

ESTTA Tracking number: **ESTTA140612**

Filing date: **05/15/2007**

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

Proceeding	91176619
Party	Defendant Mineral Resources International, Inc. Mineral Resources International, Inc. 1990 W. 3300 S. Ogden, UT 84401
Correspondence Address	PAUL C. NIELSON MINERAL RESOURCES INTERNATIONAL, INC. 1990 W 3300 S OGDEN, UT 84401-9774 pauln@mineralresourcesint.com
Submission	Answer
Filer's Name	Arthur B. Berger
Filer's e-mail	aberger@rqn.com
Signature	/Arthur B. Berger/
Date	05/15/2007
Attachments	Answer to Notice of Opposition--MRI.pdf (5 pages)(25684 bytes)

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

_____)	
Trace Minerals Research, L.C.,)	
)	
Opposer,)	Opposition No. 91176619
)	
vs.)	
)	
Mineral Resources International, Inc.,)	Mark: CONCENSEA
)	Application Serial No. 78/917034
Applicant.)	Published: February 13, 2007
_____)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

ANSWER TO NOTICE OF OPPOSITION

Applicant Mineral Resources International, Inc. (“Applicant”), answers the Notice of Opposition filed by Opposer Trace Minerals Research, L.C. (“Opposer”), against application for registration of the mark CONCENSEA, Serial No. 78/917034, published in the Official Gazette of February 13, 2007, as follows:

With respect to the introductory paragraph of the Notice of Opposition, Applicant denies that Opposer will be damaged by registration of Applicant’s CONCENSEA mark.

Applicant responds to the separately numbered paragraphs of the Notice of Opposition as follows:

1. Regarding the allegations of paragraph 1 of the Notice of Opposition, Applicant states that the referenced application speaks for itself, and denies any allegations inconsistent therewith.

2. Regarding the allegations of paragraph 2 of the Notice of Opposition, Applicant admits that its mark CONCENSEA was published for opposition in the Official Gazette of February 13, 2007. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations that Opposer sought and obtained an extension to oppose, and therefore denies the same.

3. Regarding the allegations of paragraph 3 of the Notice of Opposition, Applicant denies that Opposer has used the mark CONCENTRACE since 1974, and, on information and belief, denies that Opposer owns rights in that mark, common law or otherwise. Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 3 of the Notice of Opposition, and therefore denies the same.

4. Regarding the allegations of paragraph 4 of the Notice of Opposition, Applicant states that the referenced press release speaks for itself, and denies any allegations inconsistent therewith. In addition, and without limitation, Applicant affirmatively states that Opposer has misstated the language of the press release. Opposer claims that the press release “state[s] that CONCENTRACE ‘is now being sold under the name CONCENSEA.’” (Notice of Opp’n ¶ 4 (purportedly quoting *id.*, Ex. B).) The press release actually states that “[t]he *formula* for the ConcenTrace® product . . . is now being sold under the name ConcenSea™.” (Notice of Opp’n, Ex. B (emphasis added).) Applicant denies the remaining allegations of paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations of paragraph 5 of the Notice of Opposition, and, on information and belief, affirmatively states that Opposer does not own the CONCENTRACE mark, and/or Applicant's rights in the mark are senior to those of Opposer, in whole or in part.

6. Applicant denies each and every allegation of the Notice of Opposition not specifically admitted herein.

AFFIRMATIVE DEFENSES

In further answer to the Notice of Opposition, Applicant asserts the following separate and affirmative defenses:

1. The Notice of Opposition fails to state a basis for the relief sought.
2. The Notice of Opposition is barred by the doctrines of laches, waiver, and estoppel.
3. The Notice of Opposition is barred by the principles of consent, acquiescence, ratification, novation, and/or legal justification.
4. The Notice of Opposition is barred by Opposer's express or implied agreements, knowledge, promises, or permission.
5. The Notice of Opposition is barred by Opposer's failure to enforce its claimed CONCENTRACE trademark against other users of the claimed trademark, resulting in an abandonment of any trademark rights.
6. On information and belief, Opposer lacks standing to oppose Applicant's application for registration, and/or Opposer is otherwise barred from opposing Applicant's application for registration because Applicant does not own the mark CONCENTRACE, and/or Applicant's rights in the mark are senior to those of Opposer, in whole or in part.

WHEREFORE, Applicant prays that the Notice of Opposition be dismissed and that a registration issue to Applicant for its mark CONCENSEA.

DATED this 15th day of May, 2007.

Respectfully submitted,

MINERAL RESOURCES INTERNATIONAL, INC.

By: /s/ Arthur B. Berger

Arthur B. Berger

RAY QUINNEY & NEBEKER P.C.

36 South State Street, Suite 1400

P.O. Box 45385

Salt Lake City, Utah 84145-0385

Telephone: (801) 532-1500

Facsimile: (801) 532-7543

*Attorneys for Applicant Mineral Resources International,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2007, a true and correct copy of the foregoing ANSWER TO NOTICE OF OPPOSITION was mailed, by first-class mail, postage prepaid, to:

John H. Rees
CALLISTER NEBEKER & MCCULLOUGH
Zions Bank Building
10 East South Temple, Suite 900
Salt Lake City, Utah 84133

/s/ Lori M. McGee