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Filing date: **05/11/2016**

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

Proceeding	92063349
Party	Defendant GlueBoss Adhesive Company LLC
Correspondence Address	GLUEBOSS ADHESIVE COMPANY LLC 435 HARRISON STREET ELKHART, IN 46516-2771 UNITED STATES lou@gemstoness.com, lou.giovannini@gmail.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Terence J. Linn
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Signature	/Terence J. Linn/
Date	05/11/2016
Attachments	2-Registrants Motion to Dismiss for Failure to State A Claim.pdf(14284 bytes) 3-Registrants Brief in Support of Motion to Dismiss for Failure to State A Claim.pdf(16654 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Accumetric, LLC,)	
)	Cancellation No. 92063349
Petitioner,)	
)	Trademark Registration No. 4,244,791
v.)	
)	
GlueBoss Adhesive Company, LLC)	
)	
Registrant.)	

**REGISTRANT’S MOTION TO DISMISS IN PART
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
PURSUANT TO FED.R.CIV.P 12(b)(6)**

Registrant, GlueBoss Adhesive Company, LLC, through counsel, moves concurrently with its Answer and Affirmative Defenses pursuant to Fed.R.Civ.P. 12(b)(6), to dismiss one of the bases alleged in the Petition for Cancellation, that based on §2(a) of the Trademark Act, for failure to state a claim upon which relief can be granted.

The bases for this motion is that:

Petitioner’s Petition for Cancellation based on §2(a) of the Trademark Act, 15 U.S.C. § 1052(a), does not allege, nor could it allege, any claim that the pleaded mark BOSS points uniquely and unmistakably to the identity or persona of Petitioner.

Petitioner has not stated a claim upon which relief can be granted under §2(a) of the Trademark Act. Dismissal of that bases for the Fed.R.Civ.P.12(b)(6) and other applicable rules is mandated. A memorandum in support of this motion is filed herewith.

Respectfully submitted,

GlueBoss Adhesive Company, LLC

Date: May 11, 2016

By: /Terence J. Linn/
Terence J. Linn

GARDNER, LINN, BURKHART & FLORY, LLP
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the 11th day of
May, 2016, upon the following via First Class Mail:

Samantha M. Quimby
Frost Brown Todd LLC
400 W Narjet Street, 32nd Floor
Louisville, KY 40202

/s/ Terence J. Linn
May 11, 2016

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Accumetric, LLC,)	
)	Cancellation No. 92063349
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)	Trademark Registration No. 4,244,791
v.)	
)	
GlueBoss Adhesive Company, LLC)	
)	
Registrant.)	

**REGISTRANT’S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS IN PART
FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED
PURSUANT TO FED.R.CIV.P 12(b)(6)**

Registrant, GlueBoss Adhesive Company, LLC, has moved pursuant to Fed.R.Civ.P. 12(b)(6) to dismiss the allegations of the Petition for Cancellation based on §2(a) of the Trademark Act (15 U.S.C. § 1052(a)) for failure to state a claim upon which relief can be granted. Petitioner, Accumetric, LLC (Accumetric), as pleaded, has alleged as a basis for this Petition that the Registered mark sought to be cancelled falsely suggests a connection with Petitioner Accumetric under §2(a) of the Trademark Act, 15 U.S.C. § 1052(a). The allegations of Petitioner Accumetric, as pleaded, fail to state a claim upon which relief can be granted.

In inter parties proceedings before the Board, an essential element of a §2(a) claim of false suggestion of a connection is that the defendant/registrant’s mark must point uniquely and unmistakably to the identity or persona of the “institution” asserting the claim. If the defendant’s mark does not point uniquely and unmistakably to the plaintiff/petitioner’s identify or persona, then there can be no false suggestion of a connection. *E.g. Internet Inc. v. Corporation for National Research Initiatives*, 38 USPQ2d 1435, 1436-37 (TTAB 1996). Absence of such a claim is grounds for dismissal for failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6). *Internet v. Corp. for National Research*, 38 USPQ2d at 1437.

Regarding Petitioner Accumetric's basis for cancellation pleaded under 35 U.S.C. § 1052(a), as pleaded in the Petitioner's Petition for Cancellation, Petitioner is Accumetric, LLC. This is the identity and persona of the Petitioner Accumetric institution. Regardless of any allegations regarding purported rights in the alleged mark BOSS, the Petition for Cancellation is devoid of any basis for claiming that the Registrant's mark uniquely and unmistakably points to the identity or persona of Petitioner Accumetric as opposed to some product. Petitioner Accumetric's Petition for Cancellation is devoid of any pleading that BOSS is its identity or persona. Nor could there be such an allegation. There is no allegation that Registrant's mark points uniquely and unmistakably to anything, much less to Petitioner Accumetric's identity. Dismissal pursuant to Fed.R.Civ.P. 12(b)(6) is mandated.

In view of the above, as pleaded, Petitioner Accumetric's Petition for Cancellation fails to state a claim upon which relief can be granted. Granting of Registrant's motion and dismissal of this cancellation proceeding pursuant to Fed.R.Civ.P. 12(b)(6) is warranted.

Respectfully submitted,

GlueBoss Adhesive Company, LLC

Date: May 11, 2016

By: /Terence J. Linn/
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