

ESTTA Tracking number: **ESTTA280925**

Filing date: **04/29/2009**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	National Oilwell Varco, L.P.		
Entity	Partnership	Citizenship	Delaware
Composed Of:	NOW Oilfield Services, Inc., a Delaware corporation		
Address	7909 Parkwood Circle Drive Houston, TX 77036 UNITED STATES		

Attorney information	Gregory L. Maag Conley Rose, P.C. P.O. Box 3267 Houston, TX 77253-3267 UNITED STATES TMHou@conleyrose.com Phone:713-238-8000		
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Applicant Information

Application No	77462382	Publication date	03/31/2009
Opposition Filing Date	04/29/2009	Opposition Period Ends	04/30/2009
Applicant	The Modern Group, Ltd. 1655 Louisiana Street Beaumont, TX 77701 UNITED STATES		

Goods/Services Affected by Opposition

Class 007. All goods and services in the class are opposed, namely: oil and gas processing equipment, namely, positive displacement pumps
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Applicant was not and is not the owner of the applied for mark

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	CONTINENTAL EMSCO; CONTINENTAL EMSCO CO; and		

	CONTINENTAL EMSCO COMPANY
Goods/Services	oil and gas processing equipment, including positive displacement pumps

Attachments	int1583.PDF (5 pages)(277522 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/gregory l. maag/
Name	Gregory L. Maag
Date	04/29/2009

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

In re U.S. Trademark Application Serial No. 77/462,382 for the mark CONTINENTAL EMSCO, filed on April 30, 2008, published on March 31, 2009 and owned by The Modern Group, Ltd.

National Oilwell Varco, L.P.,	§	
	§	
Opposer,	§	
	§	
vs.	§	Opposition No. _____
	§	
The Modern Group, Ltd.,	§	
	§	
Applicant.	§	

NOTICE OF OPPOSITION

Commissioner:

National Oilwell Varco, L.P. (“Opposer”), a limited partnership of the State of Delaware, having a business address of 7909 Parkwood Circle Drive, Houston, Texas 77036, believes that it would be damaged by registration of the mark CONTINENTAL EMSCO, shown in U.S. Trademark Application Serial No. 77/462,382, and hereby opposes the same under the provisions of the Trademark Act of 1946, § 1063 of Title 15 of the United States Code.

Opposer asserts the following as grounds for the opposition:

1. The opposed U.S. Trademark Application Serial No. 77/462,382 for the trademark CONTINENTAL EMSCO was filed by Applicant on April 30, 2008 (“‘382 Application”), as evidenced by publication of the mark in the Official Gazette on March 31, 2009. The ‘382 Application recites “oil and gas processing equipment, namely positive displacement pumps” in International Class 07, and is based on 15 U.S.C. § 1052(b).

2. Opposer owns the marks and trade names CONTINENTAL EMSCO, CONTINENTAL EMSCO CO., and CONTINENTAL EMSCO COMPANY for use in connection

with oil and gas processing equipment, including positive displacement pumps (“Opposer’s Marks”). Opposer’s Marks were first used in the United States, and in interstate commerce, at least as early as July 1999. Opposer’s Marks have been used continuously in the United States since at least July 1999.

3. Opposer’s Marks have not been abandoned.

4. Opposer’s rights in Opposer’s Marks pre-date the April 30, 2008 filing date of the ‘382 Application. Opposer’s rights in Opposer’s Marks predate any use by Applicant of the CONTINENTAL EMSCO mark represented in the ‘382 Application.

5. Applicant’s CONTINENTAL EMSCO mark is identical to Opposer’s CONTINENTAL EMSCO Mark in sight, sound, and commercial impression.

6. Applicant’s CONTINENTAL EMSCO mark is virtually identical to Opposer’s CONTINENTAL EMSCO CO. and CONTINENTAL EMSCO COMPANY marks in sight, sound, and commercial impression.

7. The goods identified in the ‘382 Application, or offered by Applicant or intended to be offered by Applicant under the CONTINENTAL EMSCO mark, are identical to the goods that have been and are presently offered and sold under Opposer’s Marks.

8. The goods identified in the ‘382 Application, or offered by Applicant or intended to be offered by Applicant under the CONTINENTAL EMSCO mark are purchased by the same class of consumers and travel through the same channels of trade as the goods that have been and are presently offered and sold under Opposer’s Marks.

9. Applicant’s CONTINENTAL EMSCO mark so resembles each of Opposer’s Marks as to be likely, when applied to Applicant’s goods, to cause confusion, to cause mistake or to deceive, and Opposer will be damaged by the registration sought by Applicant.

10. Applicant also seeks to prevent registration of the Applicant's CONTINENTAL EMSCO mark because Applicant has committed fraud on the United States Patent and Trademark Office. Specifically, several of Applicant's employees are former employees of Opposer. For example, the following individuals are former employees of Opposer, *with their present title with Applicant shown*: (1) Jimmy Jones – VP / General Manager; (2) Ricky Plymell - Manager Odessa; (3) Eric Brown – Manager Victoria; (4) Gabe Norris – Engineering; (5) John Blaylock – Mast Foreman; (6) Mike Gammhee - Environmental Supervisor; (7) Pete Reyes – Mechanical Shop Supervisor; (8) Randy Richardson – Sales; and (9) David Chicon – Parts Department.

11. Upon information and belief, during their employment with Opposer, such employees held prominent positions with Opposer and became aware of Opposer's use of Opposer's Marks and that such Marks were still in use when they left the employment of Opposer. Thus, Applicant was not, at the time of filing the '382 Application or presently, the owner of the mark that is the subject of the '382 Application.

12. Additionally, in the declaration filed with the '382 Application, Applicant stated that, to the best of Applicant's knowledge and belief, "no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive." This statement is false, was material to examination and publication of the '382 Application, and was made under circumstances in which Applicant knew or should have known it was false.

13. The statement is false at least because Opposer's Marks had been used before the filing date of the '382 Application and because Opposer's Marks are confusingly similar to the mark in the '382 Application. The statement was material because, absent that false statement,

the '382 Application would have been rejected under 15 U.S.C. §1052(d) based on a likelihood of confusion between Applicant's Mark and Opposer's Marks. Finally, the statement was made knowingly because several of Applicant's officers, managers, and other employees previously worked for Opposer and were aware of, or at the very least should have been aware of, Opposer's prior use of Opposer's Marks at the time of filing the '382 Application. Therefore, the '382 Application cannot proceed because it was filed and allowed to proceed to publication fraudulently.

WHEREFORE, Opposer prays that registration of the mark shown in U.S. Trademark Application Serial No. 77/462,382 for CONTINENTAL EMSCO be refused and that this Notice of Opposition be sustained in favor of Opposer.

Authorization is hereby granted to the U.S. Patent and Trademark Office to deduct the filing fee for the present opposition in the amount of \$300.00 from Conley Rose Deposit Account No. 03-2769. Any additional fee due should be charged to Deposit Account No. 03-2769.

Respectfully submitted,

Dated: April 29, 2009

By: 

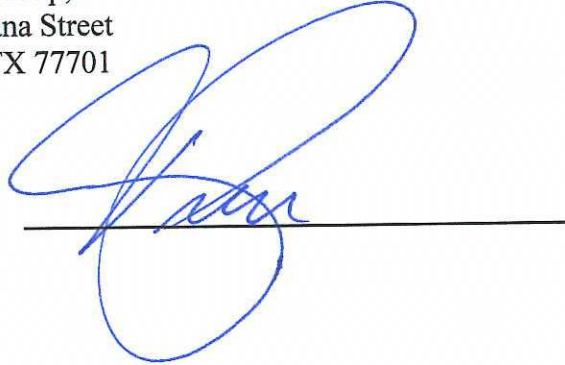
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ATTORNEY FOR OPPOSER
National Oilwell Varco, L.P.

CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing **NOTICE OF OPPOSITION** was served on the 29th day of April, 2009 on the following via U.S. first class mail, postage pre-paid and properly addressed as follows:

Mr. Casey Crenshaw
The Modern Group, Ltd.
1655 Louisiana Street
Beaumont, TX 77701

A handwritten signature in blue ink is written over a solid horizontal black line. The signature is stylized and appears to be the name 'Casey Crenshaw'.