

# Exhibits

TTAB

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### VIA EXPRESS MAIL

Trademark Trial and Appeal Board  
United States Department of Commerce  
Patent and Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-2513  
Box: TTAB NO FEE

**Re: Saint-Gobain Abrasives, Inc. v. Unova Industrial Automation  
Systems, Inc., Cancellation No. 92040569**

Dear Sir or Madam:

On behalf of Opposer, Saint-Gobain Abrasives, Inc., I am enclosing Petitioner's Opposition to Respondent's Motion to Dismiss and Cross-Motion to Dismiss Respondent's Affirmative Defenses and an accompanying postcard, which we request that you stamp and return to us.

Thank you for your consideration in attending to this matter.

Respectfully submitted,

Hara K. Jacobs

HKJ/sfs  
Enclosures

cc (w/encl.): Steven L. Permut, Esquire

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TRADEMARK TRIAL AND  
APPEAL BOARD

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

SAINT-GOBAIN ABRASIVES, INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 9204069
	:	
UNOVA INDUSTRIAL AUTOMATION	:	
SYSTEMS, INC.	:	
	:	
Respondent.	:	

**PETITIONER’S OPPOSITION TO RESPONDENT’S MOTION TO DISMISS  
AND CROSS-MOTION TO DISMISS RESPONDENT’S AFFIRMATIVE DEFENSES**

Petitioner, Saint-Gobain Abrasives, Inc. (“Saint-Gobain”), hereby opposes the motion of Respondent, Unova Industrial Automation Systems, Inc. (“Unova” or “Respondent”), to dismiss Saint-Gobain’s Petition to Cancel and cross-moves to bar Unova from raising laches, acquiescence and the Morehouse defense as affirmative defenses.

**PRELIMINARY STATEMENT**

Unova’s three-pronged motion to dismiss Saint-Gobain’s Petition to Cancel is baseless. First, Unova claims that the equitable “Morehouse defense” bars Saint-Gobain from petitioning to cancel its registration because Unova owns an earlier unchallenged registration for a mark that is similar to the mark at issue here. As a matter of law, the Morehouse defense cannot be applied in this case because Unova’s earlier registration is the subject of a pending cancellation proceeding and because Unova’s prior registered mark is not substantially identical to the alleged mark that is the subject of this cancellation proceeding.

Second, Unova has asserted that the equitable doctrines of laches and acquiescence bar Saint-Gobain’s Petition to Cancel. In fact, it is Unova that is legally barred from raising these

equitable defenses. Laches and acquiescence cannot be raised against a claim of functionality because there is a public interest in precluding registration of functional marks, which are “void ab initio.” Since Saint-Gobain has petitioned to cancel Unova’s alleged mark on the ground of functionality, Unova is legally barred from raising the affirmative defenses of laches and acquiescence. Further, laches is not applicable in this case since Saint-Gobain petitioned to cancel Unova’s alleged mark only four months after it was registered.

Finally, Unova argues that the Petition to Cancel should be dismissed because Saint-Gobain has failed to state a claim upon which relief can be granted. There is no legal basis for this argument. The Petition to Cancel adequately pleads numerous grounds for cancellation of Unova’s registration. For example, Saint-Gobain properly alleges that Unova’s alleged mark – a blue stripe applied to the periphery of abrasive wheels and disks – is functional because it is used throughout the industry to designate grit size, alert the user when the abrasive wheel should be replaced, and identify whether the abrasive wheel is in motion. The Petition to Cancel further alleges that the blue stripe is not distinctive because Saint-Gobain and other abrasive manufacturers have sold abrasive wheels and disks with blue stripes and other colored stripes for many years. These allegations are more than sufficient to satisfy the pleading requirements for a Petition to Cancel.

## **FACTUAL BACKGROUND**

### **Blue Stripe Registration**

On December 11, 2001, Unova secured registration of a blue stripe applied to the periphery of power-operated abrasive wheels and disks (“Blue Stripe”). Saint-Gobain also sells power operated abrasive wheels and disks and is a direct competitor of Unova. (Petition to Cancel at ¶ 2, Exh. A.) On April 29, 2002, Saint-Gobain petitioned to cancel Unova’s trademark registration on three principle grounds – functionality, lack of distinctiveness and indefiniteness.

Saint-Gobain contends that Unova's Blue Stripe is functional because colors, including blue, perform several functions for abrasive wheels and disks, including: (a) designating grit size; (b) alerting the user when the disk should be replaced; and (c) identifying whether the disk is in motion. (Petition to Cancel at ¶¶ 6-8, Exh. A.) Saint-Gobain contends that Unova's alleged mark is not distinctive because Saint-Gobain and other abrasive manufacturers have sold abrasive wheels and disks with blue stripes and other colored stripes for many years. (Id. at ¶¶ 4, 9.) Finally, Saint-Gobain contends that Unova's alleged mark is not entitled to registration because it is an impermissible attempt to register multiple marks in a single application in violation of International Flavors. (Id. at ¶ 11.)

Saint-Gobain served its First Request for the Production of Documents and First Set of Interrogatories on June 6, 2002. Saint-Gobain served its Notice of Depositions on June 7, 2002. Less than two weeks later, on June 19, 2002, Unova filed the instant motion to dismiss. Unova claims that three equitable doctrines – the Morehouse defense, laches and acquiescence bar Saint-Gobain's cancellation petition. Unova also contends that Saint-Gobain's Petition to Cancel fails to state a claim. Unova requested that the Board suspend the proceedings pending the disposition of its motion.

#### **Unova's Challenged Application and Registration**

In addition to petitioning to cancel Unova's Blue Stripe registration, Saint-Gobain has opposed an application of Unova and petitioned to cancel a registration of Unova for stripes applied to abrasive wheels and disks.

On September 4, 2002, Saint-Gobain filed a Notice of Opposition to Unova's application to register a yellow stripe applied to the periphery of power-operated abrasive wheels and disks, Serial No. 75/670483 ("Yellow Stripe"). (Notice of Opposition to Yellow Stripe, Exh. B.) Saint-Gobain asserted the identical grounds for its Notice of Opposition to the Yellow Stripe

application as it did for this Petition. Nine days after Saint-Gobain filed a motion to compel discovery in the Yellow Stripe opposition, Unova filed a motion for judgment on the pleadings, asserting the identical arguments contained in its Motion to Dismiss.

On June 6, 2002, approximately two weeks before Unova filed its Motion to Dismiss, Saint-Gobain filed a Petition to Cancel Unova's registration for a stripe applied to the periphery of abrasive wheels and disks, Reg. No. 378,705 ("Periphery Stripe"). (Petition to Cancel Periphery Stripe, Exh. C.) Saint-Gobain has asserted that the Periphery Stripe registration should be canceled because, *inter alia*, the alleged mark is functional. (*Id.* at ¶¶ 6-9.) Saint-Gobain contends that the Periphery Stripe is functional because abrasive manufacturers use stripes and bands of various colors on abrasive wheels and disks to designate grit size, identify the intended use of the product, identify when the disk should be replaced, and indicate whether the disk is in motion. (*Id.*) Saint-Gobain has not yet received the notice from the Board instituting the Periphery Stripe cancellation proceeding.

### **ARGUMENT**

Unova's motion to dismiss is a transparent attempt to delay discovery in this action and is legally baseless.

The Morehouse defense is inapplicable as a matter of law because the earlier registration that Unova has attempted to rely upon, the Periphery Stripe registration, is not unchallenged – it is the subject of a cancellation proceeding. Further, the defense fails on the merits because the marks at issue in the challenged Periphery Stripe registration and this Blue Stripe proceeding are not substantially identical.

Unova's remaining equitable defenses, laches and acquiescence, cannot support its motion for two reasons. First, laches and acquiescence cannot be raised against a mark that has been challenged as void ab initio. Since Saint-Gobain has claimed that Unova's alleged mark is

void ab initio because it is functional, Unova is barred from raising these affirmative defenses as a matter of law. Second, laches and acquiesce are inapplicable to this case because Saint-Gobain petitioned to cancel Unova's alleged mark only four months after the registration issued.

Finally, the Petition to Cancel amply sets forth grounds for cancellation of the registration. Saint-Gobain has alleged that it is a direct competitor of Unova in the sale of power operated abrasive wheels and disks, that it and others in the abrasives industry use blue colors and blue-colored stripes in a functional manner for abrasive wheels and disks, and that registration of the alleged mark would injure Saint-Gobain by placing a cloud on its ability to use blue-colored stripes on abrasive wheels and disks. Nothing more is required to satisfy the notice pleading requirements for a Petition to Cancel.

**I. UNOVA'S PRIOR REGISTRATION FOR A STRIPE OR BAND DOES NOT GIVE RISE TO AN "EQUITABLE DEFENSE"**

Unova cannot invoke the prior registration, or "Morehouse" defense, because it does not have an unchallenged prior registration – Saint-Gobain previously petitioned to cancel Unova's prior registration on the ground that it is void ab initio. Furthermore, the Morehouse defense is not applicable in this case because Unova's previously registered mark and its subsequently claimed mark are not substantially identical.<sup>1</sup>

The Morehouse defense is an equitable defense. It is only available against an opposer or cancellation petitioner where the party: (1) owns an unchallenged prior registration (2) for the same or substantially identical mark and for the same or substantially identical goods. O-M Bread, Inc. v. United States Olympic Comm., 65 F.3d 933, 938 (Fed. Cir. 1995); Morehouse Mfg. Corp. v. J. Strickland & Co., 407 F.2d 881, 884 (C.C.P.A. 1969); British-American

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<sup>1</sup> Unova styled its claimed Morehouse defense as an "equitable defense as a matter of law." (Motion to Dismiss at 3.)

Tobacco Co. v. Philip Morris, Inc., 55 U.S.P.Q.2d 1585, 1591 (TTAB 2000); TBC Corp. v. Grand Prix Ltd., 12 U.S.P.Q.2d 1311, 1313 (TTAB 1989). The Morehouse defense rests on the theory that the opposer or petitioner cannot be “damaged” within the meaning of section 13 of the Lanham Act by the subsequent registration because the damage has already been done by the prior registration. Id. The theory holds that the opposer or petitioner had a previous opportunity to challenge registration of the same or substantially identical mark for the same or substantially identical goods, but never did. Id. In that regard, the Morehouse defense is akin to the doctrine of laches. See TBC Corp. v. Grand Prix Ltd., 12 U.S.P.Q.2d 1311, 1312 (TTAB 1989).

**A. The Morehouse Defense Is Unavailable Because Unova’s Prior Registration Is Not Unchallenged**

Only an unchallenged prior registration can give rise to the equitable Morehouse defense. British-American Tobacco, 55 U.S.P.Q.2d at 1591. Unova claims that its prior registration for the Periphery Stripe supports a Morehouse defense. That registration, however, is not unchallenged. Saint-Gobain petitioned to cancel the registration on June 6, 2002, nearly two weeks before Unova filed this motion. (Petition to Cancel Periphery Stripe, Exh. C.) Saint-Gobain petitioned to cancel the registration on the ground that the mark is functional and thus void ab initio.<sup>2</sup> (Id.) Saint-Gobain’s Petition to Cancel Unova’s prior registration precludes the Morehouse defense as a matter of law because Unova cannot satisfy the threshold requirement of the defense. Accordingly, Unova should be barred from raising the defense in this proceeding.

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<sup>2</sup> As Unova’s own authorities recognize, the Morehouse defense cannot be applied if the prior registration is void ab initio. (Motion to Dismiss at 4, citing W. Leather Goods Co. v. Blue Bell, Inc., 178 U.S.P.Q. 382, 383-84 (TTAB 1973)).

**B. The Morehouse Defense Fails Because the Marks Are Not Substantially Identical**

Because Unova does not have an unchallenged prior registration, the Board need not even address whether the prior and subsequent marks and goods are substantially identical. See British-American Tobacco, 55 U.S.P.Q.2d at 1591. Nevertheless, the Morehouse defense fails because the prior and subsequent marks are not the same or substantially identical. The defense is predicated on the proposition that “there is no added damage from the second registration of the same mark if the goods named in it are in fact the same.” O-M Bread, 65 F.3d at 938; Morehouse, 407 F.2d at 884. The defense is viable only if the subsequent application or registration is for the same or substantially identical mark for the same or substantially identical goods. TBC Corp., 12 U.S.P.Q.2d at 1314. Contrary to Unova’s assertion, its prior and subsequently claimed marks are not “virtually identical.” (Motion to Dismiss at 4.) The subsequent registration would competitively damage Saint-Gobain.

By specifying the color of the mark, Unova’s Blue Stripe registration conveys an entirely different commercial impression than the prior registration for a stripe or band – of unspecified color – applied to the periphery of a grinding wheel. Any one color creates a distinct commercial impression. It takes little if any effort to distinguish bands of different colors on the periphery of abrasive wheels and disks. Blue and red bands, for example, are hardly essentially the same or legal equivalents. Indeed, one reason Saint-Gobain and others use color bands and stripes on abrasive disks and wheels for functional purposes is precisely *because* different colors are easily distinguishable. The Morehouse defense applies only where the prior and subsequent marks have merely “trifling differences” such that “it takes careful inspection to detect them.” Morehouse, 407 F.2d at 884. The differences between Unova’s prior and subsequently claimed

marks are glaring. By its terms, the Morehouse defense does not serve the purpose sought by Unova.

## II. UNOVA CANNOT ASSERT THE AFFIRMATIVE DEFENSES OF LACHES AND ACQUIESCENCE IN SUPPORT OF ITS MOTION

It is well-settled that the defenses of laches and acquiescence cannot be raised against a claim that a mark is void ab initio. Care Corp. v. Nursecare International, Inc., 216 U.S.P.Q. 993 (TTAB 1982); TBC Corp. v. Grand Prix Ltd., 12 U.S.P.Q.2d 1311 (TTAB 1989). Since Saint-Gobain is claiming that Unova's alleged Blue Stripe mark is void ab initio because it is functional, the defenses are legally deficient as a matter of law. Accordingly, Saint-Gobain is cross-moving to preclude Unova from asserting the equitable defenses of laches and acquiescence in this proceeding.

The defense of laches requires a showing of inexcusable delay in asserting rights against the registration of a mark and prejudice resulting therefrom. National Cable Television Assn, Inc. v. American Cinema Editors, Inc., 937 F.2d 1572, 19 U.S.P.Q.2d 1424, 1431 (Fed. Cir. 1991). Acquiescence, although sometimes called laches, is a separate defense. Jerome Gilson, Trademark Protection and Practice, § 11.08(3)(i)(ii), p. 11-230 (2001). Acquiescence requires a showing that a party assented to or gave its express or implied assurance that it would not challenge the registration of a mark. (Id.) Since these defenses are defenses to the registration of a mark, not to the use of mark, they do not start running until the date the application for registration was published for opposition. National Cable, 19 U.S.P.Q.2d at 1432; see Callaway Vineyard & Winery v. Endsley Capital Group, Inc., Opposition No. 121,583, 2002 WL 976451 at \* 5 (May 10, 2002) (citable precedent of TTAB, Exh. D).

There are important limitations to the applicability of the laches and acquiescence affirmative defenses. Laches and acquiescence cannot be raised against claims of genericness,

mere descriptiveness, fraud, abandonment and inevitable confusion because, if proved, such claims establish that the subject marks are void ab initio – meaning that the marks suffer from a defect that would have prohibited registration in the first instance. Care Corp., 216 U.S.P.Q. at 995; TBC Corp., 12 U.S.P.Q.2d at 1313. The reason for the rule is straightforward. It is in the public interest to preclude registration of marks that are defective at the time of filing and to cancel the registration of marks that were defective at the time of registration or have become defective since the time of registration. Care Corp., 216 U.S.P.Q. at 995 (quoting Southwire Co. v. Kaiser Aluminum & Chemical Corp., 196 U.S.P.Q. 566, 573 (TTAB 1977)). “[T]his interest or concern cannot be waived by the inaction of any single person or concern, no matter how long the delay persists.” Id.

Functional marks are now the same as generic, abandoned and fraudulently obtained marks – they are void ab initio and may be canceled at any time. See 15 U.S.C. § 1064(3) (adding functionality as a ground for petitioning to cancel an incontestable mark in 1998). The public policy interest in keeping generic, abandoned and fraudulently-obtained marks off the register applies with equal force to functional marks, which must be available to competitors in the industry. This public interest cannot not be overcome by the delay or inaction of one person who later objects to the registration of a functional mark.

In this case, the Petition to Cancel explicitly asserts that Unova’s alleged Blue Stripe mark is functional because it is used by Saint-Gobain and others to designate grit size, identify when the abrasive disk should be replaced and identify whether the abrasive disk is in motion. Since Saint-Gobain has claimed that Unova’s alleged mark is functional, Unova cannot raise the defenses of laches and acquiescence as a matter of law. Accordingly, the defenses cannot

support Unova's Motion to Dismiss and Unova should be precluded from asserting them in this proceeding.<sup>3</sup>

Even assuming arguendo that Unova could rely upon the equitable defenses of laches and acquiescence to support its motion, the evidence presented by Unova does not establish these defenses as a matter of law. First, Unova's evidence consists of material that is outside the scope of the pleadings. Since this is a motion to dismiss, Unova cannot rely on evidence outside the scope of the pleadings. Second, Unova's so-called evidence of Saint-Gobain's inexcusable delay consists of three letters between foreign legal counsel in Canada concerning the attempt of Unova's predecessor to register a stripe mark for grinding wheels in Canada. The Canadian letters cannot raise a genuine issue of fact, let alone demonstrate as a matter of law, that Saint-Gobain inexcusably delayed in asserting its rights against Unova's alleged mark in the United States. See Oland's Breweries (1971) Ltd. v. Miller Brewing Co., 189 U.S.P.Q. 481, 483 n.2 (TTAB 1975), aff'd, 192 U.S.P.Q. 266 (C.C.P.A. 1976) (stating that information concerning applicant's foreign applications and registrations are irrelevant to issues in an opposition proceeding). Third, there is no basis for the defenses of laches and acquiescence in this case because these defenses do not begin to run until a mark is published for opposition. Callaway Vineyard, 2002 WL 976451 at \* 5 (citable precedent of TTAB, Exh. D); National Cable, 19 U.S.P.Q.2d at 1432. Saint-Gobain petitioned to cancel the registration within four months of its

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<sup>3</sup> For this same reason, Unova should be precluded from raising the equitable Morehouse defense. The Morehouse defense is an equitable defense in the nature of laches and acquiescence and is likewise unavailable against a claim alleging that the challenged mark is void ab initio. TBC Corp., 12 U.S.P.Q.2d at 1312 (precluding the Morehouse defense because the alleged mark was challenged as void ab initio).

issuance. Thus, there has been virtually no delay and certainly no resulting prejudice to Unova during that brief period.<sup>4</sup>

### **III. SAINT-GOBAIN'S PETITION TO CANCEL ADEQUATELY PLEADS FUNCTIONALITY, LACK OF DISTINCTIVENESS, AND INDEFINITENESS**

Saint-Gobain's Petition to Cancel pleads functionality, lack of distinctiveness, and indefiniteness substantially beyond the liberal pleading requirements of the Federal Rules of Civil Procedure as interpreted by the Board and the courts.

Saint-Gobain's Petition to Cancel need only set forth facts, that if proved, show that Saint-Gobain possesses standing to challenge Unova's application and that there is a valid ground for opposition. See Cunningham v. Laser Golf Corp., 222 F.3d 943, 55 U.S.P.Q.2d 1842, 1844 (Fed. Cir. 2000); Harjo v. Pro Football, Inc., 30 U.S.P.Q.2d 1828, 1830 (TTAB 1994). A party should not be denied its right to be heard unless it is certain beyond any doubt that it cannot prevail under any circumstances. Stabilisierungsfonds fur Wein v. Zimmermann-Graeff KG, 199 U.S.P.Q. 488, 489 (TTAB 1978); see also Advanced Cardiovascular Sys., Inc. v. SciMed Life Sys., Inc., 988 F.2d 1157, 1160, 26 U.S.P.Q.2d 1038, 1041 (Fed. Cir. 1993).

Saint-Gobain's Petition to Cancel easily meets the low threshold for stating valid grounds for cancellation. The Petition to Cancel sufficiently states facts that, if true, establish that Unova's claimed blue stripe is functional. Specifically, Saint-Gobain contends that blue and other colors serve several functions for abrasive wheels and disks, including: (a) designating grit size; (b) alerting the user when the disk should be replaced; and (c) identifying whether the disk

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<sup>4</sup> Unova has argued that laches should begin to run during the time that its prior, expired registration for a blue stripe applied to the periphery of a grinding wheel was registered. That registration expired in 1998. Functionality, however, did not become a statutory basis for canceling an incontestable registered mark until 1998. Thus, even accepting Unova's unsupported argument as true, any purported delay by Saint-Gobain would be excusable.

is in motion. (Petition to Cancel at ¶¶ 6-8, Exh. A.) Saint-Gobain further contends that Unova uses blue-colored stripes and other colored stripes in a functional manner. (Id. at ¶ 10.)

The Petition also sufficiently states facts that, if true, establish that Unova's claimed blue stripe lacks distinctiveness. Specifically, Saint-Gobain contends that Unova has not had substantially exclusive use of the alleged mark because Saint-Gobain and other manufacturers have sold abrasive wheels and disks with blue stripes and other colored stripes for many years. (Id. at ¶¶ 3-4, 9.)

Finally, the Petition sufficiently states facts that, if true, establish that Unova's claimed blue stripe is indefinite. Specifically, Saint-Gobain contends that the registration sought would cover a variety of different blue colors in violation of International Flavors. (Id. at ¶ 11.) These allegations sufficiently raise doubt as to the registrability of Unova's claimed blue stripe or band. Unova's repeated assertions that Saint-Gobain's allegations "are not directed to the shape, position or orientation" of its claimed "peripheral band" merely raise questions of fact and are not appropriate grounds for dismissal for failure to state a claim.

Although difficult to discern from face of the motion, Unova also appears to argue that Saint-Gobain lacks standing because it has not pled use of the exact mark that Unova is seeking to register. Unova's argument is fallacious. Saint-Gobain is not required to allege use of the identical term. "[A] party may establish its standing to oppose or to petition to cancel by showing that it has a real interest in the case, that is, a personal interest beyond that of the general public." Harjo, 30 U.S.P.Q.2d at 1832; see also Int'l Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 1092, 220 U.S.P.Q. 1017, 1020 (Fed. Cir. 1984) (stating that the Lanham Act merely requires pleading a "real interest" in the proceeding). Saint-Gobain, which has petitioned to cancel Unova's alleged mark on the grounds of functionality and lack of

distinctiveness, fulfills the standing requirement by merely alleging an interest in the right to use the alleged mark, which would be compromised by registration. 3 J. Thomas McCarthy, Trademarks and Unfair Competition at § 20:11 (4<sup>th</sup> ed. 2002). A competitor is presumed to have such an interest and thus is presumed to meet this standing requirement. Id.; Binney & Smith v. Magic Marker Industries, Inc., 222 U.S.P.Q. 1003, 1010 (TTAB 1984); see M-5 Steel Mfg. Inc. v. O'Hagin's Inc., 61 U.S.P.Q.2d 1086, 1094 (finding that opposer, which opposed registration of applicant's alleged mark on the ground of functionality, had standing because opposer alleged that it was a competitor of applicant for the goods in question).

Saint-Gobain has alleged, and Unova admits, that Saint-Gobain is a direct competitor of Unova in the manufacture and sale of abrasive products, including the goods at issue here -- power-operated abrasive wheels and disks. (Motion to Dismiss at p. 6; Petition to Cancel at ¶ 2, Exh. A.) Saint-Gobain has further alleged that granting Unova a registration for a blue stripe would damage Saint-Gobain and other competitors by placing a cloud on their ability to continue to use blue stripes and bands on abrasive wheels and disks for functional purposes. (Petition to Cancel ¶ 12, Exh. A.) Saint-Gobain clearly has a personal interest in the opposition beyond that of the general public, is a direct competitor of Unova and has ample standing to petition to cancel Unova's alleged mark.

**CONCLUSION**

For all the foregoing reasons, Saint-Gobain respectfully requests that the Board deny Unova's Motion to Dismiss and grant Saint-Gobain's cross-motion to preclude Unova from raising laches, acquiescence and the Morehouse defense as affirmative defenses.

Dated: July 15, 2002

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

By:   
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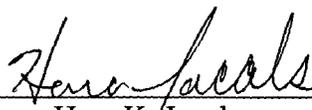
ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I, Hara K. Jacobs, hereby certify that on today's date, I caused a copy of the foregoing Petitioner's Opposition to Respondent's Motion to Dismiss and Cross-Motion to Dismiss Respondent's Affirmative Defenses to be served by United States first class mail, postage prepaid, on counsel set forth below:

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Dated: July 15, 2002

  
\_\_\_\_\_  
Hara K. Jacobs

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I, Sharon Felder-St.Clair, hereby certify that this correspondence is being deposited as "Express Mail" with the United States Postal Service addressed to: Trademark Trial and Appeal Board, United States Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202-2513 on the date indicated below.

Date of Deposit: July 15, 2002

Signed: 