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

Proceeding	91221093
Party	Defendant P3 ingenieurgesellschaft mbH
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Attachments	2015-05-27 Answer and Counterclaim - FINAL.pdf(151822 bytes)

Registrations Subject to the filing

Registration No	4001042	Registration date	07/26/2011
Registrant	P3 International Corp. 132 Nassau Street New York, NY 10038 UNITED STATES		

Goods/Services Subject to the filing

Class 007. First Use: 2005/09/15 First Use In Commerce: 2005/09/15 All goods and services in the class are requested, namely: robotic vacuum cleaners
Class 009. First Use: 1995/02/03 First Use In Commerce: 1995/02/03 All goods and services in the class are requested, namely: environmental weather monitoring systemcomprising meters and sensors for measuring and reporting temperature, barometric pressure, humidity, wind speed and direction; temperature sensors; barometers; thermometers; swimming pool temperature and ambient humidity sensors with alarm; wind speedometers; hygro-thermometersmeasuring temperature, humidity and precipitation; electronic humidity sensors;electronic precipitation gauges; electronic moisture sensors; portable electronic energy meters for monitoring and reporting electrical energy usage; electronic timers; voltage surge suppressors; audio recorders and players; telephone answering machines; electronic camera detectors; electronic pest repelling devices, namely, sonic devices for repelling animals, birds and insects; electronic animal and bird repelling devices; sonic animal repelling devices with lights; electric lighted magnifying glasses; automotive safety kits comprising warning lights,strobes, and hand tools for the repair and maintenance of automobiles
Class 010. First Use: 2006/07/13 First Use In Commerce: 2006/07/13 All goods and services in the class are requested, namely: electronic heating devices for treatment of itching, bites and stings
Class 011. First Use: 2002/03/27 First Use In Commerce: 2002/03/27 All goods and services in the class are requested, namely: portable electric fans; portable electronic air purifiers; motion-activated home and garden lighting devices; electronic water softening units; decorative electric garden lighting devices; garden lighting devices with insect traps

Class 020. First Use: 2009/05/14 First Use In Commerce: 2009/05/14
All goods and services in the class are requested, namely: electrically illuminated mirrors

Registration No	4001043	Registration date	07/26/2011
Registrant	P3 International Corp. 132 Nassau Street New York, NY 10038 UNITED STATES		

Goods/Services Subject to the filing

Class 007. First Use: 2005/09/15 First Use In Commerce: 2005/09/15
All goods and services in the class are requested, namely: robotic vacuum cleaners

Class 009. First Use: 1987/12/01 First Use In Commerce: 1987/12/01
All goods and services in the class are requested, namely: environmental weather monitoring system comprising meters and sensors for measuring and reporting temperature, barometric pressure, humidity, wind speed and direction; temperature sensors, barometers, thermometers, swimming pool temperature and ambient humidity sensors with alarm; wind speedometers; hygrometers measuring temperature, humidity and precipitation; electronic humidity sensors; electronic precipitation gauges; electronic moisture sensors; portable water consumption meters; portable electronic energy meters for monitoring and reporting electrical energy usage; electronic timers; voltage surge suppressors; audio recorders and players; telephone answering machines; electronic camera detectors; electronic pest repelling devices, namely, sonic devices for repelling animals, birds and insects; electronic animal and bird repelling devices; sonic animal repelling devices with lights; electric lighted magnifying glasses; automotive safety kits comprising warning lights, strobes, and hand tools for the repair and maintenance of automobiles

Class 010. First Use: 2006/07/13 First Use In Commerce: 2006/07/13
All goods and services in the class are requested, namely: electronic heating devices for treatment of itching, bites and stings

Class 011. First Use: 1996/11/07 First Use In Commerce: 1996/11/07
All goods and services in the class are requested, namely: portable electric fans; portable electronic air purifiers; motion-activated home and garden lighting devices; night lights; electronic water softening units; decorative electric garden lighting devices; garden lighting devices with insect traps

Class 020. First Use: 2009/05/14 First Use In Commerce: 2009/05/14
All goods and services in the class are requested, namely: electrically illuminated mirrors

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

P3 INTERNATIONAL CORP.,

Opposer,

v.

P3 INGENIEURGESELLSCHAFT MBH,

Applicant.

Opposition No. 91221093

Application Serial No. 79/143,481

Mark: P3 GROUP

ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM

Applicant P3 Ingenieurgesellschaft mbH (“Applicant”) hereby answers Opposer P3 International Corp.’s (“Opposer”) Notice of Opposition as follows:

Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the Preamble of the Notice of Opposition and therefore denies same.

1. Applicant admits that Opposer is the owner of record of United States Trademark Registration Nos. 4,001,042 and 4,001,043. Applicant further states that the United States Patent and Trademark Office (“PTO”) records for said registrations speak for themselves. Except as expressly admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 and therefore denies same.

2. Applicant admits that it is the owner of Application Serial No. 79/143,481. Applicant further states that the PTO record for said application speaks for itself. Except as expressly admitted, Applicant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 2 and therefore denies same.

3. Denied.

4. Applicant lacks knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraph 4 and therefore denies same.

5. Applicant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 and therefore denies same.

6. Denied.

7. Paragraph 7 states a conclusion of law, to which no response is required. To the extent a response is required, Applicant denies.

The remainder of the Notice of Opposition contains Opposer's prayer for relief, to which no response is required. To the extent a response is required, Applicant denies the allegations in Opposer's prayers relief and further states that Opposer is not entitled to any relief in this opposition.

AFFIRMATIVE DEFENSES

1. Applicant asserts that the rights of the Opposer in connection with its P3 and P3 INTERNATIONAL marks are so weak and narrow by virtue of third party uses and registrations on the Principal Register that it is highly unlikely that any reasonable consumer would be confused as between the respective marks and products of Opposer and those of Applicant.

2. There would be no likelihood of confusion between Opposer's P3 and P3 INTERNATIONAL marks and Applicant's P3 GROUP mark due to the differences between the goods identified in Opposer's registration and Applicant's application.

3. There would be no likelihood of confusion between Opposer's P3 and P3 INTERNATIONAL marks and Applicant's P3 GROUP mark due to the differences in target customers and industries for the respective marks.

4. There would be no likelihood of confusion between Opposer's P3 and P3 INTERNATIONAL marks and Applicant's P3 GROUP mark due to the fact that the respective

goods travel through different channels of trade.

5. There would be no likelihood of confusion between Opposer's P3 and P3 INTERNATIONAL marks and Applicant's P3 GROUP mark due to the fact that there has been no actual confusion.

6. Opposer committed fraud in the procurement of Registration No. 4,001,042 in that it knowingly, with the intent to deceive the USPTO, made a material misrepresentation that it was using its mark in commerce in the U.S. on the identified goods as of the time it filed its application, when in fact, no such use was taking place in connection with the following goods: "swimming pool temperature and ambient humidity sensors with alarm," "hygro thermometers measuring temperature," "audio recorders and players," "telephone answering machines," "electric lighted magnifying glasses," "automotive safety kits comprising warning lights," and "strobes, and hand tools for the repair and maintenance of automobiles," in International Class 9; "portable electric fans" in International Class 11; and "electrically illuminated mirrors" in International Class 20.

7. Opposer committed fraud in the procurement of Registration No. 4,001,043 in that it knowingly, with the intent to deceive the USPTO, made a material misrepresentation that it was using its mark in commerce in the U.S. on the identified goods as of the time it filed its application, when in fact, no such use was taking place in connection with the following goods: "swimming pool temperature and ambient humidity sensors with alarm," "hygro thermometers measuring temperature," "audio recorders and players," "telephone answering machines," "electric lighted magnifying glasses," "automotive safety kits comprising warning lights," and "strobes, and hand tools for the repair and maintenance of automobiles," in International Class 9; "portable electric fans" in International Class 11; and "electrically illuminated mirrors" in

International Class 20.

8. Opposer's action is barred because Opposer has acted with unclean hands.

**COUNTERCLAIM TO CANCEL OPPOSER'S
REGISTRATION NOS. 4,001,042 AND 4,001,043**

Applicant P3 Ingenieurgesellschaft mbH ("Applicant"), a limited liability corporation organized under the laws of Germany, having a business address at Am Kraftversorgungsturm 3, 52070 Aachen, Germany, believes that it is and will continue to be damaged by Opposer P3 International Corp's ("Opposer") United States Registration Nos. 4,001,042 for P3 INTERNATIONAL (the "'042 Registration") and 4,001,043 for P3 (the "'043 Registration) and hereby petitions to cancel the same in whole or in part under 15 U.S.C. § 1064(3).

The grounds for cancellation of Opposer's P3 and P3 INTERNATIONAL marks are as follows:

1. Applicant is engaged in the business of developing, manufacturing, and selling electronic testing equipment and devices, e.g., USB flash drives, SD cards, CDs, DVDs, MP3 players, etc.—often pre-recorded with testing content, individually and in kits, to business-to-business customers for the purpose of testing electronics, communications and media equipment, systems, and interfaces.
2. On September 12, 2013, Applicant filed Application Serial No. 79/143,481 for the mark P3 GROUP for goods in International Classes 9, 11, 35, 36, 38, 41, and 42 pursuant to a request for extension of protection of an international registration in the United States under section 66(a) of the Trademark Act, 15 U.S.C. §1141f.
3. On November 4, 2014, Applicant's Application Serial No. 79/143,481 for the mark P3 GROUP was published for opposition in the Official Gazette.
4. On March 4, 2015, Opposer filed a Notice of Opposition, arguing that Applicant

should be refused registration of its P3 GROUP mark for all goods in International Classes 9 and 11 on the grounds that it is likely to cause confusion, mistake or to deceive in violation of section 2(d) of the Act, and/or to dilute Opposer's P3 and P3 INTERNATIONAL marks in violation of section 43(c) of the Lanham Act, that the goods listed in International Classes 9 and 11 are not goods in trade and merely incidental to Applicant's services, and that Applicant has no bona fide intention to use its P3 GROUP mark in commerce in connection with those goods.

5. On June 11, 2010, Opposer filed § 1(a) Application Serial No. 85060909 for the mark P3 INTERNATIONAL in International Classes 7, 9, 10, 11, and 20. This application matured into registration on July 26, 2011 under Registration No. 4,001,042, which covers, *inter alia*: "swimming pool temperature and ambient humidity sensors with alarm," "hygro thermometers measuring temperature," "audio recorders and players," "telephone answering machines," "electric lighted magnifying glasses," "automotive safety kits comprising warning lights," and "strobes, and hand tools for the repair and maintenance of automobiles," in International Class 9 based on a date of first use and first use in commerce of February 3, 1995; "portable electric fans" in International Class 11 based on a date of first use and first use in commerce of March 27, 2002; and "electrically illuminated mirrors" in International Class 20 based on a date of first use and first use in commerce of May 14, 2009.

6. On June 11, 2010, Opposer filed § 1(a) Application Serial No. 85060921 for the mark P3 in International Classes 7, 9, 10, 11, and 20. This application matured into registration on July 26, 2011 under Registration No. 4,001,043, which covers, *inter alia*, "swimming pool temperature and ambient humidity sensors with alarm," "hygro thermometers measuring temperature," "audio recorders and players," "telephone answering machines," "electric lighted magnifying glasses," "automotive safety kits comprising warning lights," and "strobes, and hand

tools for the repair and maintenance of automobiles,” in International Class 9 based on a date of first use and first use in commerce of December 1, 1987; “portable electric fans” in International Class 11 based on a date of first use and first use in commerce of November 7, 1996; and “electrically illuminated mirrors” in International Class 20 based on a date of first use and first use in commerce of May 14, 2009.

7. At all times herein relevant and on information and belief, Opposer is a corporation organized and existing under the laws of the State of New York with an address of 132 Nassau Street, New York, New York 10023.

8. On information and belief, Opposer is in the business of manufacturing and selling consumer products, namely home electronics and security products, to consumers.

9. On information and belief, Opposer either no longer uses or has never used the P3 INTERNATIONAL mark in interstate commerce in connection with the following categories of goods identified in its registrations for those marks: “swimming pool temperature and ambient humidity sensors with alarm,” “hygro thermometers measuring temperature,” “audio recorders and players,” “telephone answering machines,” “electric lighted magnifying glasses,” “automotive safety kits comprising warning lights,” and “strobes, and hand tools for the repair and maintenance of automobiles,” in International Class 9; “portable electric fans” in International Class 11; and “electrically illuminated mirrors” in International Class 20.

10. On information and belief, Opposer either no longer uses or has never used the P3 mark in interstate commerce in connection with the following categories of goods identified in its registrations for those marks: “swimming pool temperature and ambient humidity sensors with alarm,” “hygro thermometers measuring temperature,” “audio recorders and players,” “telephone answering machines,” “electric lighted magnifying glasses,” “automotive safety kits

comprising warning lights,” and “strobes, and hand tools for the repair and maintenance of automobiles,” in International Class 9; “portable electric fans” in International Class 11; and “electrically illuminated mirrors” in International Class 20.

11. On information and belief, Opposer does not intend to resume use or begin use of the P3 or P3 INTERNATIONAL marks with respect to the categories of goods identified in Paragraphs 9 and 10 above.

COUNT I
(Non-use)

12. On information and belief, Opposer either no longer uses or has never used the P3 or P3 INTERNATIONAL marks in interstate commerce in connection with certain categories of goods as required by Section 45 of the Trademark Act, 15 U.S.C. § 1127.

13. On information and belief, Opposer either no longer or has never shipped any product, sample or specimen bearing the P3 or P3 INTERNATIONAL marks in interstate, international or other commerce which Congress may regulate in connection with the categories of goods identified in Paragraphs 9 and 10.

14. On information and belief, Opposer either no longer or has never used the P3 or P3 INTERNATIONAL marks in connection with the categories of goods identified in Paragraphs 9 and 10.

15. On information and belief, Opposer does not intend to resume use or begin use of the P3 or P3 INTERNATIONAL marks with respect to the categories of goods identified in Paragraphs 9 and 10.

16. Opposer has therefore abandoned Registration Nos. 4,001,042 and 4,001,043 with respect to the categories of goods identified in Paragraphs 9 and 10.

17. Therefore, Opposer’s registration on the Registration Nos. 4,001,042 and

4,001,043 should be cancelled with respect to those categories of goods identified in Paragraphs 9 and 10.

COUNT II
(Fraud on the United States Patent and Trademark Office)

18. On June 11, 2010, Opposer filed with the U.S. Patent & Trademark Office Application Serial No. 85060909 to register the mark P3 INTERNATIONAL on the Principal Register, which included a sworn declaration signed under penalty of perjury by Shawn Herzinger, Vice President, Product & Operations, for Opposer.

19. On June 11, 2010, Opposer filed with the U.S. Patent & Trademark Office Application Serial No. 85060921 to register the mark P3 on the Principal Register, which also included a sworn declaration signed under penalty of perjury by Mr. Herzinger.

20. Mr. Herzinger swore in both applications that that as of June 11, 2010, with respect to the goods identified in Paragraphs 9 and 10, the P3 INTERNATIONAL and mark “is now in use in such commerce” by Opposer. Mr. Herzinger further swore:

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the 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/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

On information and belief, such statements were false at the time they were made.

21. On information and belief, as of June 11, 2010, Opposer was not using the P3

INTERNATIONAL or P3 marks in commerce with respect to the goods identified in Paragraphs 9 and 10.

22. Opposer committed fraud in the procurement of Registration No. 4,001,042 in that it knowingly, with the intent to deceive the USPTO, made a material misrepresentation that it was using its mark in commerce in the U.S. on the identified goods as of the time it filed its application, when in fact, no such use was taking place in connection with the following goods: “swimming pool temperature and ambient humidity sensors with alarm,” “hygro thermometers measuring temperature,” “audio recorders and players,” “telephone answering machines,” “electric lighted magnifying glasses,” “automotive safety kits comprising warning lights,” and “strobes, and hand tools for the repair and maintenance of automobiles,” in International Class 9; “portable electric fans” in International Class 11; and “electrically illuminated mirrors” in International Class 20.

23. Opposer committed fraud in the procurement of Registration No. 4,001,043 in that it knowingly, with the intent to deceive the USPTO, made a material misrepresentation that it was using its mark in commerce in the U.S. on the identified goods as of the time it filed its application, when in fact, no such use was taking place in connection with the following goods: “swimming pool temperature and ambient humidity sensors with alarm,” “hygro thermometers measuring temperature,” “audio recorders and players,” “telephone answering machines,” “electric lighted magnifying glasses,” “automotive safety kits comprising warning lights,” and “strobes, and hand tools for the repair and maintenance of automobiles,” in International Class 9; “portable electric fans” in International Class 11; and “electrically illuminated mirrors” in International Class 20. Therefore, Registration No. 4,001,042 should be cancelled.

COUNT III
(Partial Cancellation Under Section 18)

24. Applicant believes it is damaged and will continue to be damaged by the '042 and '043 Registrations. Applicant hereby petitions, as an alternative claim, for partial cancellation of the goods recited in the '042 and '043 Registrations pursuant to 15 U.S.C. §§ 1067-68.

25. As fully described above, Opposer has filed the subject Notice of Opposition against Applicant's Serial No. 79/143,481 for the mark P3 GROUP in Classes 9, 11, 35, 36, 38, 41, and 42. Even though the USPTO did not find a likelihood of confusion and Applicant does not find grounds for a likelihood of confusion between the respective marks, if this claim under Section 18 for partial cancellation is granted to restrict the scope of the goods in Opposer's '042 and '043 Registrations that are still in use, then any possible likelihood of confusion will be even less likely, thereby protecting the public interest and accurately reflecting marketplace realities.

26. On information and belief, Opposer's goods are exclusively consumer products, marketed and sold exclusively to consumers.

27. If the '042 and '043 Registrations are properly restricted to the consumer products and consumer markets in connection with which Opposer's marks are actually used, Applicant, on information and belief, alleges that the '042 and '043 Registrations will more accurately reflect marketplace realities, and further reduce any perceived likelihood of confusion between the Opposer's and Applicant's marks, as Applicant's goods are targeted to business-to-business customers, not consumers of products for the home; Applicant's goods are not consumer products.

28. In light of the fact that Opposer's goods are strictly personal consumer products, the description of Opposer's goods in the '042 and '043 Registrations are overbroad. If the Opposer's identification of goods in the '042 Registration properly reflected its actual products, trade channels, target customers, and the actual marketplace realities of its use of its P3

INTERNATIONAL mark, it would be limited as follows:

- a. International Class 7: Robotic vacuum cleaners exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.
- b. International Class 9: Environmental weather monitoring system comprising meters and sensors for measuring and reporting temperature, barometric pressure, humidity, wind speed and direction exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; temperature sensors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; barometers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; thermometers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; swimming pool temperature and ambient humidity sensors with alarm exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; wind speedometers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; hygro-thermometers measuring temperature, humidity and precipitation exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic humidity sensors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic precipitation gauges exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic moisture sensors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; portable electronic energy meters for monitoring and reporting electrical energy usage exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic timers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; voltage surge suppressors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; audio recorders and players exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; telephone answering machines exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic camera detectors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic pest repelling devices, namely, sonic devices for repelling animals, birds and insects exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets;

electronic animal and bird repelling devices exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; sonic animal repelling devices with lights exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electric lighted magnifying glasses exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; automotive safety kits comprising warning lights, strobes, and hand tools for the repair and maintenance of automobiles, exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.

- c. International Class 10: electronic heating devices for treatment of itching, bites and stings, exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.
- d. International Class 11: Portable electric fans exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; portable electronic air purifiers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; motion-activated home and garden lighting devices exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic water softening units exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; decorative electric garden lighting devices exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; garden lighting devices with insect traps exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.
- e. International Class 20: Electrically illuminated mirrors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.

If the Opposer's identification of goods in the '043 Registration properly reflected its actual products, trade channels, target customers, and the actual marketplace realities of its use of its P3 mark, it would be limited as follows:

- a. International Class 7: Robotic vacuum cleaners exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.
- b. International Class 9: Environmental weather monitoring system comprising meters and sensors for measuring and reporting temperature, barometric pressure, humidity, wind speed and direction exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home

consumer markets; temperature sensors, barometers, thermometers, swimming pool temperature and ambient humidity sensors with alarm exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; wind speedometers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; hygro-thermometers measuring temperature, humidity and precipitation exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic humidity sensors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic precipitation gauges exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic moisture sensors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; portable water consumption meters exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; portable electronic energy meters for monitoring and reporting electrical energy usage exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic timers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; voltage surge suppressors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; audio recorders and players exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; telephone answering machines exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic camera detectors exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic pest repelling devices, namely, sonic devices for repelling animals, birds and insects exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic animal and bird repelling devices exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; sonic animal repelling devices with lights exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electric lighted magnifying glasses exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; automotive safety kits comprising warning lights, strobes, and hand tools for the repair and maintenance of automobiles exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.

- c. International Class 10: Electronic heating devices for treatment of itching, bites

and stings, exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.

- d. International Class 11: Portable electric fans exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; portable electronic air purifiers exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; motion-activated home and garden lighting devices exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; night lights exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; electronic water softening units exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; decorative electric garden lighting devices exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets; garden lighting devices with insect traps exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.
- e. International Class 20: Electrically illuminated mirrors, exclusively encompassing and comprising of consumer and home products targeted to the individual consumer and home consumer markets.

29. Opposer's goods are, as described on its own website, personal consumer products. Applicant's goods are not personal consumer products—they are products targeted, marketed and sold to business-to-business customers—industries such as the automotive and aviation industries, for example. Therefore, the respective products of Opposer and Applicant are not the same, are not offered in the same channels of trade, and are not sold to the same category or class of customers. The marketplace realities are such that no confusion is likely, and Opposer's '042 and '043 Registrations should reflect these marketplace realities.

30. Applicant is damaged and will continue to be damaged because Opposer's '042 and '043 Registrations cover overbroad categories of goods. These description of goods purports to include all possible channels of trade and customer categories when in fact it is strictly a consumer product, targeted to individual consumers. In stark contrast, Applicant's goods and services are targeted to the business-to-business market, to specific industries such as the

automotive and aviation industries. Consequently, the '042 and '043 Registrations are improperly overbroad in their coverage, not reflecting the marketplace realities. Opposer seeks to use this overbroad coverage to assert a misplaced likelihood of confusion argument against Applicant's P3 GROUP application, when the marketplace realities make it clear that no such confusion is even remotely likely.

31. If the '042 and '043 Registrations of Opposer is restricted to the categories described in Paragraph 28 it will more accurately reflect the marketplace realities, and further obviate any perceived likelihood of confusion with Applicant's pending Application Serial No. 79/143,481 for P3 GROUP.

WHEREFORE, for the reasons stated above, Petitioner respectfully requests that Registration Nos. 4,001,042 and 4,001,043 be CANCELLED in full or in part.

Dated: May 27, 2015
New York, New York

LOMBARD & GELIEBTER LLP

/s/Darren M. Geliebter

Darren M. Geliebter

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Attorneys for Applicant

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the ANSWER TO NOTICE OF OPPOSITION AND COUNTERCLAIM was served via first class mail, postage prepaid, on this day of May 27, 2015 on counsel for Opposer at the following address:

James A. Power Jr.
POWER DEL VALLE LLP
233 West 72nd Street
New York, New York 10023

Dated: May 27, 2015
New York, New York

LOMBARD & GELIEBTER LLP

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