

ESTTA Tracking number: **ESTTA657398**

Filing date: **02/23/2015**

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

| | |
|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 91220132 |
| Party | Defendant DiversiTech Corporation |
| Correspondence Address | W. SCOTT CREASMAN TAYLOR ENGLISH DUMA LLP 1600 PARKWOOD CIR SE STE 400 ATLANTA, GA 30339-2119 trademarks@taylorenghish.com |
| Submission | Answer |
| Filer's Name | Scott Creasman |
| Filer's e-mail | screasman@taylorenghish.com |
| Signature | /s/ |
| Date | 02/23/2015 |
| Attachments | Answer.pdf(93568 bytes) |

**UNITED STATES TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|-------------------------------------------|---|-------------------------|
| CATERPILLAR, INC. | : | |
| | : | |
| Opposer, | : | |
| | : | |
| v. | : | Opposition No. 91220132 |
| | : | Serial No. 86/067,988 |
| | : | |
| DIVERSITECH CORPORATION | : | |
| | : | |
| Applicant. | : | |
| | : | |
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ANSWER

Applicant DiversiTech Corporation (“DiversiTech” or “Applicant”) hereby responds to Caterpillar, Inc.’s Notice of Opposition as follows:

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 1 and therefore denies the same.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 2 and therefore denies the same.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 3 and therefore denies the same.
4. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 4 and therefore denies the same.
5. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 5 and therefore denies the same.
6. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations set forth in Paragraph No. 6 and therefore denies the same.

7. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 7 and therefore denies the same.
8. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 8 and therefore denies the same.
9. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 9 and therefore denies the same.
10. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 10 and therefore denies the same.
11. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 11 and therefore denies the same.
12. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 12 and therefore denies the same.
13. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 13 and therefore denies the same.
14. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 14 and therefore denies the same.
15. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 15 and therefore denies the same.
16. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 16 and therefore denies the same.
17. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations set forth in Paragraph No. 17 and therefore denies the same.

18. In response to the allegations in Paragraph No. 18, Applicant admits that the Opposer appears to have successfully cited to decisions of the Trademark Trial and Appeal Board, but denies that those decisions support the relief sought in this case. Applicant denies all the remaining allegations.
19. In response to the allegations in Paragraph No. 19, Applicant admits that the Opposer appears to have successfully cited to Trademark Office records and provided copies of the same. Applicant denies all the remaining allegations.
20. In response to the allegations in Paragraph No. 20, Applicant states that the referenced records speak for themselves. Applicant denies all the remaining allegations.
21. In response to the allegations in Paragraph No. 21, Applicant admits that the Opposer appears to have successfully cited to Trademark Office records and provided copies of the same. Applicant denies all the remaining allegations.
22. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 22 and therefore denies the same.
23. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 23 and therefore denies the same.
24. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 24 and therefore denies the same.
25. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 25 and therefore denies the same.
26. Admitted.

27. Admitted.

28. Admitted.

29. Applicant restates and incorporates by reference each response in paragraphs 1 to 28 above.

30. Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph No. 30 and therefore denies the same.

31. In response to the allegations in Paragraph No. 31, Applicant states that the referenced records speak for themselves. Applicant denies all the remaining allegations.

32. In response to the allegations in Paragraph No. 32, Applicant states that the referenced records speak for themselves. Applicant denies all the remaining allegations.

33. Denied.

34. Denied.

35. Applicant restates and incorporates by reference each response in paragraphs 1 to 34 above.

36. Denied.

37. Denied.

PRAYER FOR RELIEF

The Notice of Opposition contains a “WHEREFORE” prayer for relief for which no response is necessary, but Applicant denies that any of such relief is warranted. In addition, the Notice of Opposition contains headings that do not require a response. To the extent such headings are deemed to contain any allegations to which a response is required, then Applicant denies them.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Applicant states as follows:

1. The Notice of Opposition should be dismissed for failing to state a claim upon which relief can be granted.
2. Applicant's trademark is not confusingly similar to any trademark of Opposer, does not infringe or dilute any trademark owned by Opposer, and does not violate any legitimate right of Opposer.
3. Opposer's claims are barred by the doctrine of laches.
4. Opposer's claims are barred by the doctrine of unclean hands.

Respectfully submitted, this 23rd day of February 2015.

Counsel for Applicant
DiversiTech Corporation

s/W. Scott Creasman
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ANSWER has been served on Opposer's counsel of record, Christopher P. Foley, by mailing said copy on February 23, 2105, via First Class Mail, postage prepaid to:

Christopher P. Foley
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
901 New York Ave., N.W.
Washington, D.C. 2001-4413

s/W. Scott Creasman/
W. Scott Creasman

Attorney for Counsel for Applicant
DiversiTech Corporation

CERTIFICATE OF TRANSMITTAL

I hereby certify that the foregoing ANSWER is being filed electronically with the Board via ESTTA on February 23, 2015.

s/W. Scott Creasman/
W. Scott Creasman

Attorney for Counsel for Applicant
DiversiTech Corporation