

2. Answering paragraph 2 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

4. Answering paragraph 4 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant has no knowledge or information sufficient to form a belief as to the allegations contained therein and accordingly denies the allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

7. Answering paragraph 7 of the Notice of Opposition, Applicant denies the allegation contained therein.

8. Answering paragraph 8 of the Notice of Opposition, Applicant denies the allegation contained therein.

9. Answering paragraph 9 of the Notice of Opposition, Applicant denies each and every allegation contained therein.

AFFIRMATIVE DEFENSES

10. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. The ELMOS registration, which is attached hereto as Exhibit A, is more akin to "EL-MOS", because of the heavy design element, which includes bubble letters, a raised dot separating the "EL" from the "MOS", and an "O" which appears to be a grid. The DRIVEN BY ELMOS registration, which is attached hereto as Exhibit B, also has further distinctive elements, which render it distinguishable from Applicant's εMOS (stylized) mark, in part being the fact that it is a slogan. It is noted that the examining attorney performed a search of the Trademark Office records, and did not find that either of these marks was similar to Applicant's εMOS (stylized) mark.

11. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. Applicant's application, which is attached hereto as Exhibit C, is distinguishable from the Opposer's marks in many ways. Applicant's house mark, the Greek letter epsilon, or "ε", is combined with "MOS", which is well known in the trade as an acronym for "metal-oxide-semiconductor". This mark is a stylized mark due to the computer keyboard's inability to type the Greek letter "ε", and not a design mark.

12. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. Any similarity, if at all, between Applicant's mark and the pleaded marks of Opposer is in the term "MOS", which is a well-known term in the semiconductor field. Also, upon information and belief, the term "MOS" has been used and registered by numerous third parties in the semiconductor product and services fields. A search of the Trademark Office database of marks using the term "MOS" in International Class 9 alone reveals 288 records, a printout of which is attached as Exhibit D. A sampling of these results is attached as Exhibit E, containing printouts of United States Trademark Registration Nos. 1,229,358, 1,358,920, 1,388,904, 1,405,604, 1,418,207, 1,656,640, 1,882,876, 1,887,794, 1,973,895, 2,144,824, 2,358,266, 2,438,860, 2,484,465, and 2,489,118, each and every registration of which uses "MOS" as part of the mark, and is registered in the field of semiconductor devices. As a result, Opposer cannot base any similarity between its pleaded marks and the mark of Applicant on the term "MOS".

13. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant's mark is not confusingly similar to the pleaded marks of Opposer. Opposer has also attempted to compare the "EL" portion of its mark to the "e" in Applicant's mark. Applicant asserts that there is no similarity between "EL" and the Greek letter epsilon. Purchasers of any of Opposer's goods or Applicant's services will be sophisticated enough to be able to recognize the Greek letter epsilon when they see it, instead of just thinking it is a fanciful letter "e". A potential client looking to license the intellectual property of Applicant will recognize the Greek letter of Applicant's mark, almost exclusively seen as "εMOS". If, however, Applicant for graphics reasons were unable to portray the Greek letter "epsilon", the mark would be portrayed as "eMOS". Even when the "eMOS" mark is compared to Opposer's "EL-MOS" mark, which is

almost universally seen as “Elmos” in the marketplace, there is still no likelihood of confusion. However, in opposition proceedings, the only consideration is the mark as shown in the application, namely εMOS, and not eMOS, because opposition proceedings do not determine the common law rights of Applicant. What is to be determined here is whether Applicant’s mark is entitled to registration, namely whether εMOS is entitled to registration, not whether eMOS is entitled to registration.

14. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant’s mark is not confusingly similar to the pleaded marks of Opposer. The mark EL-MOS gives the perception of being the plural of “ELMO” rather than a variation of “εMOS”. A search of the Trademark Office database for the mark “ELMOS” reveals 49 records of marks that are some variation of “ELMO”, none of which are εMOS, which is attached as Exhibit F. The most famous of these marks is the Children’s Television Workshop mark, “ELMO’S WORLD”.

15. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant’s services are not confusingly similar to the goods of Opposer. Applicant’s services are “technical, scientific and industrial research, technical project studies, and licensing of intellectual property, all related to research and development of semiconductor processes, materials, devices and circuits”, with a heavy emphasis on the licensing of intellectual property. Opposer’s goods are almost completely related to the automotive industry. Attached as Exhibit G is “Overview of some ELMOS ASICs” from the Elmos Semiconductor web page, in which it is stated, “[a] large portion of our products are customer-specific and therefore not generally available.” In addition, attached as Exhibit H is a press release from Motorola Inc.’s web page regarding a partnership with Elmos Semiconductor, in which it is stated on page 2 that “[t]he company is therefore

specialized on Mixed-Signal and Smart-Power devices mainly for the automotive business (85%).”

16. There is no likelihood of confusion, mistake or deception because, *inter alia*, Applicant’s services are not confusingly similar to the goods of Opposer. Because of the highly technical nature of Applicant’s services, and the highly specific nature of Opposer’s goods, the purchasers of each are more discerning of the products which they purchase than the average, impulse buying consumer.

17. Applicant further affirmatively alleges that as a result of its adoption and use of its mark εMOS, this mark is a valuable asset of Applicant and carries considerable goodwill and consumer acceptance of its products sold under the mark. Such goodwill and widespread usage has made the mark distinctive to the Applicant.

18. Applicant further affirmatively alleges that it is the owner of United States Trademark Application No. 76/256935 and United States Service Mark Application No. 76/256939, both for the mark “ε” as house marks for Applicant and attached as Exhibit I. It is this house mark that Applicant has placed in front of the well-known term “MOS”, to form it’s new and distinctive mark, εMOS.

In view of the foregoing, Applicant contends that this opposition is groundless and baseless in fact; that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant’s service mark; that Applicant’s service mark is manifestly distinct

from any alleged mark of the Opposer or any designation of the Opposer and Applicant prays that this Opposition be dismissed and that Applicant be granted registration of its service mark.

AMBERWAVE SYSTEMS CORPORATION

Dated: 11/14/01

By: Matthew E. Connors
Matthew E. Connors, Attorney for Applicant
Samuels, Gauthier & Stevens LLP
225 Franklin Street, Suite 3300
Boston, Massachusetts 02110
Tel: (617) 426-9180 ext. 112

CERTIFICATE OF SERVICE

I hereby certify that a copy of this paper, along with all papers referred to as being attached or enclosed, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 and is addressed to Stewart J. Bellus, Collard & Roe, P.C., 1077 Northern Boulevard, Roslyn, New York, 11576, on this 14th day of November, 2001.

LABEL NO. EL853225339US

Matthew E. Connors
Matthew E. Connors, Esq.
Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that this paper, along with all papers and fees referred to as being attached or enclosed, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

LABEL NO.: EV 039175847 US

Matthew E. Connors
Matthew E. Connors, Esq.

DATED: November 14, 2001

Attorney for Applicant

Brown **TTAB**

6413-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Owner: AmberWave Systems Corporation

Opposition: Elmos Semiconductor Aktiengesellschaft, Opposer

v.

AmberWave Systems Corporation, Applicant



11-14-2001

U.S. Patent & TMO/TM Mail Rcpt Dt. #58

Filing Date: August 24, 2000

Assistant Commissioner for Trademarks
2900 Crystal Drive/ Box PTAB No Fee
Arlington, VA 22202-3513

TRANSMITTAL LETTER

Sir:

Enclosed herewith are the following:

1. Applicant's Answer To Notice of Opposition including Exhibits A-I
2. A self-addressed, postage prepaid return postcard.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account 19-0079.

Matthew E. Connors
Reg. No. 33,298
Samuels, Gauthier & Stevens LLP
225 Franklin Street, Suite 3300
Boston, MA 02110
(617) 426-9180
Extension 112

CERTIFICATION UNDER 37 CFR 1.10

I hereby certify that this paper, along with all papers and fees referred to as being attached or enclosed, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

LABEL NO.: EV039175847US

DATED: November 14, 2001

Deborah M. Costello
(Type or print name of person mailing paper)

(Signature of person mailing paper)

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