

ESTTA Tracking number: **ESTTA393490**

Filing date: **02/15/2011**

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

Proceeding	91198095
Party	Defendant Nimble Storage, Inc.
Correspondence Address	TODD S. BONTEMPS COOLEY GODWARD KRONISH LLP 777 6TH STREET NW SUITE 1100 WASHINGTON, DC 20001 trademarks@cooley.com
Submission	Answer
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Signature	/Aaron M. Fennimore/
Date	02/15/2011
Attachments	Nimble - Answer to Notice of Opposition.pdf (5 pages)(122820 bytes)

Class 09. Except as expressly admitted herein, Applicant denies the allegations in Paragraph 4 of the Notice of Opposition.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Notice of Opposition, and on that basis denies the same.

6. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Notice of Opposition, and on that basis denies the same.

7. Answering Paragraph 7, Applicant admits that Exhibit A to the Notice of Opposition purports to provide a definition for the word “Nimbus.” Applicant admits that Exhibit B to the Notice of Opposition purports to describe features of “cloud computing.” Applicant admits that Exhibit C to the Notice of Opposition purports to provide a definition for the word “Nimble.” Except as expressly admitted herein, Applicant denies the allegations in Paragraph 7 of the Notice of Opposition.

8. Answering Paragraph 8, Applicant admits that it has applied to register Applicant’s Mark in connection with “Computer hardware and software for use in the storage, management, and acceleration of data over computer networks within the field of data storage, and instruction and user manuals provided in connection therewith,” in International Class 09. Except as expressly admitted herein, Applicant denies the allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant denies the allegations in Paragraph 9 of the Notice of Opposition.

10. Applicant believes that it is under no obligation to either admit or deny the statements made in Paragraph 10 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Opposer fails to state a claim on which relief can be granted.
2. No likelihood of confusion, mistake, or deception exists between Opposer's alleged marks NIMBUS and NIMBUS DATA and Applicant's Mark because they are different in overall sight, sound, and meaning, and they are used for distinct products and/or services that are offered in different channels of trade to sophisticated purchasers who make careful purchasing decisions.
3. Opposer's claims are barred in whole or in part by the doctrines of waiver and estoppel.
4. Opposer lacks standing to oppose Applicant's Mark in that Opposer is not likely to be damaged by the registration of Applicant's Mark.
5. Applicant presently has insufficient knowledge or information upon which to form a belief as to whether it has additional, but as-yet-unstated, affirmative defenses available. Accordingly, Applicant hereby reserves the right to assert additional affirmative defenses in the event it determines that such defenses are appropriate.

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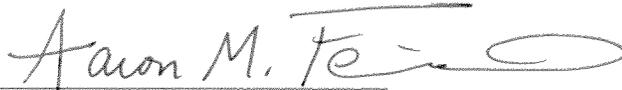
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PRAYER FOR RELIEF

WHEREFORE, Applicant prays that Opposer's Opposition be dismissed in its entirety and that a registration issue to Applicant for its NIMBLE STORAGE mark.

COOLEY LLP

Date: February 15, 2011

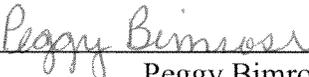
By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION was mailed, first-class postage prepaid, to counsel for Opposer at the address listed below, this 15th day of February 2011.

Counsel for **Nimbus Data Systems, Inc.**
Jennifer Lee Taylor
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105



Peggy Bimrose