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

Proceeding	91212629
Party	Defendant 123eInternational SEZC
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Submission	Answer
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Date	04/02/2014
Attachments	Answer.pdf(31610 bytes)

Case: SEZCC-001M

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IN RE SERIAL NO. 85/813,475

TESSCO Communications Incorporated,)	Opposition No.: 91212629
)	
Opposer,)	
)	
vs.)	
)	
123eInternational SECZ,)	
)	
Applicant.)	
)	

APPLICANT’S ANSWER TO NOTICE OF OPPOSITION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant, 123eInternational SECZ (hereinafter “Applicant”), hereby answers each and every allegation recited in the above-captioned Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and therefore denies the same.
2. Applicant admits that Opposer is identified as the “Registrant” in the four “Wireless Solutions” trademark registrations that are asserted as the basis for its Notice of Opposition. Except as expressly admitted herein, Applicant denies each and every remaining allegation contained in Paragraph 2 of the Notice of Opposition.
3. Applicant is without knowledge or information sufficient to form a belief

as to the truth of the allegations of Paragraph 3 and therefore denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 and therefore denies the same.

6. Applicant admits that Opposer is identified as the “Registrant” in the four “Wireless Solutions” trademark registrations that are asserted as the basis for its Notice of Opposition. The remaining allegations are statements of legal conclusion that do not require a formal response. Except as expressly admitted herein, Applicant denies each and every remaining allegation contained in Paragraph 6 of the Notice of Opposition.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 7 and therefore denies the same.

8. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies the same.

9. Applicant admits that it filed an application for registration of the 123eWireless Integrated Solutions mark in Class 009 for telecommunications cables on December 31, 2012 with the United States Patent and Trademark Office. Applicant further admits that it claimed a date of first use and date of first use in commerce of at least as early as August 1, 2010. Applicant denies Opposer’s allegation that the 123eWireless Integrated Solutions is a “similar mark” to Opposer’s “Wireless Solutions” mark. Applicant contends that Opposer’s charging allegation of a “similar mark” is vague, ambiguous and irrelevant as it is not the appropriate standard for determining whether a mark should be granted or refused registration. Except as expressly admitted

herein, Applicant denies each and every remaining allegation contained in Paragraph 9 of the Notice of Opposition.

10. Deny that Applicant has not used the 123eWireless Integrated Solutions mark prior to August 1, 2010. Admit that the term “Integrated Wireless Solutions” is found in promotional materials for Applicant’s products, including but not limited to telecommunications cables, but Deny that such use by Applicant of the phrase “Integrated Wireless Solutions” constitutes trademark usage or serves as a source identifier. Except as expressly admitted herein, Applicant denies each and every remaining allegation contained in Paragraph 10 of the Notice of Opposition.

11. Deny.

12. Deny.

AFFIRMATIVE DEFENSES

Applicant sets forth below its affirmative defenses. By setting forth these affirmative defenses, Applicant does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Opposer. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Opposer’s allegations.

1. Opposer has failed to state a claim upon which relief can be granted.
2. Opposer’s claims are precluded by the doctrines of Estoppel and Acquiescence.
3. Opposer will not be damaged by the registration of Applicant’s Mark.
4. Opposer is barred, in whole or in part, from relief by the Doctrine of Waiver.

5. Opposer is barred, in whole or in part, from relief by the Doctrine of Laches.

6. Opposer is barred, in whole or in part, from relief by the Doctrine of Unclean Hands.

7. Applicant alleges that its conduct was at all times lawful, privileged, justified, reasonable, and in good faith, based upon the relevant facts known at the time it acted.

8. Opposer's claims are barred, in whole or in part, since there is no likelihood of confusion in the marketplace.

9. Opposer's "Wireless Solutions" trademarks have been cancelled or abandoned for one or more classes of goods.

10. Opposer's claims are barred by the Doctrine of Fraud on the United States Patent and Trademark Office for failing to disclose that the phrase "Wireless Solutions" was in wide use by third parties in relation to advertising services, promotional materials in the field of communications, communications parts and accessories, and telecommunications parts and accessories and was generic and/or descriptive for the same.

11. Opposer's Trademark Registration Nos. 1,930,226; 2,360,450; 2,153,943; and 2,412,753 are invalid because the term WIRELESS SOLUTIONS has become generic.

12. Applicant hereby gives notice that it intends to rely on any additional affirmative defenses that become available or apparent during discovery and thus reserves the right to amend its answer to assert such additional affirmative defenses.

WHEREFORE, Applicant prays that this opposition to Applicant Serial No. 85/813,475 be denied and that registration for its mark 123eWireless Integrated Solutions be granted.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: April 2, 2014

By: /s/Stephen Z. Vegh

William J. Brucker, Reg. No. 35,462

Stephen Z. Vegh, Reg. No. 48,550

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Counsel for Applicant

123eInternational SECZ

PROOF OF SERVICE

State of California)
) ss.
County of Orange)

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **April 2, 2014**, the attached **APPLICANT’S ANSWER TO NOTICE OF OPPOSITION** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

James E. Shlesinger
Shlesinger, Arkwright & Garvey LLP
5845 Richmond Highway, Suite 415
Alexandria, VA 22303

Executed on **April 2, 2014** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

/s/Tara Hamilton
Tara Hamilton