

ESTTA Tracking number: **ESTTA684017**

Filing date: **07/16/2015**

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

Proceeding	91213597
Party	Defendant Tigercat International Inc.
Correspondence Address	CANDACE LYNN BELL ECKERT SEAMANS CHERIN & MELLOTT LLC 50 S 16TH STREET, 22ND FLOOR PHILADELPHIA, PA 19102 2523 UNITED STATES cbell@eckertseamans.com, rjacobsmeadway@eckertseamans.com, lscol- lon@eckertseamans.com
Submission	Other Motions/Papers
Filer's Name	Candace Lynn Bell
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Signature	/Candace Lynn Bell/
Date	07/16/2015
Attachments	NOTICE OF CORRECTED DECLARATION FILING (M1396615).pdf(225757 bytes)

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

CATERPILLAR, INC.	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91213597
	:	
TIGERCAT INTERNATIONAL,	:	
INC.	:	
	:	
Applicant.	:	

**APPLICANT’S NOTICE OF CORRECTED DECLARATION FILING
IN OPPOSITION TO OPPOSER’S MOTION FOR LEAVE TO FILE
AMENDED NOTICE OF OPPOSITION**

Applicant, Tigercat International, Inc. (“Tigercat” or “Applicant”) filed a declaration of Paul Iarocci in support of Applicant’s Response in Opposition to Opposer’s Motion For Leave To File Amended Notice Of Opposition on March 11, 2015. (“P. Iarocci Declaration”). (Dkt. 21). It has come to Applicant’s attention that the P. Iarocci Declaration incorrectly identified his employer as Applicant. Mr. Paul Iarocci’s employer is Tigercat Industries Inc. Tigercat Industries Inc. is a wholly owned subsidiary of Applicant, Tigercat International, Inc. Tigercat Industries Inc. manufactures and distributes goods under the TIGERCAT mark for Tigercat International Inc.

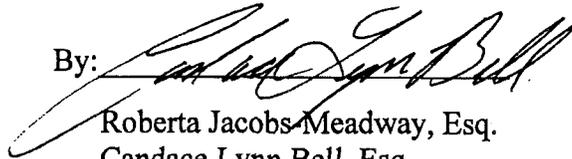
Applicant respectfully requests the Board substitute the Corrected Declaration of Paul Iarocci in support of Applicant’s Response in Opposition to Opposer’s Motion For Leave To File Amended Notice Of Opposition, attached hereto as Exhibit 1, for the P. Iarocci Declaration

currently on file. (Dkt. 21) Opposer's Motion for Leave to File Amended Notice of Opposition is currently pending before the Board. (Dkt. 19) Counsel for Opposer has stated Opposer will not oppose the filing of the Corrected Declaration of Paul Iarocci during the suspension.

Respectfully submitted,

Dated: July 16, 2015

By:



Roberta Jacobs-Meadway, Esq.
Candace Lynn Bell, Esq..
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Attorneys for Applicant
Tigercat International Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the attached Applicant's Notice of Corrected Declaration Filing in Opposition to Opposer's Motion for Leave to File Amended Notice of Opposition was served on counsel for Opposer on the date listed below via electronic mail and courtesy copy by U.S. Mail:

Christopher P. Foley
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Ave., N.W.
Washington, DC 20001-4413

Laura K. Johnson
FINNEGAN, HENDERSON, FARABOW,
GARETT & DUNNER, L.L.P.
2 Seaport Boulevard
Boston, MA 02210

Dated: July 16, 2015

By:

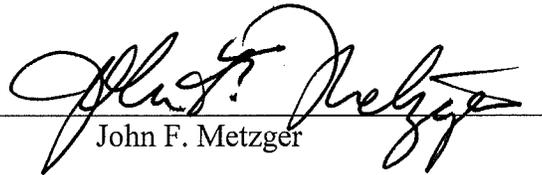

John F. Metzger

EXHIBIT 1

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

CATERPILLAR INC.,

OPPOSER,

v.

TIGERCAT INTERNATIONAL INC.

APPLICANT.

Opposition No. 91213597

CORRECTED DECLARATION OF PAUL IAROCCI
IN SUPPORT OF APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S
MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

Paul Iarocci declares:

1. I am a citizen of Canada and a resident of the Province of Ontario, and I am over the age of eighteen (18).

2. I am the Communications Manager of Tigercat Industries Inc.

3. In my Declaration dated March 6, 2015, I incorrectly identified the company which employs me as Tigercat International Inc. I am employed by Tigercat Industries Inc. (hereinafter "Tigercat"). Tigercat is a corporation formed and organized under the laws of Ontario, Canada with a registered office in Brantford, Ontario, Canada. Tigercat is a wholly owned subsidiary of Tigercat International Inc. Tigercat manufactures and distributes goods under the TIGERCAT mark for Tigercat International Inc.

4. As Communications Manager, I oversee and manage all aspects of Tigercat's marketing, promotion and branding, including strategic brand planning, brand development and design, and product marketing and branding of Tigercat's off road industrial equipment and other goods. As part of my duties, I routinely travel to job sites in the United States to meet with customers and observe Tigercat's off road and forestry equipment as used in the field. As part of my duties I receive reports from other Tigercat employees on their observations of Tigercat equipment and competitors' equipment as used in the field.

5. Tigercat is a world recognized leader in the design, development, manufacture and distribution of off road industrial and forestry equipment. *See Exhibit A.*

6. Tigercat has designed, developed, manufactured and sold a variety of off road industrial and forestry equipment. The full extent of Tigercat's product line can be seen on Tigercat's website, www.tigercat.com.

7. Tigercat sells its equipment under its TIGERCAT mark, which Tigercat uses to distinguish its off road industrial and forestry equipment.

8. Tigercat sells its TIGERCAT off road industrial and forestry equipment to customers in the United States, Canada and many other countries worldwide.

9. Since April 1, 1992, Tigercat has sold and is currently selling its TIGERCAT forestry equipment and off road industrial equipment primarily through its dealer network. *See Exhibit B.*

10. I have personally observed in the field on job sites in the United States that TIGERCAT mulchers are used on oil and gas new pipeline construction, commercial land clearing for new development projects, and vegetation management projects for utility and transmission line ROW (right-of-way).

11. I have personally observed in the field on job sites in the United States that TIGERCAT sprayers (attached to TIGERCAT skidder-based prime movers) are used for broadcasting fertilizers and herbicides various agricultural silviculture purposes.

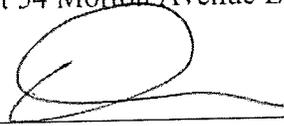
12. I am aware from reports that I receive in the ordinary course of business that on job sites in the United States: TIGERCAT skidders have been used for pulling utility poles in connection with replacement projects for utility companies; TIGERCAT mulchers have been used on oil and gas new pipeline construction, commercial land clearing for new development projects, and vegetation management projects for utility and transmission line ROW (right-of-way); and TIGERCAT aerial device carriers (attached to TIGERCAT skidder-based prime movers) have been used for transmission line maintenance and vegetation management.

13. Specific industry designations that suggest a limitation on use of equipment to specific industries, such as "used exclusively in the forestry and vegetation and management fields" are not commercially meaningful based on the way off road industrial equipment is manufactured and distributed and used. End-users will use the equipment to meet their particular needs for a project and Tigercat does not and cannot control how the equipment is used after purchase.

14. As the above examples show, and as I am aware from my 18 years in the industry and my attendance at trade shows, and my conversations with dealers, end users, and Tigercat sales representatives, that the TIGERCAT off road industrial equipment including more specialized equipment used in the forestry field, such as feller bunchers, are used based on the functions of the equipment, and the use is not restricted to any particular industry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the date listed below at 54 Morton Avenue East, Brantford, Ontario, Canada N3R 7J7.

Date: July 10/2015

By: 
Paul Iarocci