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

Proceeding	91192771
Party	Defendant North American Audio Management, Inc.
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Date	12/31/2009
Attachments	Answer to MTS Opposition.pdf (8 pages)(159578 bytes)

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

In the matter of Application
Serial No. 77123052

For the mark
MTS

MITEK CORPORATION,

Opposer,

v.

NORTH AMERICAN AUDIO MANAGEMENT,
INC.,

Applicant.

OPPOSITION NO. 91192771

**ANSWER AND AFFIRMATIVE
DEFENSES TO NOTICE OF
OPPOSITION**

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

Applicant, North American Audio Management, Inc., now known as North America Audio Group, Inc. ("Applicant"), a corporation organized and existing under the laws of the State of New Jersey, having an address of 85 Kinderkamack Road, Emerson, New Jersey 07630, by way of answer and affirmative defenses to the notice of opposition filed by Mitek Corporation ("Opposer"), alleges:

1. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 1 of the notice of opposition, as to the ownership of the mark MTX. Applicant neither admits nor denies the remaining allegations set forth in the second sentence of paragraph 1 of the notice of opposition, except that, based upon the publicly available electronic records of the United States Patent and Trademark Office, it appears that the mark MTX was registered in 1991 in International Class 009.

2. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 2 of the notice of opposition, as to the ownership of the mark MTX for speakers, namely full range, woofer, midrange, tweeter and compression drivers. Applicant neither admits nor denies the remaining allegations set forth in the second sentence of paragraph 2 of the notice of opposition, except that, based upon the publicly available electronic records of the United States Patent and Trademark Office, it appears that the mark MTX for the goods/services identified was registered in 1984 in International Class 009.

3. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 3 of the notice of opposition, as to the ownership of the mark MTX for portable digital media player speaker systems. Applicant neither admits nor denies the remaining allegations set forth in the second sentence of paragraph 3 of the notice of opposition, except that, based upon the publicly available electronic records of the United States Patent and Trademark Office, it appears that the mark MTX for the goods/services identified was registered in 2007 in International Class 009.

4. Applicant admits that it filed an application for registration for the mark MTS for audio speakers in International Class 009, based upon a date of first use in commerce and a date of first use anywhere that is at least as early as April 1, 1998, and that such application was assigned Serial No. 77123052.

5. Applicant neither admits nor denies the allegations contained in paragraph 5 of the notice of opposition, as the records of the State of New Jersey speak for themselves.

6. Applicant neither admits nor denies the allegations contained in paragraph 6 of the notice of opposition because such allegations call for a legal conclusion.

7. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 7 of the notice of opposition as to what are Opposer's "beliefs". Applicant denies the remaining allegations contained in paragraph 7 of the notice of opposition.

8. Applicant denies the allegations contained in paragraph 8 of the notice of opposition.

9. Applicant denies the allegations contained in paragraph 9 of the notice of opposition.

10. Applicant denies the allegations contained in paragraph 8 of the notice of opposition.

11. Applicant denies the allegations contained in paragraph 8 of the notice of opposition, except that the description of the goods being "audio speakers" are, in themselves, the same.

12. Applicant denies the allegations contained in paragraph 8 of the notice of opposition.

13. Applicant denies the allegations contained in paragraph 8 of the notice of opposition.

14. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 14 of the notice of opposition, except that, based upon the publicly available records of the United States Patent and Trademark Office, the registration for the mark MTX appears to be in the name of Opposer.

15. Applicant denies the allegations contained in paragraph 15 of the notice of opposition.

16. Applicant denies the allegations contained in paragraph 16 of the notice of opposition.

17. Applicant denies the allegations contained in paragraph 17 of the notice of opposition.

18. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 18 of the notice of opposition.

19. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 19 of the notice of opposition.

20. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 20 of the notice of opposition.

21. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 21 of the notice of opposition.

22. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 22 of the notice of opposition.

23. Applicant denies the allegations contained in paragraph 23 of the notice of opposition.

24. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 24 of the notice of opposition. It is unclear what Opposer means by the allegations.

25. Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in paragraph 14 of the notice of opposition. It is unclear what Opposer means by the allegations.

26. Applicant denies the allegations contained in paragraph 26 of the notice of opposition.

27. Applicant denies the allegations contained in paragraph 27 of the notice of opposition.

28. Applicant denies the allegations contained in paragraph 28 of the notice of opposition.

29. Applicant denies the allegations contained in paragraph 29 of the notice of opposition.

30. Applicant denies the allegation that the TTAB should refuse registration of the mark MTS.

SEPARATE AND AFFIRMATIVE DEFENSES

1. Opposer's claims are barred because Opposer cannot carry its burden of proof with respect to each element of its notice of opposition.

2. Opposer's claims are barred because there is no evidence of actual confusion between Applicant's mark and Opposer's marks.

3. Opposer's claims are barred based upon Applicant's continuous use of the MTS mark in commerce.

4. Opposer's claims are barred because the products do not travel in the same channels of trade.

5. Opposer's claims are barred based upon Applicant's prior registration of the mark MTS.

6. Opposer's claims are barred because the registration of Applicant's mark will not and is not likely to cause confusion with, to cause mistake with or to deceive consumers and distributors, within the meaning of 15 U.S.C 1052(d).

7. Opposer's claims are barred because Applicant has not abandoned the use of the mark, MTS, Applicant has not used the mark in a deceptive or scandalous manner, and both Applicant's mark and Opposer's mark has co-existed without any evidence of confusion.

8. Opposer's claims are barred because the existence of Applicant's mark, for more than a decade, has not diluted Opposer's mark.

9. Opposer's claims are barred because Applicant has continued to use the mark in good faith and consistent with the good will and reputation that has been established by Applicant's use of the mark.

10. Opposer has not shown and cannot show that it is likely to be damaged by the registration of Applicant's mark.

11. Opposer has not suffered and will not suffer any losses or damages by reason of the registration of Applicant's mark.

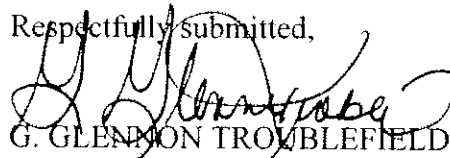
12. Opposer's claims and legal assertions are barred by the doctrine of laches.

13. Opposer's claims are barred by the doctrine of waiver.

14. Opposer's claims are barred by the doctrines of estoppel.

WHEREFORE, Applicant prays that the notice of opposition filed by Opposer be dismissed, with prejudice, in its entirety and that a registration issue to Applicant for the mark MTS issue.

Respectfully submitted,



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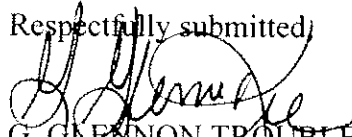
Dated: December 31, 2009

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on December 31, 2009, a copy of the foregoing answer to the notice of opposition filed on behalf of Mitek Corporation was served via email and first class mail, postage prepaid, on counsel for Opposer at the following address:

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Respectfully submitted,



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Dated: December 31, 2009