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

Proceeding	92051170
Party	Defendant O2 HOLDINGS LIMITED
Correspondence Address	Linda Jurth 575 Route 28, Suite 102 Raritan, NJ 08869 UNITED STATES
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Linda Kurth
Filer's e-mail	officeactions@br-tmlaw.com,k.hnasko@br-tmlaw.com,l.kurth@br-tmlaw.com
Signature	/Linda Kurth/
Date	07/26/2010
Attachments	Motion to dismiss.pdf (26 pages)(566271 bytes)

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

O2Micro International Ltd.	Cancellation No. 92051170
Petitioner,	Mark: O2
v.	Reg. No. 2231093
O2 Holdings, Ltd.	
Registrant.	

REGISTRANT'S MOTION TO DISMISS FIRST AMENDED PETITION FOR CANCELLATION OR ALTERNATIVELY REGISTRANT HEREBY SUBMITS ITS ANSWER TO THE FIRST AMENDED PETITION FOR CANCELLATION

Registrant, O2 Holdings, Ltd., ("Registrant"), by and through its attorneys Baker & Rannells, PA, hereby moves for the Board to dismiss Petitioner's, O2Micro International Ltd., ("Petitioner") first Amended Petition for Cancellation in lieu of filing an Answer. As grounds for cancellation, Petitioner again alleges abandonment and fraud. However, Petitioner's allegations that its information and belief of intent to deceive are based on facts uncovered by an investigation remain insufficient. Further, its new claims that Registrant purposefully avoided acquiring knowledge of its own non-use, render its claims of intent to deceive or abandon moot.

Because the Board allowed Registrant 40 days to file an Answer from the date of its last order, Registrant is alternatively submitting an Answer to Petitioner's Amended Petition for Cancellation for the Board's convenience and to minimize further delays, included in Exhibit B.

I. Procedural History and Underlying Facts

On June 17, 2010, the Board issued an order denying Petitioner's Cross-Motion for Summary Judgment. The Board sternly warned Petitioner that it could file an amended pleading IF Petitioner had a sound basis for doing so, failing which the existing allegations regarding fraud were stricken.

On June 24, 2010, Petitioner filed a First Amended Petition for Cancellation of Registrant's registration on the basis of fraud and abandonment. In some of the paragraphs, those which allege fraud, namely paragraphs 10, 11, 13, 14, 15 and 21, Petitioner simply inserted the phrase "and upon the results of the investigation commissioned by Petitioner" to its prior preamble of "Upon information and belief." Insertion of this phrase without details of the investigation upon which the belief was formed makes these paragraphs insufficient to allege fraud, and they should be stricken without further ado.

Petitioner also inserted new paragraphs in which it added the so-called facts its alleged investigation uncovered. These new paragraphs include the following:

> 8. The investigator conducted an online search of Respondent's predecessor in interest's website, www.sgi.com, and found the products identified under the "O2" mark on a page of the website which is headed by the title "Legacy Products" and states that the page contains information for products which are "no longer manufactured or sold by SGI."
>
> 9. Following conducting an online search, the investigator contacted a representative for Respondent's predecessor in interest and learned that Respondent's predecessor in interest was no longer offering for sale in the United States any products under the "O2" mark. The investigator further learned that Respondent's predecessor in interest had discontinued use of the "O2" mark at least seven years ago, if not longer.

17. On information and belief, and upon the results of an investigation commissioned by Petitioner, the Substitute Specimen shows the "O2" mark on a SIM card bearing the web address www.O2.co.uk/blueroom.com.

18. On information and belief, and upon the results of an investigation commissioned by Petitioner, the SIM card shown in the Substitute Specimen was not offered for sale in the United States at the time that either the Renewal Application or the Subsequent Letter was filed.

19. On information and belief, and upon the results of an investigation commissioned by Petitioner, the Subsequent Letter and Substitute Specimen were submitted by Registrant in an effort to cure the fraudulent statements made in the Renewal Application.

20. On information and belief, and upon the results of an investigation commissioned by Petitioner, Registrant made further material representations of fact in its declaration submitted with its Subsequent Letter which it knew or should have known to be false in an effort to procure renewal.

22. On information and belief, on October 29, 2007, Silicon Graphics, Inc. executed a document intended to assign its entire interest in the O2 Registration, and rights in the "O2" mark, to Registrant.

23. On information and belief, and upon the results of the investigation commissioned by Petitioner, the "O2" mark had been abandoned by Silicon Graphics, Inc. at least three years prior to the date of the assignment of the "O2" mark. Due to this abandonment, there was no goodwill associated with the "O2" mark at the time the assignment was executed. As a result, the assignment was in gross and therefore invalid.

24. On information and belief, and based on Registrant's own statements, Registrant has licensed to Silicon Graphics, Inc. rights to use the"O2" mark in connection with the sale of goods identified in the O2 Registration.

25. On information and belief, Registrant does not supervise or have any involvement regarding the quality of the goods produced or sold by Silicon Graphics, Inc. under the "O2" mark. This lack of quality control has created a naked license resulting in Registrant's abandonment of the "O2" mark.

26. On information and belief, and based on Registrant's own statements as well as the results of an investigation commissioned by Petitioner, Registrant unreasonably and intentionally chose to rely on its Licensee, Silicon Graphics, Inc., to inform Registrant when it discontinued sale of products under the "O2" mark and did not inquire into its Licensee's use or sales under the mark at the time the Renewal Application was filed although the specimen submitted by Registrant in the Renewal Application had a copyright notice date of 2000 and was found on a page depicting discontinued products.

27. On information and belief, and based on Registrant's own statements as well as the results of an investigation commissioned by Petitioner, Registrant's intentional uncontrolled licensing and willful blindness as to its Licensee's activities was done in an effort to escape its burden of supplying truthful information with its Renewal Application and thereby fraudulently procure Renewal.

These new paragraphs include so-called facts uncovered by the investigation commissioned by Petitioner. However, these claims do not support an inference of intent to deceive or even explicitly state that they do. Further, because abandonment also requires alleging intent particularly with clear and convincing evidence, these new paragraphs, even if taken as true, are also wholly insufficient.

As the Board has already been informed, up to the time of the renewal of its registration in 2009, Registrant had in place a license agreement with SGI, from whom it acquired Registration Number 2231093, for the Mark "O2" ("Registrant's Mark"). The agreement provided that SGI had an affirmative duty to inform Registrant if it intended to discontinue use of Registrant's Mark. Registrant received no communication from SGI prior to commencement of the time period for renewal of Registrant's Mark that SGI had stopped making and selling O2 products. Registrant, thus, submitted the renewal under the presumption that SGI's use was in force and supported renewal.

When a question arose about SGI's use of Registrant's Mark, Registrant immediately called the USPTO to inquiry whether it could submit an additional specimen in support of the renewal, namely Registrant's own use of Registrant's Mark on the goods identified in the registration, its SIM cards. The USPTO informed Registrant that because the time for renewal had not yet closed, Registrant was allowed to submit an additional supportive specimen by facsimile evidencing its use.

Registrant first confirmed that its SIM cards were in use during the relevant period pursuant TMEP § 1604.10, then filed its substitute specimen without delay. Registrant was uncertain of the status of SGI's usage on that date, and decided to submit additional evidence to give it time to acquire the facts regarding SGI's usage. If Registrant determined that the SGI's usage had in fact ceased completely, then the other specimen could substitute as proof of continued usage. Registrant submitted its additional specimen to provide the PTO with evidence of its use during the relevant period prior to the renewal period, in the form of SIM cards bearing its mark. Registrant has since confirmed its continued use of its alternate goods.

Exhibit A attached hereto contains representative invoices of Registrant's sales of its SIM cards both before the renewal and through the present (redacted to preserve confidentiality).

II. Legal Standards

The standard governing motions to dismiss under Fed. R. Civ. P. 12(b)(6) is set forth below:

> In order to withstand a motion to dismiss for failure to state a claim, a plaintiff need only allege such facts as would, if proved, establish that (1) the plaintiff has standing to maintain the proceedings, and (2) a valid ground exists for opposing the mark. The pleading must be examined in its entirety, construing the allegations therein liberally, as required by Fed. R. Civ. P. 8(f), to determine whether it contains any allegations which, if proved, would entitle plaintiff to the relief, sought. See Lipton Industries, Inc. v. Ralston Purina Co., 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); Kelly Services Inc. v. Greene's Temporaries Inc., 25 USPQ2d 1460 (TTAB 1992); and TBMP §503.02 (2d. ed. rev. 2004).

The purpose of a Rule 12(b)(6) motion is to challenge "the legal theory of the complaint, not the sufficiency of any evidence that might be adduced" and "to eliminate actions that are fatally flawed in their legal premises and destined to fail ..." Advanced Cardiovascular Systems Inc. v. SciMed Life Systems Inc., 26 USPQ2d 1038, 1041 (Fed. Cir. 1993).

On the issue of a substitute affidavit of use and substitute specimen, TMEP § 1604.10 provides in part:

> . . . (2) If the §8 affidavit was filed within one year before the end of any ten-year period after the date of registration, the substitute affidavit must state that the mark was in use in commerce on or in connection with the goods/services within one year before the end of the ten-year period after the date of registration, if accurate; (emphasis added)

Fed. R. Civ. P. 9(b) provides that the circumstances constituting the alleged fraud shall be stated with particularity. DaimlerChrysler Corp. v. American Motors Corp., 94 USPQ2d 1086, 1088 (TTAB 2010); See also King Automotive, Inc. v. Speedy Muffler King, Inc., 212 USPQ

801 (CCPA 1981) ("[t]he pleadings [must] contain explicit rather than implied expressions of the circumstances constituting fraud"). See also Wright & Miller, Federal Practice and Procedure: 5A §1296 n. 11 (2004) (citing cases that discuss purposes of the Rule 9(b) heightened pleading standard to include providing notice, weeding out baseless claims, and preventing fishing expeditions and fraud actions in which all facts are learned after discovery).

"A trademark is obtained fraudulently under the Lanham Act only if the applicant or registrant knowingly makes a false material representation with the intent to deceive the PTO." In re Bose Corporation, 476 F. 3d 1331, 91 USPQ2d 1938, 1941 (Fed. Cir. 2009). See also Torres v. Cantine Torresella *S. r. l.,* 808 F.2d 46, 48, 1 USPQ2d 1483, 1484 (Fed. Cir. 1986). The standard for finding intent to deceive is stricter that the standard for negligent or gross negligence. See Bose, 91 USPQ2d at 1941. Deceptive intent may be established by direct evidence or may be inferred from indirect or circumstantial evidence, but no matter the type of evidence, it must be clear and convincing. *Id.* citing Star Scientific, Inc. v. R. J. Reynolds Tobacco Co., 537 F3d. 1357, 1366, 88 USPQ2d 1001, 1007 (Fed. Cir. 2008). (emphasis added). "There is no fraud if a false representation is occasioned by honest misunderstanding or inadvertence without a willful intent to deceive." Bose, 91 USPQ2d at 1940 (emphasis added).

"Fraud in procuring or maintaining a trademark registration occurs when an applicant for registration or a registrant in a declaration of use or a renewal application knowingly makes specific false, material representations of fact in connection with an application to register or in a post-registration filing with the intent of obtaining or maintaining a registration to which it is otherwise not entitled." Qualcomm Inc. v. FLO Corp., 93 USPQ2d 1768, 1770 (TTAB 2010)(citing Bose).

Pleadings of fraud made "on information and belief," when there is no allegation of "specific facts upon which the belief is reasonably based" are insufficient. Exergen Corp. v. Wal-Mart Stores Inc., 91 USPQ2d 1656, 1670 (Fed. Cir. 2009) and cases cited therein (discussing when pleading on information and belief under Fed. R. Civ. P. 9(b) is permitted). "Additionally, under USPTO Rule 11.18, the factual basis for a pleading requires either that the pleader know of facts that support the pleading or that evidence showing the factual basis is "likely" to be obtained after a reasonable opportunity for discovery or investigation. Allegations based solely on information and belief raise only the mere possibility that such evidence may be uncovered and do not constitute pleading of fraud with particularity." Asian and Western Classics B.V. v. Selkow, 92 USPQ2d 1478, 1479 (TTAB 2009)(emphasis added). "A party making a fraud claim is under a heavy burden because fraud must be "proven 'to the hilt' by clear and convincing evidence," leaving nothing to speculation, conjecture, or surmise; any doubt must be resolved against the party making the claim. Id. at 1480 (emphasis added).

"Additionally, under USPTO Rule 11.18, the factual basis for a pleading requires either that the pleader know of facts that support the pleading or that evidence showing the factual basis is "likely" to be obtained after a reasonable opportunity for discovery or investigation. Allegations based solely on information and belief raise only the mere possibility that such evidence may be uncovered and do not constitute pleading of fraud with particularity." Asian and Western Classics B.V. v. Selkow, 92 USPQ2d 1478, 1479 (TTAB 2009) (emphasis added).

As to abandonment, a registered trademark is considered abandoned if its "use has been discontinued with intent not to resume such use." 15 U.S.C. § 1127 (2006). "Nonuse for 3 consecutive years shall be prima facie evidence of abandonment." *Id.* A showing of a prima facie case creates a rebuttable presumption that the trademark owner has abandoned the mark without

intent to resume use. On-Line Careline, Inc. v. Am. Online, Inc., 229 F.3d 1080, 1087 (Fed. Cir. 2000) (Fed. Cir. 2000). "The burden then shifts to the trademark owner to produce evidence that he either used the mark during the statutory period or intended to resume use." *Id.* "The burden of persuasion, however, always remains with the [challenger] to prove abandonment by a preponderance of the evidence." Id. As to abandonment through uncontrolled licensing, this charge must also be proved by clear and convincing evidence. See Winnebago Industries, Inc. v. Oliver & Winston, Inc., 207 USPQ 335 (TTAB 1980).

III. Legal Analysis

Petitioner's claims of fraud and abandonment must fail, and thus its pleading should be stricken. Neither the amended nor the additional paragraphs are sufficient to show intent to deceive or abandon, and none can be inferred. Petitioner does not know facts that support its claims – it only knows it could not find anything. Petitioner hopes that discovery will uncover the facts it seeks, but no fact will show that Registrant acted with the intent to deceive. Petitioner's bizarre claim that Registrant tried to 'escape its burden of supplying truthful information' by avoiding the truth renders its claim of intent to deceive moot. Moreover, Registrant's Exhibit A should put to rest any question of intent to deceive or to abandon.

First, Petitioner's "amended" paragraphs alleging fraud remain completely devoid of facts, containing no clear and convincing evidence whatsoever. The amended paragraphs ONLY add the phrase "and upon the results of the investigation commissioned by Petitioner" to the preamble sentence of "upon information and belief." They are insufficient to be sustained as a matter of law as they contain no facts about the investigation. Petitioner must believe insertion of this phrase is the magic language required to cure its prior failure. It does not. Paragraphs 10, 11, 13, 14, 15 and 21 should be stricken as they are fatally flawed.

Second, Petitioner's "new" paragraphs, which allegedly contain facts uncovered from its investigation, do not apply to fraud, but possibly only abandonment. However, they not only fail to show clearly and convincingly that Registrant intended to deceive the USPTO, but they also fail to show that Registrant intended to abandon its mark without an intent to resume. Registrant in fact had use during the three years prior to renewal.

Petitioner admits that perhaps Registrant did not know at the time of the renewal about SGI's non-use, negating any inference of intent to deceive. This alone negates intentional fraud or abandonment. Registrant's continued sales of its SIM cards in the U.S., the subject of its supplemental renewal, makes the dismissal of the petition inevitable despite Petitioner's additional paragraphs. Registrant did not discontinue or abandon its other use, and never intended to deceive the PTO. Even if the investigation uncovered that Registrant had a gap in its supplemental use, Petitioner still has not shown that Registrant intended not to resume use.

Registrant sells its SIM cards to its U.S. SIM roaming partners. These are wholesale transactions done pursuant to terms of confidential contracts. After purchase, the SIM roaming partners embed the cards into prepaid phones for sale to retail consumers. Registrant receives revenues from the telecommunications roaming charges generated by use of the phones.

The investigator's report obviously did not report that Registrant's SIM cards are sold to transactional partners on a wholesale basis, who use them inside of cell phones, rather than to retail consumers. Registrant continues to sell these cards to its partners. Registrant's supplemental specimen of its SIM cards was proper as sale of these cards occurred at least one year before the end of the ten-period of renewal.

At worst, Registrant either inadvertently, or by honest mistake, initially submitted specimens to support its use by its licensee, \when use had ceased. This does not even rise to the

level of gross negligence. Petitioner's allegations of willful intent to deceive, intent to abandon or *de facto* abandonment through naked licensing are futile. The circumstances that Petitioner has alleged from its investigation, even if true, do not plausibly suggest any deliberate decision by Registrant to make a knowingly false misrepresentation—a necessary predicate for inferring deceptive intent or to show abandonment.

Petitioner will undoubtedly rely on the Board's recent decision in Meckatzer Löwenbräu Benedikt Weiß KG v. White Gold LLC, 95 USPQ2d 1185 (TTAB 2010). However, the facts in that matter distinguish it from this matter. In Meckatzer, a motion to dismiss an amended pleading of fraud was denied because the amended petition relied on facts gleaned from a investigation. Id. at 118. However, the facts found in Meckatzer by the petitioner's investigator were clear, namely that the respondent's mark was only in use on vodka and none of the other goods listed in its statement of use. Id. (finding the amended pleadings to be sufficient specific as a result). Further, that motion to dismiss was denied in part because it was based on a claim that the petitioner had not identified a specific individual who had the requisite intent, a predicate not supported. Id. In contrast, Petitioner here relies on speculation and conjecture arising from the investigator's inability to make a determination about any of the goods on which Registrant uses it mark. Such speculation does not support an allegation of intent to deceive but suggests that the investigator did not know where to look.

Moreover, in its amended pleading, Petitioner submits a crazy theory that Registrant intentionally chose to rely on SGI's duty to report discontinuance so that Registrant could "escape its burden of supplying truthful information" (See Amended Petition for Cancellation paragraphs 26 and 27). Even if this preposterous notion was true, which Registrant strongly denies, escaping a duty is not the same thing as having actual knowledge of non-use coupled

with intent to deceive. One cannot lie about things one does not know about, and it negates any finding of intentional abandonment as well.

Petitioner cannot have it both ways. Petitioner cannot claim that Registrant had actual knowledge about SGI's alleged non-use (which remains undetermined\) and intentionally lied to the USPTO both at its initial renewal and about its substitute renewal, then ALSO claim that Registrant purposefully chose not to know about SGI's non-use. First, Registrant had no actual knowledge that SGI's use had ceased. Second, if it did not know that use had ceased, it could NOT have then intentionally misled the USPTO. Finally, it has actual use currently on its SIM cards.

Registrant requests that the Board strike the amended petition in its entirety. Petitioner's allegations will not stand up under scrutiny. Petitioner cannot prove now or ever that Registrant intended to deceive the patent office or that it ever intentionally abandoned its mark. Letting this matter go forward would be a waste of judicial resources.

IV. Conclusion

Registrant requests that the Board grant Registrant's Motion in its entirety. In the event that the Board does not grant this motion, Registrant hereby submits its Answer to Petitioner's First Amended Petition for Cancellation as included in Exhibit B attached.

Dated: July 26, 2010

BAKER AND RANNELLS, PA

By: /s/ Linda Kurth

Stephen L. Baker
Linda Kurth
Attorneys for Registrant
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

EXHIBIT A

[redacted]
USA

[redacted]

Date: 30 April 2008

SIM Card Invoice

In Respect Of The Period: April 2008

SIM Card Order:	10,000	@	£3.00	30,000.00

SP Purchase Order Number: [redacted]

Net Amount:	30,000.00
VAT @ 0.00%	0.00
Total Invoice Amount:	£30,000.00

[redacted]
USA

[redacted]

Date: 30 June 2008

SIM Card Invoice

In Respect Of The Period: June 2008

SIM Card Order:	10,000	@	£3.00	30,000.00

SP Purchase Order Number: [redacted]

Net Amount:	30,000.00
VAT @ 0.00%	0.00
Total Invoice Amount:	£30,000.00

[redacted]
USA

[redacted]

Date: 28 February 2009

SIM Card Invoice

In Respect Of The Period: February 2009

SIM Card Order:	10,000	@	£3.00	30,000.00

SP Purchase Order Number: [redacted]

Net Amount:	30,000.00
VAT @ 0.00%	0.00
Total Invoice Amount:	£30,000.00

[redacted]
USA

[redacted]

Dale: 31 October 2009

SIM Card Invoice

In Respect Of The Period: October 2009

SIM Card Order:	10,000	@	£3.00	30,000.00

SP Purchase Order Number: [redacted]

Net Amount:	30,000.00
VAT @ 0.00%	0.00
Total Invoice Amount:	£30,000.00

[redacted]

USA

[redacted]

Date: 30 June 2010

SIM Card Invoice

In Respect Of The Period: June 2010

SIM Card Order:	10,000	@	£3.00	30,000.00

SP Purchase Order Number: [redacted]

Net Amount:	30,000.00
VAT @ 0.00%	0.00
Total Invoice Amount:	£30,000.00

EXHIBIT B

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

O2Micro International Ltd.	Cancellation No. 92051170
Petitioner,	Mark: O2
v.	Reg. No. 2231093
O2 Holdings, Ltd.	
Registrant.	

ANSWER TO FIRST AMENDED PETITION FOR CANCELLATION

Registrant, O2 Holdings, Ltd., ("Registrant"), by and through its attorneys Baker & Rannells, PA, for its Answer and Affirmative Defenses to the First Amended Petition for Cancellation of the Petitioner, O2Micro International Ltd., ("Petitioner"), alleges on knowledge as to its own acts and otherwise upon information and belief as follows:

With respect to the introductory paragraph of the First Amended Petition for Cancellation, Registrant states that it has insufficient knowledge or information upon which to form a belief as to the corporate information of Petitioner and it denies that Petitioner will be damaged by Registration No. 2231093.

1. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 1 of the First Amended Petition for Cancellation with respect to Petitioner's family of trademarks ("Petitioner's Marks").

2. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 2 of the First Amended Petition for Cancellation.

3. Registrant admits that Petitioner and Registrant are parties to trademark opposition proceedings in other countries with respect to trademarks comprising the term "O2."

4. Registrant admits that on September 19, 1996, Registrant's predecessor in interest, Silicon Graphics, Inc. filed an application with the United States Patent and Trademark Office ("USPTO") for the mark "O2," ("Registrant's Mark"), serial number 75268580 in Class 9 for "computer hardware and computer operating system software, and instructional manuals therefore sold as a unit therewith," which subsequently matured into Registration Number 2331093 (the "O2 Registration").

5. Registrant admits that on October 29, 2007, Registration Number 2331093 was assigned to Registrant and recorded with the USPTO at Reel 03649, Frame 0527.

6. Registrant admits that on March 9, 2009, it filed a Combined Declaration of Use in Commerce & Application for Renewal of registration of Registrant's Mark under Sections 8 & 9 ("Renewal Application") and claimed use of the mark in commerce in connection with all of the goods recited in the O2 Registration. Registrant has insufficient knowledge or information upon which to form a belief concerning the remainder of the allegations contained in Paragraph 6 of the First Amended Petition for Cancellation.

7. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 7 of the First Amended Petition for Cancellation.

8. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 8 of the First Amended Petition for Cancellation.

9. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 9 of the First Amended Petition for Cancellation.

10. Registrant has insufficient knowledge or information upon which to form a belief concerning the allegations contained in Paragraph 10 of the First Amended Petition for Cancellation.

11. Registrant denies each and every allegation contained in Paragraph 11 of the First Amended Petition for Cancellation.

12. Registrant denies each and every allegation contained in Paragraph 12 of the First Amended Petition for Cancellation.

13. Registrant denies each and every allegation contained in Paragraph 13 of the First Amended Petition for Cancellation.

14. Registrant denies each and every allegation contained in Paragraph 14 of the First Amended Petition for Cancellation.

15. Registrant admits that the Renewal was granted for the O2 Registration but Registrant denies the remainder of the allegations contained in Paragraph 15 of the First Amended Petition for Cancellation.

16. Registrant admits that on September 8, 2009, it submitted a supplemental declaration of use and specimen of use in support of its renewal. Registrant denies the remainder of the allegations contained in Paragraph 16 of the First Amended Petition for Cancellation.

17. Registrant admits that its supplemental specimen of use in support of its renewal shows its O2 Mark on a SIM card bearing the web address www.O2.co.uk/blueroom.

Registrant denies the remainder of the allegations contained in Paragraph 17 of the First Amended Petition for Cancellation

18. Registrant denies each and every allegation contained in Paragraph 18 of the First Amended Petition for Cancellation.

19. Registrant denies each and every allegation contained in Paragraph 18 of the First Amended Petition for Cancellation.

20. Registrant denies each and every allegation contained in Paragraph 20 of the First Amended Petition for Cancellation.

21. Registrant denies each and every allegation contained in Paragraph 21 of the First Amended Petition for Cancellation.

22. Registrant admits that on October 29, 2007, SGI assigned its entire interest in the O2 registration to Registrant.

23. Registrant denies each and every allegation contained in Paragraph 23 of the First Amended Petition for Cancellation.

24. Registrant admits that it entered in to a licensing agreement with SGI allowing SGI to use the O2 Mark in connection with goods identified in the O2 registration

25. Registrant denies each and every allegation contained in Paragraph 25 of the First Amended Petition for Cancellation.

26. Registrant denies each and every allegation contained in Paragraph 26 of the First Amended Petition for Cancellation.

27. Registrant denies each and every allegation contained in Paragraph 27 of the First Amended Petition for Cancellation.

28. Registrant denies each and every allegation contained in Paragraph 28 of the First Amended Petition for Cancellation.

AFFIRMATIVE DEFENSES

1. As and for a first defense, the First Amended Petition for Cancellation fails to state a claim upon which relief can be granted

2. As and for a second defense, the First Amended Petition for Cancellation is barred by the doctrines of laches and waiver in that the Petitioner's Marks have coexisted with Registrant's Mark since at least 2001 without prior objection from Petitioner.

3. As and for a third defense, the First Amended Petition for Cancellation is barred by the doctrine of estoppel in that the United States Patent and Trademark Office ("USPTO") issued an office action with regard to one of Petitioner's applications in which the Examining Attorney cited Registrant's Mark in a 2(d) refusal to register. Teresa Tucker, the attorney who filed the instant Petition to Cancel, successfully responded that Registrant's Mark and Petitioner's Mark were so dissimilar in name and with respect to the goods on which each party used its Mark that no likelihood of confusion was likely to occur. The Examining Attorney at the USPTO relied on the statements of Ms. Tucker, removed the 2(d) citation and allowed Petitioner's Mark to register.

4. As and for a fourth defense, the First Amended Petition for Cancellation is barred in whole or in part by the unclean hands doctrine as the parties are involved in other litigation in Europe in which they indicated mutual desires to settle, and Petitioner instituted this litigation purely as a settlement tactic.

5. As and for a fifth defense, Petitioner may have committed fraud on the USPTO for failure to use one of its Marks in association with its goods by not either directly applying its Mark on its goods or on its point of sale material, or the like; Applicant reserves the right to file an Amended Answer with Counterclaims after discovery commences and discoverable evidence is produced of said fraud.

Dated: July 26, 2010.

BAKER AND RANNELLS, PA

By: /s/ Linda Kurth

Stephen L. Baker
Linda Kurth
Attorneys for Registrant
575 Route 28, Suite 102
Raritan, New Jersey 08869
(908) 722-5640

CERTIFICATE OF SERVICE

I hereby certify that a copy of Registrant's Motion to Dismiss or Alternatively Registrant's Answer to Petitioner's First Amended Petition for Cancellation in re O2Micro International Ltd.v. O2 Holdings, Ltd., Cancellation Number 92051770 was forwarded by email and first class mail, postage prepaid, on this 26 day of July, 2010 to the attorneys for the Petitioner at the following address:

Teresa C. Tucker
Grossman, Tucker, Perreault & Pfleger, PLLC
55 S. Commercial Street
Manchester, NH 03101
ttucker@gtpp.com

/s/ Linda Kurth
Linda Kurth