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

Proceeding	92057366
Party	Defendant UVCleaning Systems, Inc.
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Date	07/26/2013
Attachments	Answer of Registrant UVCleaning Systems.pdf(2172319 bytes)

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

1047406 Ontario Ltd. and Purifics ES, INC., Petitioners, v. UVCleaning Systems, Inc., dba Puralytics Corporation, Registrantt.	))))))))))	ANSWER Cancellation No.: 92057366

In re trademark registration of: UVCleaning Systems, Inc., dba Puralytics Corporation.

Registration No.: 4217809

Registered: October 2, 2012

Mark: PURALYTICS

International Class(es): 11

ANSWER OF REGISTRANT UVCLEANING SYSTEMS, INC.

COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313

Registrant UVCleaning Systems, Inc., dba Puralytics Corporation ("Registrant") answers the Petition for Cancellation ("Cancellation") filed by Petitioners 1047406 Ontario Ltd. and Purifics ES, Inc., as follows:

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Cancellation.

2. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Cancellation.

3. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Cancellation.

4. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Cancellation.

5. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Cancellation.

6. Registrant admits that it is a corporation with a principal place of business at 15250 NW Greenbrier Pkwy, Beaverton, Oregon 97006. Registrant denies that it is a newcomer to the water purification industry. Registrant admits that Mark Owen has alleged that "we started using Puralytics as a mark in the beginning of 2009," but at the same time also stated that he "does not know the exact dates" of when Registrant began use of PURALYTICS.

7. Registrant admits that it filed an intent-to-use application for PURALYTICS in October 2009 for waste water purification units, water purification and filtration apparatus, and water purification units in International Class 11, that the number of the application assigned by the Patent and Trademark Office was 77861438, and that the application was published for opposition on April 30, 2010. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7 of the Cancellation.

8. Registrant admits that within the period from 2010 to Spring 2013 the parties conducted written discovery and took depositions. Registrant lacks knowledge or information sufficient to form a belief as to the truth of whether such discovery constitutes significant discovery. Registrant denies that Petitioner served any discovery request seeking the identity of all of Registrant's trademark applications and registrations in the water purification industry. What Petitioner sought was that Registrant "[i]dentify each of Applicant's registrations of, applications to register, or any attempt to register any mark in the United States Patent and

Trademark Office or elsewhere for waste water purification units, water purification and filtration apparatus, water purification units, or any related products." Registrant objects to the characterization that that Registrant did not identify applications and registrations by not producing documents. This characterization is vague and ambiguous and accordingly unanswerable. Registrant denies that requested information was not provided. Registrant identified Application Serial No. 77/861,438. Registrant admits that it has not supplemented its responses to Petitioner's written discovery in Opposition 91,194,706. Registrant denies that it has not disclosed the existence of other trademark applications or registrations noting that both its filing and the Patent and Trademark Office's publication of the application that matured into the registration that is the subject of this Cancellation may be considered disclosures.

9. Registrant admits that it filed an intent-to-use application for PURALYTICS on March 1, 2012, to register the mark PURALYTICS for portable sunlight activated water purification units. Registrant admits that this application was filed while Opposition 91194706 was pending. Registrant lacks knowledge or information sufficient to form a belief as to the truth of Petitioner's allegation that it did not know of the filing. Registrant admits that Registration No. 4217809 issued over 8 months ago, on October 2, 2012, to Registrant for PURALYTICS for portable sunlight activated water purification units.

10. Registrant denies that it filed an application to register its mark PURALYTICS for "water purification goods" as Petitioner characterizes Registrant's application. The Registration that Petitioner is seeking to cancel identifies "portable sunlight activated water purification units." Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegation that Registrant's use of and application to register its now registered PURALYTICS mark were without Petitioner's consent, noting that acquiescence can be

considered consent -- and therefore that Petitioner may have consented by acquiescence to Registrant's use of and application to register PURALYTICS.

11. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations that Petioner provides water purification goods and services under its alleged PURIFICS mark using a photocatalytic process. Registrant admits that its sunlight activated water purification units use a photocatalytic process. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations that the photocatalytic process employed in its goods is similar to the alleged photocatalytic process employed by Petitioner.

12. Registrant denies the allegations in Paragraph 12 of the Cancellation.

13. Registrant denies the allegations in Paragraph 13 of the Cancellation.

14. Registrant admits that it markets its goods to purchasers of water purification goods. Registrant otherwise denies the allegations in Paragraph 14 of the Cancellation.

15. Registrant denies the allegations in Paragraph 15 of the Cancellation.

16. Registrant denies the allegations in Paragraph 16 of the Cancellation.

17. Registrant denies the allegations in Paragraph 17 of the Cancellation.

18. Registrant denies the allegations in Paragraph 18 of the Cancellation.

19. All allegations not specifically admitted or denied herein are denied.

AFFIRMATIVE AND OTHER DEFENSES

Further answering the Notice of Cancellation, Registrant UVCleaning Systems, Inc., dba Puralytics Corporation ("Registrant") asserts the following defenses and reserves the right to amend its Answer with additional defenses as additional information is obtained.

FIRST AFFIRMATIVE DEFENSE

There are numerous uses of marks closer to PURIFICS than Registrant's mark in connection with water treatment and/or purification, including a proliferation of marks using or starting with variations of PUR or PURE, thereby confirming the narrow scope of any rights alleged by Petitioners and negating any likelihood of confusion.

SECOND AFFIRMATIVE DEFENSE

Petitioners have been aware of Registrant's use of PURALYTICS for goods used for water purification since at least as early as April 2010. In that regard, Petitioner stated in response to Interrogatory No. 4 in Opposition 91194706 that before filing that opposition it conducted "Internet research of [Registrant's] website to determine the goods and services that [Registrant] purports to offer." Registrant's website disclosed its use of PURALYTICS for goods used for water purification since at least as early as that time. Further, Registrant's website at that time also disclosed Registrant's SolarBag (a portable sunlight activated water purification unit) offered in connection with its PURALYTICS name. On information and belief, Registrant should have known of this use having reviewed Registrant's website "to determine the goods and services that [Registrant] purports to offer." Despite this awareness for over three years, Petitioners have taken no action to prevent Registrant's use of its PURALYTICS mark and, particularly, have taken no action to stop Registrant's use of its PURALYTICS mark on the goods identified in the subject registration: portable sunlight activated water purification units. Rather, Petitioners have allowed Registrant to continue on in its business using PURALYTICS for portable sunlight activated water purification units. Having knowingly allowed Registrant to continue to use PURALYTICS for over three years, it would be prejudicial to Registrant to now find for Petitioner that the marks at issue are likely to cause confusion when used on the identified goods. Petitioner's Cancellation is barred by laches.

THIRD AFFIRMATIVE DEFENSE

Registrant realleges the allegations of its Second Affirmative Defense. Despite being aware for over three years that Registrant uses PURALYTICS for a portable sunlight activated water purification unit, Petitioners have taken no action to prevent Registrant's use of its PURALYTICS mark. Rather, Petitioners have allowed Registrant to continue on in its business using PURALYTICS for a portable sunlight activated water purification unit. Having knowingly allowed Registrant to continue to use PURALYTICS for over three years, Petitioners have acquiesced in Registrant's use and should also be considered to have acquiesced in Registrant's registration. This Cancellation is barred by acquiescence.

PRAYER FOR RELIEF

WHEREFORE, Registrant requests judgment dismissing Petitioners' Notice of Cancellation in this proceeding in its entirety with prejudice, and that Registrant's application for the mark PURALYTICS, Serial No. 77/861,438, be registered to Registrant.

Dated: July 26, 2013

Respectfully submitted,

UVCLEANING SYSTEMS, INC. dba
PURALYTICS CORPORATION

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 26, 2013, the foregoing ANSWER, was served on Petitioners' attorneys by first class mail, to:

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