatowy**

**Data zgłoszenia: 2004-09-08**

**Numer zgłoszenia: 285166**

**Pierwszeństwo:**

**Data wydania decyzji o udzieleniu prawa ochronnego: 2008-03-14**

**Numer prawa ochronnego: 204918**

**O udzieleniu prawa ochronnego ogłoszono w WUP 10/2008**

**Uprawniony: Oskar International Polska Spółka z o.o., Gdańsk, Polska.**

**Wykaz towarów przyporządkowanych do odpowiednich klas towarowych: 11 wentylacyjne urządzenia odciagu stanowiskowego 35 zgrupowanie na rzecz osób trzecich wentylacyjnych urządzeń odciagu stanowiskowego pozwalające nabywcy wygodnie je oglądać i kupować bezpośrednio lub za pośrednictwem globalnej sieci internetowej, wykorzystując formę wysyłkową, usługi agencji importowo-eksportowej, promocja sprzedaży na rzecz osób trzecich 42 ekspertyzy inżynierskie, projektowanie techniczne, badania techniczne**

Urząd Patentowy  
Rzeczypospolitej Polskiej  
Departament Rejestrów  
Al. Niepodległości 188/192  
00-950 Warszawa skr. poczt. 203

Warszawa, 2008-12-09

Znak: DR/ R-204918  
Kancelaria "PATENT"  
rzec. pat. Jan Prościński  
ul. Oliwkowa 14D/35  
81-589 Gdynia  
skr. poczt. 53

Urząd Patentowy RP przesyła w załączeniu świadectwo ochronne na znak towarowy nr R-204918 stwierdzające udzielenie prawa ochronnego.

PODREFERENDANTZ

*Katarzyna Szeleba-Kopczyńska*  
Katarzyna Szeleba-Kopczyńska

# EXHIBIT B

**From:** TEAS@uspto.gov  
**To:** patent@aol.com  
**Subject:** Received Your Trademark/Service Mark Application, Principal Register for serial number 77782940  
**Date:** Thu, Jul 16, 2009 4:36 pm

---

**MARK:** OSKAR air products. (stylized and/or with design, mark\_702116737-160805630\_.\_OSCAR1.jpg)

The literal element of the mark consists of OSKAR air products..

The color(s) white and navy blue. is/are claimed as a feature of the mark. The mark consists of The mark consists of the wording "OSKAR", located on a navy blue rounded background and written in white color, in the capital letters except the letter "A" which is written in law case letter. The worded part of the mark is surrounded by 3 circles. Two external part circles are made of two thin circle lines in a navy blue color. A third circle, in a navy blue color, is located close to the wording "OSKAR" and has a double thickness than the two external circles. On the right side from the wording "OSKAR", between two external circles the phrase "air products" is located, supplementing the part circles and written in capitals letters in a navy blue color .

We have received your application and assigned serial number '77782940' to your submission. The summary of the application data, *bottom below*, serves as your official filing receipt. In approximately 3 months, an assigned examining attorney will review your application. Currently, your mark is not registered, but rather is considered a "pending" application. The overall process, from the time of initial filing to final registration, can take 13-18 months or even longer, depending on many factors; e.g., the correctness of the original filing and the type of application filed.

If you discover an error in the application data, you may file a preliminary amendment, at <http://www.uspto.gov/teas/eTEASpageB2.htm>. Do not submit any proposed amendment to TEAS@uspto.gov, because the technical support team may not make any data changes. **NOTE:** You must wait approximately 7-10 days to submit any preliminary amendment, to permit initial upload of your serial number into the USPTO database. The acceptability of any preliminary amendment will only be determined once regular examination begins, since the assigned examining attorney must decide whether the change proposed in the amendment is permissible. Not all errors may be corrected; e.g., if you submitted the wrong mark, if the proposed correction would be considered a material alteration to your original filing, it will not be accepted, and your only recourse would be to file a new application (with no refund for your original filing).

Since your application filing has already been assigned a serial number, please do not contact TEAS@uspto.gov to request cancellation. The USPTO will only cancel the filing and refund your fee if upon review we determine that the application did not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration. **NOTE:** The only "exception" to the above is if you inadvertently file duplicate applications specifically because of a *technical glitch* and not merely a misunderstanding or mistake; i.e., if you believe that the first filing did not go through because no confirmation was received and then immediately file again, only to discover later that both filings were successful, then the technical support team at TEAS@uspto.gov can mis-assign and refund one of the filings.

**NOTE:** To check status, please use <http://tarr.uspto.gov>. Do **not** submit status requests to [TEAS@uspto.gov](mailto:TEAS@uspto.gov). You should check status at the 6-month point after filing, and every two months thereafter, to ensure you are aware of any action that the Office may have issued. Failure to respond timely to an action will result in abandonment of your application. You can view all incoming and outgoing correspondence at <http://portal.uspto.gov/external/portal/tow>. If your status check reveals an action has issued that you did not receive, please immediately check the on-line site to view the action. The USPTO does not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must ensure that you update your record if your mail and/or e-mail address changes, using the form available at <http://www.uspto.gov/teas/eTEASpageE.htm>.

**WARNING:** You may receive unsolicited communications from companies requesting fees for trademark related services, such as monitoring and document filing. Although solicitations from these companies frequently display customer-specific information, including USPTO serial number or registration number and owner name, companies who offer these services are not affiliated or associated with the USPTO or any other federal agency. The USPTO does not provide trademark monitoring or any similar services. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult the USPTO website.

**APPLICATION DATA: Trademark/Service Mark Application, Principal Register**

The applicant, Oskar International Polska Sp. z o.o, a limited liability company legally organized under the laws of Poland, having an address of  
ul. Zlota 3  
Gdansk 80-180  
Poland

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 011: Fume extraction and filtration apparatuses and equipment for welding, soldering, grinding, automotive, powders and chemical fumes; stationary suction ventilation apparatuses

**Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 011, the mark was first used at least as early as \_\_\_\_\_, and first used in commerce at least as early as 11/22/2002, and is now in use in such commerce. The applicant will submit one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .

**Based on Foreign Registration:** Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of Poland registration number 204 918, registered 03/14/2008 with a renewal date of 09/08/2014 and an expiration date of 09/08/2014, and translation thereof, if appropriate. 15

**U. S.C. Section 1126(e), as amended.**

**International Class 035: Services associated with sale and distribution of fume extraction and filtration apparatuses and equipment for welding, soldering, grinding, automotive, powders and chemical fumes; stationary suction ventilation apparatuses; import and export agencies; commercial, wholesale and retail services provided via Internet including shipment of the ordered goods; promoting sale to third persons**

**Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.**

**In International Class 035, the mark was first used at least as early as \_\_\_\_\_, and first used in commerce at least as early as 11/22/2002, and is now in use in such commerce. The applicant will submit one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .**

**Based on Foreign Registration: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of Poland registration number 204 918, registered 03/14/2008 with a renewal date of 09/08/2014 and an expiration date of 09/08/2014, and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.**

**International Class 042: Engineering expertise, technical planning, technical research**

**Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.**

**In International Class 042, the mark was first used at least as early as \_\_\_\_\_, and first used in commerce at least as early as 11/22/2002, and is now in use in such commerce. The applicant will submit one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .**

**Based on Foreign Registration: Applicant has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and will submit a copy of Poland registration number 204 918, registered 03/14/2008 with a renewal date of 09/08/2014 and an expiration date of 09/08/2014, and translation thereof, if appropriate. 15 U. S.C. Section 1126(e), as amended.**

**The applicant hereby appoints Horst M. Kasper and Richard T. Laughlin of Kasper and Laughlin**

**13 Forest Drive  
Warren, New Jersey 07059  
United States**

**to submit this application on behalf of the applicant. The attorney docket/reference number**

is **PRO603**.

**Correspondence Information:** Horst M. Kasper  
Kasper and Laughlin  
13 Forest Drive  
Warren, New Jersey 07059  
908-526-1717(phone)  
908-526-6977(fax)

A fee payment in the amount of \$975 will be submitted with the application, representing payment for 3 class(es).

### Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

### Declaration Signature

Signature: /hmk/ Date: 07/16/2009  
Signatory's Name: Horst M. Kasper  
Signatory's Position: Attorney of record

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### TEAS XML SUBMISSION

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two thin circle lines in a navy blue color. A third circle, in a navy blue color, is located close to the wording

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"OSKAR" and has a double thickness than the two external circles. On the right side from the wording "OSKAR", between two external circles the phrase "air products" is located, supplementing the part circles and written in capitals letters in a navy blue color .</text>

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the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section
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commerce on or in connection with the identified goods and/or services, and attaches a copy of the foreign
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<boilerplate-text>The undersigned, being hereby warned that willful false statements and the like so made
are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false
statements; and the like, may jeopardize the validity of the application or any resulting registration,

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declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.</boilerplate-text>

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Thank you,

The TEAS support team

Thu Jul 16 16:35:45 EDT 2009

STAMP: USPTO/BAS-70.21.167.37-20090716163545860123-77782940-

40018c0313b2af761fed623a9da551144-CC-2891-20090716160805630772

# EXHIBIT C

**DISTRIBUTION AGREEMENT ENTERED INTO ON THE 1ST DAY OF NOVEMBER 2002**

**BETWEEN:** Oskar International Polska Sp. z o.o.  
ul. Złota 3  
80-180 Gdańsk POLAND,

(hereinafter referred to as "OSKAR")

**AND:** Industrial Air Quality, Inc. (IAQ)  
102 Ag Drive  
Youngsville, North Carolina 27569, USA

(hereinafter referred to as the "Distributor")

WHEREAS OSKAR is engaged in and sale of, inter alia, products designed for specific applications such as those identified in Schedule "A" attached.

WHEREAS the Distributor has represented to OSKAR that it is familiar with the market for the Products in the territory identified in Schedule "G" attached hereto (hereinafter respectively referred to as the "Market" and the "Territory") and is able to offer specialized services with respect to the creation of markets for and the sale and service of the Products and technical promotional services in the instruction, application and use of the Products in the Territory:

WHEREAS the Distributor is prepared to further the distribution and sale of the Products, in the territory, identified in Schedule "A" for the mutual benefit of both parties:

WHEREAS the Distributor wishes to acquire the exclusive rights to purchase and resell the Products within the Territory and OSKAR is prepared to grant such rights.

FOR VALUE RECEIVED AND IN CONSIDERATION OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

**SECTION I - EXCLUSIVE APPOINTMENT**

- 1.1 OSKAR hereby appoints Industrial Air Quality Inc. as its exclusive distributor of Products in the Territory and the Distributor hereby accepts such appointment, subject to and in accordance with such exceptions, limits, terms and conditions as stated herein.
- 1.2 OSKAR will sell Products in the Territory (referred to above) only through the Distributor. OSKAR shall have the right to promote the use of and seek orders for the Products in the Territory. However, all orders, requests or inquiries received by OSKAR with respect to any Products for delivery, use or purchase in the Territory shall be referred to the Distributor. OSKAR shall not be liable for third parties who, without its consent or authorization, make, advertise, sell or distribute Products in the Territory.
- 1.3 The relationship between OSKAR and the Distributor is that of a supplier and a purchaser for resale, neither party acting as a partner or other legal representative of the other. The Distributor may not represent itself to be the agent of OSKAR. The Distributor shall have no authority to enter into commitments, contracts, or incur liability of any kind in the name of OSKAR or on behalf of OSKAR or to bind OSKAR in any manner whatsoever.
- 1.4 If applicable laws permit, the Distributor shall not, whether directly or indirectly, sell, distribute or deliver any Product outside the Territory nor knowingly transfer possession of any Product to any person who may sell, distribute or deliver same outside the Territory. All requests or inquiries received by the Distributor with respect to any Product for delivery, use or purchase outside the Territory shall be referred immediately by the Distributor to OSKAR.

- 1.5 The Distributor acknowledges that the Products are complementary to the products which it currently sells in the Territory (if any). If applicable laws permit, the Distributor agrees not to stock or become interested whether as employee, agent, representative, distributor, manager, partner, joint venture, shareholder, consultant, supplier, independent contractor or through any partnership or otherwise in connection with any person, directly or indirectly, in any other business involving the manufacture, distribution, promotion or sale in the Territory of any competitive products or products which perform the same function as the Products or to engage in such distribution, promotion or sale in the Territory while this Agreement is in effect.
- 1.6 The Distributor agrees that the covenants set forth in sub-sections 1.4 and 1.5 are reasonable and have no impact on public order and good morals in all respect and hereby irrevocably agrees to waive (and irrevocably agrees not to raise) as a defense any issue of reasonableness (including, without limitation as to the duration and scope of the covenants) in any proceeding to enforce such covenants. The intention of the parties being to provide for the legitimate and reasonable protection of the interest of OSKAR allowable by applicable laws.

#### SECTION II - PRICES

- 2.1 OSKAR will supply the Distributor with Products, EXW., at the prices set forth in Schedule "A" Price List hereto, as amended from time to time, less the discounts referred to on said pricelist. The said prices shall be the net selling price by OSKAR to the distributor, exclusive of all sales and other similar taxes, insurance premiums, freight charges and all other charges of a similar nature, whether currently imposed or applicable in the future.
- 2.2 OSKAR will inform the Distributor at least two (2) months prior to any change in its list prices. With respect to any written purchase orders for the Products which may be placed by the Distributor between the date of such written notice by the company and the effective date of the price change, the price for the Products so ordered shall be the price prevailing at the time the purchase order is received and accepted by OSKAR, provided that such written purchase order specifies delivery dates not exceeding ninety (90) days from the order date, failing which the increased purchase price shall be applicable.
- 2.3 All dollar values expressed in this Agreement and the Price Lists hereto and all payments required to be made by the Distributor, shall be in US dollars. Payments are due at the day of dispatch of ordered goods. Any amount owed to OSKAR which is not paid on its due date shall bear interest at the rate of eighteen percent (18%) per annum calculated from the date upon which such amount was due.

#### SECTION III - ANNUAL SALES FORECAST

- 3.1 No order for Products received from the Distributor shall bind OSKAR until such order is accepted by an authorized officer of OSKAR. OSKAR agrees that it will endeavor to fill firm orders for standard Products within sixty (60) days following the receipt of such order, subject, however, to delays caused by governmental orders, unavailability of raw materials or supplies, transportation problems, strikes, fires or any other cause beyond the control of OSKAR.
- 3.2 The Distributor expressly releases OSKAR from any liability for any loss or damage arising from the failure of OSKAR to fill any order of the Distributor for any reason whatsoever.
- 3.3 The Distributor will bear the entire risk of loss, damage, destruction or theft of all or part of any Products sold for any reason other than the gross negligence of OSKAR, its employees or authorized agents, from the time such Products or parts thereof have been placed in the hands of the carrier.

#### SECTION IV - COMMITMENT TO PURCHASE

- 4.1 The Distributor does hereby purchase from OSKAR for the first contract year, the dollar value of \$150,000.00.

4.2 The Distributor undertakes to purchase from OSKAR in each subsequent contract year the Products in the minimum dollar values as set forth below.

Year 2: \$150,000.00 Year 3: \$200,000.00 Year 4: \$250,000.00.

4.3 At least ninety (90) days prior to the first day of each subsequent contract year of this Agreement, the Distributor shall deliver to OSKAR a realistic approximation of the value of Products that the Distributor shall purchase during the subsequent contract year.

4.4 The Distributor will maintain a stock for demonstration purposes as per Schedule A Attached

#### SECTION V - PRODUCTS

5.1 OSKAR agrees to regularly inform the Distributor of Products development progress and of new Product applications.

5.2 OSKAR shall give the Distributor prior written notice of any proposed changes in the specifications and/or designs of the Products. OSKAR shall have the right to discontinue the sale of any Product upon giving prior written notice thereof to the Distributor.

5.3 The Distributor agrees not to add to, remove from or in any way change the Products without the prior written approval of OSKAR. The Distributor also agrees not to alter, remove or otherwise tamper with any trade mark or other marking appearing on any Product, its container or any document or object associated with same without the prior written approval of OSKAR.

5.4 All Products sold by OSKAR to the Distributor shall be covered by OSKAR's standard warranty the text of which is attached hereto as Schedule "B".

5.5 The Distributor shall make no warranty regarding any Products other than the expressed warranties, if any, of OSKAR. No warranty of any nature as to any Product shall be between OSKAR and the Distributor. OSKAR shall be under no obligation to the Distributor to continue, discontinue or change any Product.

#### SECTION VI - PROMOTION AND SALE

6.1 The Distributor shall exercise its best and good faith efforts at its expense to introduce, promote the sale of, obtain orders for, and sell Products throughout the Territory and give adequate, efficient and prompt service to customers. Without limiting the generality of the foregoing, the Distributor shall:

- a) purchase the Products exclusively from OSKAR and make its sales at such price and on such terms of sale as may be reasonable under the competitive conditions of the Territory, in order to expand and hold the trade;
- b) maintain a suitable place of business which shall be opened and properly staffed during normal business hours;
- c) develop a strong marketing organization and maintain a high quality sales force including the appointment of a dedicated Product Manager for the OSKAR products.
- d) cooperate with OSKAR in the planning and implementation of promotional marketing campaigns for the Products; and
- e) send its sales personnel to seminars as they may be organized, from time to time by OSKAR with respect to its Products or new products. The cost of traveling to and attending such seminars shall be borne by the Distributor or as OSKAR shall elect to pay.

- 6.2 The Distributor shall obtain information and report to OSKAR concerning existing and potential markets for the Products and for new or modified Products which OSKAR might profitably add to its line of Products.
- 6.3 The Distributor shall advise OSKAR of market conditions, its marketing activities, its sales in relation to leads it has provided results and forecasts in relation to leads, and inventory levels from time to time using the report forms supplied by OSKAR. The Distributor shall also advise OSKAR of the activities of competitors and other matters in the Territory likely to be of interest to OSKAR in the furtherance of its business.
- 6.4 Without limiting the generality of the foregoing and in relation to the leads provided, the Distributor shall provide OSKAR with lists of customers and potential customers for Products and continuously maintain in its possession complete sales and service records fully documenting the status of the Distributor's quotations, sales and service program and provide a copy of same to OSKAR upon request.
- 6.5 The Distributor shall provide appropriate customer services including customer training and equipment maintenance.
- 6.6 The Distributor shall also investigate any warranty claim or complaint made by a customer originating from the Territory and promptly report same to OSKAR.
- 6.7 The Distributor shall prepare and submit to OSKAR for its review an annual marketing plan for distribution of Products in the Territory. The Distributor shall notify OSKAR of any significant changes in the Distributor's sales forecasts, personnel or method of conducting business.
- 6.8 The Distributor shall indemnify and save and hold harmless OSKAR from any liabilities, claims, causes of action, suits, damages and expenses (including reasonable attorneys' fees and expenses) which OSKAR is or becomes liable for, or may incur, or be compelled by reason of any acts, whether of omission or commission that may be committed or suffered by the Distributor or any of its servants, agents or employees in connection with the Distributor's performance under the terms of this Agreement.

#### SECTION VII - INFORMATION AND ASSISTANCE

- 7.1 OSKAR will supply to the Distributor all its current technical and commercial information relating to the Products. When dictated by good business practices, the Distributor shall prepare a version of such documents for use in the Territory. The Distributor shall submit any such local version to OSKAR prior to using same.
- 7.2 OSKAR agrees to send one of its representatives to the offices of the Distributor to train the Distributor's personnel and dealers on the principles and proper use of the Products. During this visit, OSKAR's representative will also be available to assist the Distributor in conducting seminars at selected major potential customers.
- 7.3 OSKAR will provide the Distributor with advertising materials, which the Distributor will be free to use to promote the Products in periodicals and technical journals.
- 7.4 However, the Distributor agrees not to place any advertisements about Products in any trade show, newspapers, journals, trade lists or any written or verbal means of mass communication, unless the text thereof has been approved in writing by OSKAR.

#### SECTION VIII - TERM

- 8.1 This Agreement is deemed to have commenced on 1<sup>st</sup> November 2002 and shall terminate on the expiration date of 31<sup>st</sup> October 2003 hereto unless previously terminated in accordance with the terms of this Agreement.



- 8.2 This Agreement shall be automatically prolonged for successive twelve (12) month periods if neither party hereto gives written notice of termination to the other at least three (3) months prior to the end of the then current period.
- 8.3 OSKAR may terminate this Agreement on one (1) day's written notice upon the occurrence of any or more of the following events:
- a) the Distributor assigns this Agreement without OSKAR's prior written consent;
  - b) there is a change in the control or management of the Distributor which is unacceptable to OSKAR
  - c) the Distributor ceases to function as a going concern or to conduct its operations in the normal course of business;
  - d) the Distributor's insolvency, dissolution, bankruptcy, assignment for the benefit of creditors or admission of its inability to pay its debts as they mature;
  - e) the Distributor violates section 1.4 or 1.5; and
  - f) the merger or consolidation of the Distributor with another entity or the acquisition of all or substantially all the Distributor's assets by another person or entity.
- 8.4 In the event of the breach of any provision of this Agreement by the Distributor, OSKAR shall have the right to terminate this Agreement. Such right shall be exercised by giving a written notice to the Distributor specifying the circumstances in which it breached the Agreement and stating that OSKAR elects to terminate this Agreement as of a date not less than fifteen (15) days subsequent to the date of such notice unless the Distributor has cured such breach within said delay. In the case the Distributor fails to cure such breach within the aforesaid delay, this Agreement shall come to an end on the date specified in such notice.
- 8.5 Termination of this Agreement by either party shall not release one party from any sum due to the other party.
- 8.6 The acceptance of orders from the Distributor or the continuous sale of Products to the Distributor or any other act after the termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor a waiver of the termination.
- 8.7 Upon termination of this Agreement, the Distributor shall return to OSKAR promptly and without charge all price lists, manuals, specifications, sales aids, and other technical and commercial publications of OSKAR relating to the Products which the Distributor may have on hand or which may be under its control.
- 8.8 The Distributor hereby grants to OSKAR an option to purchase all the Products purchased which he may have in its inventory upon the termination of this Agreement. By virtue thereof OSKAR shall have the option to repurchase the said Products, at a price up to ninety percent (90%) of the price, paid by the Distributor for those products. The Distributor agrees to prepare and forward to OSKAR an inventory list of the Products at the date of termination.

#### SECTION IX - INTELLECTUAL PROPERTY

- 9.1 The Distributor recognizes and admits that any invention, patent, trade mark, trade name or other identifying mark, industrial design, copyrightable document or object as well as any technical or commercial know-how or trade secret including, but without limitation, any hardware, software, price lists, specifications, technical data used by OSKAR in association with its Products (hereinafter described as the "Intellectual Property") is the exclusive property of OSKAR



- 9.2 The Distributor will hold in confidence any Intellectual Property and any information or document which has been revealed or furnished by OSKAR with an indication that it is confidential (the "Confidential Information") not otherwise known to the public without any fault of the Distributor or any person under its control and more particularly, the Distributor will take all necessary measures to maintain the confidentiality of such Intellectual Property and Confidential Information.
- 9.3 No license, expressed or implied, is granted to the Distributor except the right to market, promote, sell and distribute the Products delivered to the Distributor as provided herein.
- 9.4 The Distributor hereby acknowledges the validity of the Intellectual Property of OSKAR and more particularly of any trade mark, trade name or other identifying mark of OSKAR, whether registered or not as well as the proprietary interest of OSKAR in same, and agrees that it shall not at any time during the continuance of this Agreement or thereafter, either directly or indirectly, contest or aid in contesting the ownership or validity of any such Intellectual Property, whether now in existence or hereafter obtained by OSKAR or any affiliated or subsidiary corporation, either in the Territory or elsewhere.

#### SECTION X - USE OF TRADE MARKS

- 10.1 The Distributor agrees not to place or allow the placement of any other trade mark, trade name or other identifying mark on any of the Products without having previously obtained OSKAR's written consent.
- 10.2 Neither the Distributor, its parent, subsidiaries or affiliates, if any, will use or permit any person to use the name "OSKAR" or any modification thereof or any other trade mark, trade name or identifying mark of OSKAR as part of its corporate name without the prior written consent of OSKAR.
- 10.3 The Distributor will use OSKAR's trade marks, trade names and other identifying marks only in accordance with the terms of this Agreement and in such manner as to sufficiently protect and preserve all rights of OSKAR in such trade marks, trade names and other identifying marks.

#### SECTION XI - ARBITRATION

- 11.1 Any controversy or claim arising out of or in relation to this Agreement, including but not limited to its existence and legal validity, shall be finally and exclusively settled by arbitration in accordance with the rules of the Republic of Poland, which rules the parties hereto expressly state to be known to them and are herein incorporated by reference. The place of arbitration shall be the Arbitration Court in Gdansk, Poland.

#### SECTION XII - GENERAL PROVISIONS

- 12.1 The preamble to this Agreement forms part hereof as if recited in full.
- 12.2 This Agreement sets forth the entire Agreement and understanding between the parties with respect to the subject matter of this Agreement and merges and supersedes all prior discussions, representations, undertakings and agreements, whether oral or in writing, between the parties with respect to such subject matter. This Agreement may be altered, modified or amended only by a written document signed by the parties. There are no statements, representations or warranties which have not been embodied in this Agreement.
- 12.3 The parties agree that notwithstanding anything otherwise contained in this Agreement, in the event that any clause, term or provision of this Agreement is determined by any Court, arbitrator or agency of competent jurisdiction to be illegal, unenforceable or in conflict with any applicable law or regulations, this Agreement shall continue in full force and effect as if the offending clause, terms and provisions hereof are no longer incorporated herein.



12.4 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties. Notwithstanding the above, the Distributor shall not have the right to transfer or assign to anyone this Agreement or the rights and obligations contained herein.

12.5 Any notice required or permitted by this Agreement shall be in writing and either delivered to the attention of the party hereto to which it is destined or mailed to such party by registered or certified mail at the address indicated above or at such other address as such party may from time to time have communicated to the other party pursuant to this section. Any notice so delivered shall be deemed to have been received by the addressee at the time and date of delivery. Any notice so mailed shall be deemed to have been received by the addressee on the fifth (5th) day following that upon which it is proved to have been mailed.

12.6 The failure of any party to require the performance of any term or obligation hereof shall not affect the right of such party to enforce the same thereafter.

12.7 This Agreement shall be construed and enforced in accordance with and the rights of the parties hereto shall be governed by the laws of the Republic of Poland. The enforcement of any awards rendered by arbitration pursuant to Section XI and any disputes arising under this Agreement, which for any reason cannot be resolved by arbitration as provided in Section XI, shall be subject to the exclusive jurisdiction of the Courts of the Republic of Poland and both parties hereby irrevocably attorney to the jurisdiction of the Courts of such State.

IN WITNESS WHEREOF, the parties hereto have signed as of the place and date indicated above.

Agata Kosowska 1/11/2002  
WITNESS DATE

Per Wojciech Rafliński 1/4/2002  
Oskar International Polska sp. z o.o. DATE

Michelle Mahura 1/14/2002  
WITNESS DATE

Per [Signature] 1/14/2002  
Industrial Air Quality, Inc. DATE

# EXHIBIT D

**CLASS 11—(Continued).**

SN 77-568,420. MASCO CORPORATION OF INDIANA, INDIANAPOLIS, IN. FILED 9-12-2008.

# SENSORI

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR PLUMBING PRODUCTS, NAMELY, SHOWER AND BATH SYSTEMS COMPOSED OF SHOWER CONTROL VALVES, SHOWER SPRAYERS, SHOWER HEADS AND SHOWER SPRAY NOZZLES (U.S. CLS. 13, 21, 23, 31 AND 34).

KATHERINE CONNOLLY, EXAMINING ATTORNEY

SN 77-641,866. NOVANNI STAINLESS INC., COLDWATER, CANADA, FILED 12-31-2008.

**AMI**  
  
**COMMERCIAL**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COMMERCIAL", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORD "AMI" AT THE TOP LEFT CORNER FOLLOWED BY A SOLID LINE, THE WORD "NOVANNI", ACROSS THE MIDDLE WITH THE LETTER "O" BEING IN THE FORM OF A STYLIZED DRAWING OF A SINK, A SOLID LINE UNDERNEATH THE WORD "NOVANNI" FOLLOWED BY THE WORD, "COMMERCIAL", AT THE BOTTOM RIGHT.

FOR FAUCETS; PLUMBING FITTINGS, NAMELY, SINK STRAINERS; SINKS (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 3-21-2008; IN COMMERCE 3-21-2008.  
 LINDA ORNDORFF, EXAMINING ATTORNEY

SN 77-642,651. MASCO CORPORATION OF INDIANA, INDIANAPOLIS, IN. FILED 1-2-2009.

# ARCTIC

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR FINISH COATING AS AN INTEGRAL COMPONENT OF PLUMBING PRODUCTS, NAMELY, FAUCETS AND SHOWER HEADS (U.S. CLS. 13, 21, 23, 31 AND 34).  
 AMEEN IMAM, EXAMINING ATTORNEY

**CLASS 11—(Continued).**

SN 77-652,977. SOUTH ASIA INTERNATIONAL (H.K.) LTD., HUNGHOM, KOWLOON, HONG KONG, FILED 1-20-2009.

# EVOVE

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR ELECTRIC KITCHEN APPLIANCES, NAMELY, DRIP COFFEE MAKERS, 3-IN-1 COMBINATION COFFEE MAKERS, ESPRESSO COFFEE MAKERS, TOASTERS, ELECTRIC WAFFLE MAKERS, COUNTERTOP PIZZA OVENS, COUNTERTOP TOASTER OVENS, COUNTERTOP CONVECTION OVENS, COUNTERTOP ROTISSERIE OVENS, ELECTRIC GRILLS, ELECTRIC DEEP FRYERS, ELECTRIC GRIDDLES, COMBINATION RICE COOKER AND SLOW COOKER AND DEEP FRYERS, RICE COOKERS, SLOW COOKERS, FOOD STEAMERS, ELECTRIC HOT POTS, ELECTRIC TEA KETTLES, BREAD MACHINES, ELECTRIC DOUGHNUT MAKERS, ELECTRIC YOGURT MAKERS, ELECTRIC POPCORN POPPERS, ROASTERS, BROILERS, ELECTRIC PRESSURE COOKERS, ELECTRIC FRY PANS, ICE CREAM MAKERS, ELECTRIC WOKS; AIR PURIFIERS; HUMIDIFIERS; DEHUMIDIFIERS; WATER PURIFIERS (U.S. CLS. 13, 21, 23, 31 AND 34).

TEJBIR SINGH, EXAMINING ATTORNEY

SN 77-653,259. OSKAR AIR PRODUCTS, INC., YOUNGSVILLE, NC. FILED 1-21-2009.

# OSKAR

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

FOR FUME EXTRACTION AND FILTRATION EQUIPMENT FOR WELDING, SOLDERING, GRINDING, AND AUTOMOTIVE, POWDERS AND CHEMICAL FUMES, NAMELY, EXHAUST FANS, EXHAUST AIR FILTRATION DEVICES AND DUST COLLECTORS, NAMELY, AIR FILTERS FOR INDUSTRIAL INSTALLATIONS (U.S. CLS. 13, 21, 23, 31 AND 34).

SCOTT BIBB, EXAMINING ATTORNEY