

ESTTA Tracking number: **ESTTA321847**

Filing date: **12/14/2009**

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

Proceeding	91192554
Party	Defendant MTP Medical Technical Promotion GmbH
Correspondence Address	WESLEY W. WHITMYER, JR. ST. ONGE STEWARD JOHNSTON & REENS LLC 986 BEDFORD ST STAMFORD, CT 06905-5610 tm-pto@ssjr.com
Submission	Answer and Counterclaim
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Signature	/Andy I. Corea/
Date	12/14/2009
Attachments	Answer and Counterclaim.pdf (5 pages)(351187 bytes)

Registration Subject to the filing

Registration No	1790969	Registration date	08/31/1993
Registrant	COOK INCORPORATED P.O. BOX 489 BLOOMINGTON, IN 47402 UNITED STATES		
Grounds for filing	The registered mark has become the generic name for the goods.		

Goods/Services Subject to the filing

Class 010. First Use: 1991/11/21 First Use In Commerce: 1991/11/21 All goods and services in the class are requested, namely: drawstring surgical pouch used during surgery to remove organs and tissue
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Cook Incorporated	:	
	:	
Opposer,	:	
Counter-Claim Registrant	:	
	:	
v.	:	Opposition No. 91192554
	:	
MTP Medical Technical Promotion GmbH	:	
	:	
Applicant,	:	
Counter-Claim Petitioner	:	

ANSWER and
COUNTER-CLAIM PETITION TO CANCEL

Answer

Applicant MTP Medical Technical Promotion GmbH ("Applicant") hereby answers the Notice of Opposition, answering the numbered paragraphs thereof as follows:

1. Applicant admits that a copy of the certificate of registration for U.S. Registration No. 1,790,969 was attached to the Notice of Opposition. With respect to the remaining allegations of paragraph 1, Applicant lacks sufficient information to form a belief as to those allegations, and accordingly, denies those allegations.

2. Applicant lacks sufficient information to form a belief as to the allegations of paragraph 2, and accordingly, denies the allegations of this paragraph.

3. Applicant admits the allegations of paragraph 3.

4. Applicant denies the allegations of paragraph 4.

5. Applicant denies the allegations of paragraph 5.

6. Applicant denies the allegations of paragraph 6.

7. With respect to prayer for relief, Applicant denies that Opposer is entitled to any of the relief requested.

8. Applicant denies any allegation to which is has not specifically admitted.

WHEREFORE, Applicant requests that the Trademark Trial and Appeal Board dismiss the Notice of Opposition and otherwise deny Opposer's requested relief.

Petition to Cancel

Counter-Claim Petitioner, MTP Medical Technical Promotion GmbH ("Petitioner") believes it is being damaged by the registration of the mark LAPSAC, U.S. Registration No. 1,790,969 and hereby requests cancellation of same. Petitioner asserts the following grounds for cancellation.

1. Petitioner is a limited partnership organized under the laws of Germany with an address at Take-off Gewerbepark 46 Neuhausen ob Eck Germany, D-78579.

2. The records of the USPTO identify the current owner of U.S. Registration No. 1,790,969 as: Cook Incorporated, a corporation organized under the laws of Indiana, with an address at P.O. Box 489, Bloomington, IN 47402 (“Registrant”).

3. Registrant has filed Notice of Opposition No. 91192554 against Petitioner’s application to register TRAPSAC, asserting as its sole basis for opposition, its rights to the trademark LAPSAC as embodied in U.S. Registration No. 1,790,969.

4. U.S. Registration No. 1,790,969 for the mark LAPSAC identifies the following goods: drawstring surgical pouch used during surgery to remove organs and tissue – in International Class 10.

5. On information and belief, the wording SAC is generic for surgical pouches within the meaning of the Lanham Act in that it identifies the genus of the identified goods.

6. On information and belief, the wording LAP is generic for certain types of surgical procedures within the meaning of the Lanham Act in that it is commonly used as a prefix indicating laproscopic surgery.

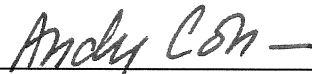
7. The combination of the generic wording LAP with the generic wording SAC is devoid of any secondary meaning and immediately identifies the genus of the identified goods.

8. Petitioner is harmed and will continue to be harmed by Registrant’s ownership of U.S. Registration No. 1,790,969.

WHEREFORE, Petitioner prays that this Board: (i) deny Opposer's Opposition; (ii) cancel Opposer's Registration Nos. 1,790,969; and (iii) grant to Applicant such other and further relief as this Board may deem to be appropriate.

Dated: December 14, 2009

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer and Counter-Claim Petition to Cancel was served by first class mail, postage prepaid, to counsel for Opposer:

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December 14, 2009



Joan M. Burnett