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Filing date: **12/20/2005**

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

Proceeding	91160497
Party	Defendant Suarez Corporation Industries Suarez Corporation Industries 7800 Whipple Avenue N.W. North Canton, OH 44720
Correspondence Address	John P. Murtaugh Pearne & Gordon LLP 1801 East 9th Street Suite 1200 Cleveland, OH 44114-3108  tmdocket@pearnegordon.com, scolon@pearnegordon.com
Submission	Response to Board Order/Inquiry
Filer's Name	John P. Murtaugh
Filer's e-mail	ckintly@pearnegordon.com
Signature	/johnpmurtaugh/
Date	12/20/2005
Attachments	SUA-35433-MOTION-page1-JPM.tif ( 1 page ) SUA-35433-MOTION-page2-JPM.tif ( 1 page ) SUA-35433-MOTION-page3-JPM.tif ( 1 page ) SUA-35433-MOTION-page4-JPM.tif ( 1 page ) SUA-35433-MOTION-page5-JPM.tif ( 1 page ) SUA-35433-MOTION-page6-JPM.tif ( 1 page ) SUA-35433-MOTION-page7-JPM.tif ( 1 page ) SUA-35433-MOTION-page8-JPM.tif ( 1 page )

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

Speedel Holding AG,

Opposer,

v.

Suarez Corporation Industries,

Applicant.

In re U.S. Application Serial No. 78/224,251

For the Mark SPEED SLIM

Opposition No. 91160497

Commissioner for Trademarks  
Box TTAB – NO FEE  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO SET ASIDE DEFAULT JUDGMENT AND FOR PERMISSION TO FILE ANSWER**

On February 22, 2005, Applicant filed in this proceeding a Motion for Suspension for Settlement with Consent. On February 22, 2005, the TTAB issued an Order granting the Motion to Suspend. In the Order granting the Motion to Suspend, the TTAB, at the bottom of the Order, listed five dates regarding when the proceedings would resume, when the discovery period would close, etc. As noted in the attached Affidavit, these dates were entered in Applicant's attorneys' electronic docketing system. However, above the five listed dates and in the text of the Order, the TTAB wrote "If an answer has not been filed, the defendant is allowed until thirty days from the date of resumption to file an answer." As noted in the attached Affidavit, this sentence was not noticed when the clerical staff was entering the dates in the electronic docketing system and accordingly no entry or call-up was made for an answer due date. Through this error and oversight, no answer due date was inputted into the electronic docketing system. Since this date was not put into the docketing system, no one in Applicant's attorneys' office noticed that the answer date went by without an answer being filed, and this is why an answer was not filed in a timely manner. The error was innocent and through oversight and no deception or delay was

intended.

On November 29, 2005, the TTAB issued an Order stating that Applicant was allowed until December 29, 2005 to show cause why judgment by default should not be entered against Applicant. It was only upon receiving this Order that Applicant's attorneys realized that an answer was due and had not been filed. Applicant is accordingly submitting the present Motion to Set Aside Default Judgment and For Permission to File Answer. Applicant has prepared the enclosed Answer to the Notice of Opposition and requests permission to serve and file this Answer.

In summary, the reason Applicant's Answer was not filed in a timely manner was due to a clerical error and oversight and Applicant hereby requests permission to file its Answer, a form of which is attached hereto. Upon receipt of an Order from the TTAB granting this motion, Applicant will immediately serve and file its Answer.

Respectfully Submitted,

SUAREZ CORPORATION INDUSTRIES

By: John P. Murtaugh  
John P. Murtaugh  
PEARNE & GORDON LLP  
1801 East 9<sup>th</sup> Street, Suite 1200  
Cleveland, Ohio 44114-3108  
Tel: (216) 579-1700  
Fax: (216) 579-6073  
Attorney for Applicant

Date: December 20, 2005

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

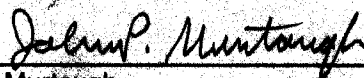
I hereby certify that this document is being filed electronically with the Commissioner for Trademarks, Box TTAB – NO FEE, P.O. Box 1451, Alexandria, VA 22313-1451 on December 20, 2005

I also hereby certify that a copy of the foregoing document is being served on the attorneys for Opposer as follows on the date indicated below:

VIA FIRST CLASS MAIL:

Daniel H. Solomon  
Kenyon & Kenyon  
One Broadway  
New York, NY 10004

Date service copy mailed: December 20, 2005



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John P. Murtaugh  
Attorney for Applicant

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AFFIDAVIT OF HANNAH H. FOLSOM

STATE OF OHIO

}

COUNTY OF CUYAHOGA

}

SS:

HANNAH H. FOLSOM, being first duly sworn according to law, deposes and says as follows:

1. I am over eighteen years of age and I make the following statements of my own personal knowledge.

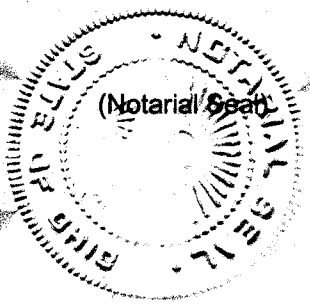
2. I am a docketing clerk at Pearne & Gordon LLP, attorneys representing Applicant in the above-referenced opposition proceeding. On February 22, 2005, my department received an Order from the TTAB granting a Motion to Suspend Proceedings in this opposition. On February 23 and 24, 2005, I entered call-ups in our electronic docketing system based upon the February 22 Order. I entered call-ups for the following dates: Proceedings Resume, Discovery Period to Close, Plaintiff's Testimony Period to Close, Defendant's Testimony Period to Close, and Rebuttal Testimony Period to Close. However, I did not notice the sentence earlier in the Order which said " If an answer has not been filed, the defendant is

allowed until thirty days from the date of resumption to file an answer." and accordingly did not enter a call-up for the answer due date. Since no answer due date was put as a call-up into our electronic docketing system, to my knowledge no one in our office was aware that the answer was due and for this reason the answer date passed without an answer being filed.

Further affiant sayeth naught.

Hannah H. Folsom  
Hannah H. Folsom

SWORN TO BEFORE ME and subscribed in my presence this 20th day of  
December, 2005.



Linda Ibbett  
Notary Public

My commission expires: LINDA IB BETT, Notary Public  
State of Ohio  
My Commission Expires October 13, 2008  
Recorded in Cuyahoga County

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**ANSWER TO NOTICE OF OPPOSITION**

Pursuant to 37 CFR § 2.106(b), Applicant hereby submits the following Answer to the Notice of Opposition filed in the above-captioned U.S. trademark application.

In response to the correspondingly numbered paragraphs in the Notice of Opposition, Applicant responds as follows:

1. Applicant admits the allegations of paragraph 1.
2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and they are therefore denied.
3. Applicant admits the allegations of paragraph 3 based upon public records.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, and they are therefore denied.
5. Applicant denies the allegations of paragraph 5.
6. Applicant denies the allegations of paragraph 6.
7. Applicant denies the allegations of paragraph 7.
8. Applicant denies the allegations of paragraph 8.

9. Applicant denies the allegations of paragraph 9.
10. Applicant denies the allegations of paragraph 10.
11. Applicant denies the allegations of paragraph 11.

Wherefore, Applicant requests that the opposition be dismissed and that a Notice of Allowance be issued for application serial number 78/224,251.

Respectfully Submitted,

SUAREZ CORPORATION INDUSTRIES

By: \_\_\_\_\_  
John P. Murtaugh  
PEARNE & GORDON LLP  
1801 East 9<sup>th</sup> Street, Suite 1200  
Cleveland, Ohio 44114-3108  
Tel: (216) 579-1700  
Fax: (216) 579-6073  
Attorney for Applicant

Date: \_\_\_\_\_



**CERTIFICATE OF ELECTRONIC FILING AND SERVICE**

I hereby certify that this document is being filed electronically with the Commissioner for Trademarks, Box TTAB – NO FEE, P.O. Box 1451, Alexandria, VA 22313-1451 on \_\_\_\_\_.

I also hereby certify that a copy of the foregoing *Answer to Notice of Opposition* is being served on the attorneys for Opposer as follows on the date indicated below:

**VIA FIRST CLASS MAIL:**

Daniel H. Solomon  
Kenyon & Kenyon  
One Broadway  
New York, NY 10004

Date service copy mailed: \_\_\_\_\_

\_\_\_\_\_  
John P. Murtaugh  
Attorney for Applicant