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Filing date: **05/26/2016**

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

Proceeding	92063349
Party	Plaintiff Accumetric, LLC
Correspondence Address	SAMANTHA M QUIMBY FROST BROWN TODD LLC 400 W NARJET STREET, 32ND FLOOR LOUISVILLE, KY 40202 UNITED STATES fbtiplitigation@fbtlaw.com, squimby@fbtlaw.com, kcomella@fbtlaw.com, cstewart@fbtlaw.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Samantha M. Quimby
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Signature	/samantha m quimby/
Date	05/26/2016
Attachments	Motion to Amend Petition to Cancel.pdf(747205 bytes) Exhibit A to Motion to Amend Petition to Cancel.pdf(4282185 bytes)

Date: May 26, 2016

Respectfully submitted,

/samantha m quimby/

Samantha M. Quimby

Cynthia L. Stewart

Kathryn A. Comella

FROST BROWN TODD LLC

400 W. Market Street

32nd Floor

Louisville, KY 40202

Telephone: (502) 568-0225

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Amend Petition to Cancel was served on the Counsel for Registrant via First Class mail, postage prepaid, at the correspondence address of record on this 26th day of May, 2016:

Terrence J. Linn
Gardner Linn Burkhardt & Flory LLP
2851 Charlevois Drive SE, Ste 207
Grand Rapids, Michigan 49546

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Samantha M. Quimby

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Samantha M. Quimby

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EXHIBIT A

packages, sells and distributes adhesives, sealants, lubricants, and related products to domestic customers and other customers worldwide.

2. Accumetric is the owner of, among others, the following federal trademark registrations:

BOSS—Registration No. 2,354,288, registered June 6, 2000, for adhesives for applying floor tiles, for use in the manufacture of furniture and for use in the construction industry; adhesives for stationery or household purposes; and adhesive sealants for general use.

(the “BOSS Registered Mark”).

3. Pursuant to Trademark Rule 2.122(d)(1), Accumetric hereby provides proof of status and title of the BOSS Registered Mark by filing a copy of the records from the USPTO electronic database attached hereto as Exhibit A.
4. The certificate of registration identified in paragraphs 2 and 3 is valid and subsisting and is prima facie evidence of the validity of the registration, of Accumetric’s ownership of the BOSS Registered Mark, of Accumetric’s exclusive right to use the BOSS Registered Mark in commerce in connection with the goods specified under the provisions of 15 U.S.C. § 1057(b), and is constructive notice of Accumetric’s claim of ownership under 15 U.S.C. § 1072. Moreover, this registration is incontestable, which provides conclusive evidence of its validity, of Accumetric’s ownership of the mark and of Accumetric’s exclusive right to use the BOSS Registered Mark in commerce under 15 U.S.C. § 1115(b).
5. Accumetric has used the BOSS Registered Mark in interstate commerce in the United States continuously since December 1, 1985 in connection with the manufacture, distribution, provision, offering for sale, sale, marketing, advertising and promotion of adhesives and sealants. Attached hereto as Exhibit B are excerpts from Accumetric’s

website showing Accumetric's use of the Boss Registered Mark in connection with adhesive and sealant products.

6. As a result of its widespread, continuous and exclusive use of the BOSS Registered Mark to designate its adhesives and sealants and Accumetric as their source, Accumetric owns valid and subsisting federal statutory and common law rights to the BOSS Registered Mark.
7. The BOSS Registered Mark is distinctive to both the consuming public and to businesses in the adhesives and sealants market.
8. Accumetric has expended substantial time, money and resources marketing, advertising and promoting the adhesives and sealants sold under the BOSS Registered Mark including through regional and national trade shows, individual promotional events or "counter" days at distributor locations and direct marketing through direct mailings, catalogs and otherwise to the ultimate consumer and to distributors.
9. Registrant applied for the GLUEBOSS Registered Mark for use on acrylic based sealants and adhesives under Section 1(a) on January 25, 2012, a date long after Accumetric's first use of the BOSS Registered Mark
10. The GLUEBOSS Registered Mark registered on November 20, 2012 for use in connection with acrylic based sealants and adhesives in International Class 17, a date long after Accumetric's first use of the BOSS Registered Mark.
11. The GLUEBOSS Registered Mark claims a first use date of January 19, 2012, a date long after Accumetric's first use of the BOSS Registered Mark.
12. Registrant and Accumetric are not related companies and do not otherwise have any connection or contractual relation with one another.

13. The GLUEBOSS Registered Mark is confusingly similar to the BOSS Registered Mark such that one would reasonably expect them both to emanate from the same source, and the contemporaneous use thereof is likely to cause confusion, mistake, or deception because the purchasing public is likely to believe that Registrant's goods emanate from, or are in some way associated or connected with, or sponsored, licensed, or authorized by Accumetric, all to the damage of Accumetric.
14. As such, the GLUEBOSS Registered Mark should be cancelled pursuant to Section 2(d) of the Lanham Act.
15. Further, the GLUEBOSS Registered Mark is for use on products that are advertised and sold to the same consuming public as that of Accumetric's products that are sold and advertised under the BOSS Registered Mark. The GLUEBOSS Registered Mark is similar to the BOSS Registered Marks in look, sound, and commercial impression and the marks are used on identical goods. As a result, and given Accumetric's long-standing use and promotion of its BOSS Registered Mark and the resulting recognition of the BOSS Registered Mark in the relevant marketplace, the GLUEBOSS Registered Mark ~~creates~~ is likely to cause confusion a false sense of connection between Registrant and with Accumetric's BOSS Registered Mark. under Section 2(ad).
16. The use of GLUEBOSS by Registrant also constitutes an attempt to palm off and appropriate to itself Accumetric's exclusive rights in the mark BOSS for glues, adhesives and sealants.
17. Given Accumetric's long-standing use of BOSS Registered Mark for decades, the BOSS mark became famous long before Registrant's first use date. As such, the BOSS Registered Mark dilutes the distinctiveness of Accumetric's BOSS Registered Mark

under Section 43(c)

18. By reason of the foregoing, Petitioner's Cancellation should be sustained and the GLUEBOSS Registered Mark should be cancelled pursuant to Section 14 of the Trademark Act (15 U.S.C. § 1064).

WHEREFORE, Petitioner prays that this Petition to Cancel be sustained and that Trademark Registration No. 4244791 be cancelled under Sections 2(d), ~~2(a)~~ and 43(c) of the Trademark Act.

The fee of \$ 300.00 as provided by Sections 14 and 31 of the Trademark Act of 1946 is paid by credit card upon electronic filing of this Petition to Cancel. Please recognize Cynthia L. Stewart and Samantha M. Quimby, members of the Bar of the Commonwealth of Kentucky and the State of Ohio, respectively, as its attorneys to prosecute this Petition to Cancel and to transact all business in the Patent and Trademark Office in connection herewith. Please address all communications and correspondence to: Cynthia L. Stewart, Frost Brown Todd LLC, 400 W. Market Street, 32nd Floor, Louisville, KY 40202, Telephone 502.568.0225, Facsimile 502.581.1087, email at cstewart@fbtlaw.com.

Date: ~~March~~ May —, 26, 2016

Respectfully submitted,

/samantha m quimby/

Samantha M. Quimby

Cynthia L. Stewart

~~Kathryn~~ Kathryn A. Comella

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I hereby certify that a copy of the foregoing ~~Notice of Opposition~~ Amended Petition to Cancel was served on the Counsel for Registrant via First Class mail, postage prepaid, at the correspondence address of record on this ~~—26th day of March~~ May, 2016:

Terrence J. Linn
Gardner Linn Burkhardt & Flory LLP
2851 Charlevois Drive SE, Ste 207
Grand Rapids, Michigan 49546

GlueBoss Adhesive Company LLC
435 Harrison Street
Elkhart, Indiana 46516-2771
Attn: Louis J. Giovannini

/samantha m quimby/

Samantha M. Quimby

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