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

Proceeding	91212693
Party	Defendant Kunshan M.U.S. International Co., Ltd.
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Date	12/13/2013
Attachments	MUS Opposition Answer serial 85611497 opp 91212693.pdf(289047 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEL BOARD**

In the Matter of Application Serial No. 85/611,497  
Filed on April 30, 2012 for the Mark MUS  
Published in the Official Gazette on August 6, 2013

**MICRONEL AG.,**

**Opposer,**

**v.**

**M. U. S. INTERNATIONAL CO.,  
LIMITED**

**Applicant.**

**Opposition No.: 91212693**

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant M. U. S. International Co., Limited. (“Applicant”) through its undersigned attorney submits its answer to the Notice of Opposition (“Opposition”) filed by Micronel AG (“Opposer”) dated September 26, 2013 as follows:

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies such allegations.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 2 and therefore denies such allegations.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 3 and therefore denies such allegations.
4. Applicant denies the allegations set forth in paragraph 4 of the Opposition.
5. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 5 and therefore denies such allegations.

6. Applicant admits that the United States Patent and Trademark Office records regarding U.S. Trademark Registration No. 1,192,451 reflect a trademark which is registered on the Principal Register. To the extent that further response is necessary, applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 6 of the Opposition and therefore denies such allegations.

7. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 7 and therefore denies such allegations.

8. Applicant denies the allegations set forth in paragraph 8 of the Opposition.

9. Applicant denies the allegations set forth in paragraph 9 of the Opposition.

**Count I - Likelihood of Confusion**  
**Trademark Act 2(d) - 15 U. S. C. §1052(d)**

10. Paragraph 10 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 10 of the Opposition.

11. Paragraph 11 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 11 of the Opposition.

12. Paragraph 12 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 16 of the Opposition.

**Count II - Deception/False Suggestion of Connection**  
**Trademark Act 2(a) - 15 U. S. C. §1052(a)**

13. Paragraph 13 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 16 of the Opposition.

14. Paragraph 14 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 16 of the Opposition.

15. Paragraph 15 of the Opposition states legal conclusions of the Opposer, to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 16 of the Opposition.

16. Paragraph 16 of the Opposition states the legal conclusions of the Opposer to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 16 of the Opposition.

17. Paragraph 17 of the Opposition states the legal conclusions of the Opposer to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 17 of the Opposition.

18. Paragraph 18 of the Opposition states the legal conclusions of the Opposer to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 18 of the Opposition.

19. Paragraph 19 of the Opposition states the legal conclusions of the Opposer to which no answer is required. To the extent further response is necessary, Applicant denies the allegations of paragraph 19 of the Opposition.

### **AFFIRMATIVE DEFENSES**

By way of further answer, Applicant alleges and asserts the following defenses in response to the allegations contained in the Notice of Opposition. In this regard, Applicant undertakes the burden of proof only as to those defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Applicant reserves the right to assert other affirmative defenses as this opposition proceeds based on further discovery, legal research, or analysis that may supply additional facts or lend new meaning or clarification to Opposer's claims that are not apparent on the face of the Notice of Opposition.

**FIRST AFFIRMATIVE DEFENSE**  
**FAILURE TO STATE A CLAIM**

20. Opposer has failed to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**  
**NO INJURY OR DAMAGE**

21. The Opposer's claims are barred, in whole or in part, because Opposer has not and will not suffer any injury or damage from the registration of Applicant's U.S. Application Serial No. . 85/611,497 for the MUS word mark.

**THIRD AFFIRMATIVE DEFENSE**  
**LACK OF LIKELIHOOD OF CONFUSION**

22. Opposer does not own any common law rights or any registered marks that would be confused with Applicant's mark in terms of sight, sound, meaning and commercial impression.

23. Applicant's mark differs in terms of sight, sound, and meaning from Opposer's claimed mark(s) and has a distinct commercial impression from Opposer's claimed mark(s).

24. Applicant's registration of Applicant's mark does not create a likelihood of confusion among consumers that Applicant's services are offered, are sponsored by, or are otherwise endorsed by Opposer. Nor does Applicant's use or registration of Applicant's mark

create a likelihood that consumers will falsely believe that Applicant and Opposer and affiliated in any way.

**FOURTH AFFIRMATIVE DEFENSE**  
**LACK OF STANDING**

25. Opposer's claims are barred, in whole or in part, because Opposer does not have standing in that Opposer does not have rights, superior or otherwise, sufficient to support the Notice of Opposition.

**FIFTH AFFIRMATIVE DEFENSE**  
**LACHES**

26. Opposer's claims are barred, in whole or in part, by the doctrine of laches.

**SIXTH AFFIRMATIVE DEFENSE**  
**ACQUIESCENCE**

27. Opposer's claims are barred, in whole or in part, by the doctrine of acquiescence.

**SEVENTH AFFIRMATIVE DEFENSE**  
**LACK OF SECONDARY MEANING**

28. Opposer's claims are barred, in whole or in part, by the lack of sufficient secondary meaning in the Opposer's mark(s) in question in this matter.

**EIGHTH AFFIRMATIVE DEFENSE**

29. Applicant reserves the right to assert any and all other affirmative defenses of which it becomes aware during the pendency of this matter.

WHEREFORE, Applicant requests that the opposition be dismissed and that Serial No. 85/611,497 be allowed to register.

Date: December 13, 2013

Respectfully submitted,

/s/ Mitesh Patel

Mitesh Patel

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*Attorney for Applicant*

### CERTIFICATE OF TRANSMISSION

I certify that on the 13th day of December 2013, that the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** is being electronically transmitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") at <http://estta.uspto.gov/>.

By:       /s/ Mitesh Patel        
Mitesh Patel

### CERTIFICATE OF SERVICE

I certify that on the 13th day of December 2013, a true copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** is being served by mailing a copy thereof by first class mail, postage prepaid, in an envelope addressed as follows:

MARK I. PEROFF  
MANATT, PHELPS & PHILLIPS LLP  
7 TIMES SQUARE  
NEW YORK, NEW YORK 10036

By:       /s/ Mitesh Patel        
Mitesh Patel