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

Proceeding	91189980
Party	Defendant The Modern Group, Ltd.
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Date	08/07/2009
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

National Oilwell Varco, L.P.,

Opposer,

v.

The Modern Group, Ltd.

Applicant.

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Opposition No.: 91189980

**APPLICANT’S DEFENSE UNDER RULE 12(b), ORIGINAL ANSWER TO NOTICE OF
OPPOSITION, AND AFFIRMATIVE DEFENSES**

The Modern Group, Ltd., (“Applicant”) in this proceeding, hereby answers the Notice of Opposition (“Notice”) of Plaintiff National Oilwell Varco, L.P. (“Opposer”). Applicant denies Opposer’s allegations in the opening unnumbered paragraph of the Notice that it will be damaged by registration of Applicant’s Mark CONTINENTAL EMSCO, as shown in U.S. Trademark Application Serial Number 77/462,382.

I.

DEFENSE UNDER RULE 12(b)

The Notice fails to state a claim for relief for fraud, and a combined motion to dismiss Opposer’s claim for fraud and to strike paragraphs 10-13 of the Notice is being filed concurrently herewith.

II.

ORIGINAL ANSWER

1. Applicant admits the allegations in paragraph 1 of the Notice.
2. Applicant denies that Opposer’s use of the terms CONTINENTAL EMSCO, CONTINENTAL EMSCO CO., AND CONTINENTAL EMSCO COMPANY (Opposer’s Alleged Marks”) has been used continuously in the United States since at least July 1999.

Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2 of the Notice, and therefore denies same.

3. Applicant denies the allegations of paragraph 3 of the Notice.

4. Applicant denies Opposer's rights in Opposer's Alleged Marks and accordingly Applicant denies the allegations of paragraph 4 of the Notice.

5. Applicant denies Opposer's rights in CONTINENTAL EMSCO and accordingly Applicant denies the allegations of paragraph 5 of the Notice.

6. Applicant denies Opposer's rights in CONTINENTAL EMSCO CO. and CONTINENTAL EMSCO COMPANY and accordingly Applicant denies the allegations of paragraph 6 of the Notice.

7. Applicant denies Opposer has or is presently offering goods under Opposer's Alleged Marks and accordingly Applicant denies the allegations of paragraph 7 of the Notice.

8. Applicant denies Opposer has or is presently offering goods under Opposer's Alleged Marks and accordingly Applicant denies the allegations of paragraph 8 of the Notice.

9. Applicant denies Opposer's rights in Opposer's Alleged Marks and accordingly Applicant denies the allegations of paragraph 9 of the Notice.

10. Applicant has filed concurrently herewith a combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice. The allegations of paragraph 10 of the Notice are the subject of this motion. Applicant reserves the right to respond to the allegations in this paragraph 10 of the Notice following a ruling by the Trademark Trial and Appeal Board on Applicant's combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice.

11. Applicant has filed concurrently herewith a combined motion to dismiss

Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice. The allegations of paragraph 11 of the Notice are the subject of this motion. Applicant reserves the right to respond to the allegations in this paragraph 11 of the Notice following a ruling by the Trademark Trial and Appeal Board on Applicant's combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice.

12. Applicant has filed concurrently herewith a combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice. The allegations of paragraph 12 of the Notice are the subject of this motion. Applicant reserves the right to respond to the allegations in this paragraph 12 of the Notice following a ruling by the Trademark Trial and Appeal Board on Applicant's combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice.

13. Applicant has filed concurrently herewith a combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice. The allegations of paragraph 13 of the Notice are the subject of this motion. Applicant reserves the right to respond to the allegations in this paragraph 13 of the Notice following a ruling by the Trademark Trial and Appeal Board on Applicant's combined motion to dismiss Opposer's claim for fraud and to strike paragraphs 10-13 of the Notice.

14. Applicant denies that Opposer is entitled to any of the relief prayed for.

III.

AFFIRMATIVE DEFENSES

First Defense

15. Applicant asserts an affirmative defense of abandonment.

Second Defense

16. Applicant asserts an affirmative defense that Opposer lacks standing in that Opposer is not the owner of Opposer's Alleged Marks.

Third Defense

17. Applicant asserts an affirmative defense that Opposer lacks standing in that Opposer has neither trade name rights nor trademark rights in Opposer's Alleged Marks.

Fourth Defense

18. Applicant asserts an affirmative defense that there is no likelihood of confusion.

Fifth Defense

19. Applicant asserts an affirmative defense that Opposer does not have priority in Opposer's Alleged Marks.

Sixth Defense

20. Applicant asserts an affirmative defense of laches.

Seventh Defense

21. Applicant asserts an affirmative defense of waiver.

Eighth Defense

22. Applicant asserts an affirmative defense of acquiescence.

Ninth Defense

23. Applicant asserts an affirmative defense of estoppel.

Tenth Defense

23. Applicant asserts an affirmative defense of unclean hands.

WHEREFORE, Applicant prays that this Opposition be denied and that Applicant's mark be allowed to proceed to registration.

Dated: August 7, 2009

Respectfully submitted,

/s/ Marc L. Delflache

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**ATTORNEYS FOR THE MODERN
GROUP, LTD.**

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing APPLICANT'S DEFENSE UNDER RULE 12(b), ORIGINAL ANSWER TO NOTICE OF OPPOSITION, AND AFFIRMATIVE DEFENSES was served by First Class Mail, postage prepaid, on August 7, 2009, upon Opposer's Attorney at the address below:

Gregory L. Maag
Conley Rose, P.C.
P.O. Box 3267
Houston, TX 77253-3267
UNITED STATES


Erin B. Frazier