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

Proceeding	91226609
Party	Defendant SunPower Corporation
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Date	04/08/2016
Attachments	Applicant's Answer to Notice of Opposition.pdf(502138 bytes )

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

In the matter of Application Serial No.: 86/530,938  
By SunPower Corporation for the mark: HELIX  
Filed: February 11, 2015  
Published in the *Official Gazette* on: September 1, 2015

WAYNE FUELING SYSTEMS LLC,	§	
	§	
	§	
Opposer,	§	
	§	Opposition No.: 91226609
v.	§	
	§	
SUNPOWER CORPORATION,	§	
	§	
Applicant.	§	
	§	

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

Applicant, SunPower Corporation (“Applicant”), hereby answers the Notice of Opposition of Opposer, Wayne Fueling Systems LLC (“Opposer”) as follows. The paragraph numbers below correspond to those numbered paragraphs in the Notice of Opposition. Applicant reserves the right to amend or supplement this Answer to the Notice of Opposition as appropriate:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Notice of Opposition and therefore denies the same.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Notice of Opposition and therefore denies the same.
3. Applicant admits that the records of the U.S. Patent and Trademark Office (“USPTO”) indicate that the designation “HELIX” is subject of the U.S. Registration No.

4,286,468 (“Opposer’s Mark”), and that such registration covers the alleged goods set forth in Paragraph 3 of the Notice of Opposition (“Opposer’s Goods”).

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Notice of Opposition and therefore denies the same. Further, to the extent that Opposer asserts that the information presented on Opposer’s web site appearing at <https://wayne.com/en/products/helix-fuel-dispenser/> is incorporated into Opposer’s allegations presented in the Notice of Opposition, Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations presented at <https://wayne.com/en/products/helix-fuel-dispenser/> and therefore denies the same.

5. Applicant admits the allegations contained in Paragraph 5 of the Notice of Opposition.

6. With respect to the allegations contained in Paragraph 6 of the Notice of Opposition, Applicant admits that it specifically operates within the renewable energy sector of the vast energy industry.

7. Applicant admits the allegations contained in Paragraph 7 of the Notice of Opposition.

8. With respect to the allegation that Applicant’s products, generally, are sold directly and through distributors, Applicant admits that allegation in Paragraph 8 of the Notice of Opposition. With respect to the remaining allegations contained in Paragraph 8 of the Notice of Opposition, Applicant does not understand the meaning of the term “retail operations” in relation to Applicant’s sale of its products and therefore is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8 and therefore denies the same.

9. Applicant admits the allegations contained in Paragraph 9 of the Notice of Opposition.

10. Applicant admits the allegations contained in Paragraph 10 of the Notice of Opposition. Applicant admits that proof of use has not been filed yet in support of Applicant's "HELIX" U.S. Application Serial No. 86/530,938 ("Applicant's Mark"), on the basis that Opposer opposed Applicant's Mark thus preventing the USPTO from issuing a Notice of Allowance with respect to Application Serial No. 86/530,938.

11. Applicant denies the allegations contained in Paragraph 11 of the Notice of Opposition.

12. Applicant re-alleges and incorporates herein by reference the denial set forth above in Paragraph 11 above as if fully set forth herein. To the extent that Opposer further re-alleges and incorporates herein by reference Paragraphs 1-10 as if fully set forth herein, Applicant re-alleges and incorporates herein by reference the respective denials and admissions set forth above in Paragraphs 1-10 as if fully set forth herein.

13. With respect to allegations contained in Paragraph 13 concerning the date of first use of Opposer's Mark in the U.S., Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Notice of Opposition concerning such date of first use and therefore denies the same. With respect to allegations contained in Paragraph 13 concerning the filing date for Opposer's Mark in the U.S., Applicant admits that U.S. Registration No. 4,286,468 indicates that the underlying application was filed on July 2, 2010, and Applicant further admits that the filing date of U.S. Application Serial No. 86/530,938 is not prior to July 2, 2010. Applicant further admits that its date of first use of

Applicant's Mark in connection with Applicant's Goods (as defined below) is not prior to July 2, 2010.

14. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Notice of Opposition with respect to the marketing, channels of trade, and distribution of the goods sold and otherwise distributed under Opposer's Mark and therefore denies allegations regarding the same. Further, Applicant denies the remaining allegations contained in Paragraph 14 of the Notice of Opposition.

15. Applicant denies the allegations contained in Paragraph 15 of the Notice of Opposition.

16. Applicant denies the allegations contained in Paragraph 16 of the Notice of Opposition.

To the extent that Applicant has not admitted or denied any allegation contained in the Opposer's Notice of Opposition, all allegations are hereby denied by Applicant.

#### **AFFIRMATIVE DEFENSES**

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

2. Opposer's alleged rights in Opposer's Mark do not extend to or overlap with Applicant's Mark.

3. Opposer's Goods are so different from Applicant's goods, as set forth in Applicant's Application Serial No. 86/530,938 ("Applicant's Goods"), that there could not be any reasonable likelihood of confusion, mistake or deception as to the origin of Applicant's Mark and Applicant's Goods.

4. The nature and scope of Opposer's Goods and Applicant's Goods are different and not reasonably likely to result in confusion, mistake or deception as to the origin of

Applicant's Mark and Applicant's Goods because the respective goods are not used for the same purpose and they are not related to each other and they are not complementary or otherwise used together.

5. The respective costs and conditions of purchase for Opposer's Goods and Applicant's Goods reveal that there could not be any reasonable likelihood of confusion, mistake or deception as to the origin of Applicant's Mark and Applicant's Goods, because the respective goods are not subject to impulse purchasing, in such that a sophisticated purchaser would exercise a high degree of care when purchasing such goods.

6. Opposer's Goods and Applicant's Goods are distributed through very different distribution networks, do not travel through the same channels of trade, and are not promoted through the same promotional channels which further shows that there could not be any reasonable likelihood of confusion, mistake or deception as to the origin of Applicant's Mark and Applicant's Goods.

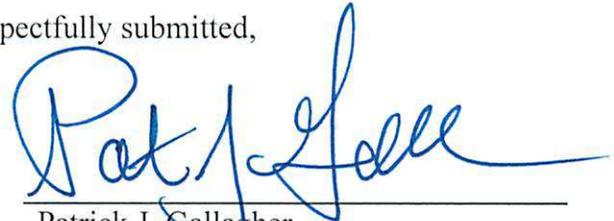
7. Applicant and Opposer are in different lines of business, correspondingly Applicant's Goods and Opposer's Goods are in different product lines, because Applicant is a manufacturer and distributor of solar products and a provider of related solar services, and whereas Opposer is a manufacturer and distributor of fuel dispensers. Such differences further show that there could not be any reasonable likelihood of confusion, mistake or deception as to the origin of Applicant's Mark and Applicant's Goods.

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 respectfully requests that this Notice of Opposition be dismissed, that judgment be entered in Applicant's favor and that Applicant's U.S. Trademark Application Serial No. 86/530,938 be allowed.

Respectfully submitted,

By:



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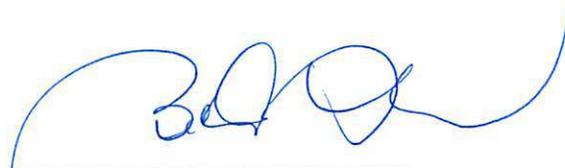
SUNPOWER CORPORATION

Dated: April 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Applicant's Answer to Notice of Opposition has been served via First Class Mail to Applicant's attorney of record at the address below on this the 8th day of April, 2016:

Susan Neuberger Weller  
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Beth Drucker