

ESTTA Tracking number: **ESTTA773147**

Filing date: **09/27/2016**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Daniel Measurement and Control, Inc.
Granted to Date of previous extension	10/01/2016
Address	11000 Brittmoore Park Drive Houston, TX 77041 UNITED STATES
Attorney information	Thomas L. Warden Conley Rose, P.C. P.O. Box 3267 Houston, TX 77253-3267 UNITED STATES tmhou@conleyrose.com Phone:7132388000

Applicant Information

Application No	86923972	Publication date	08/02/2016
Opposition Filing Date	09/27/2016	Opposition Period Ends	10/01/2016
Applicant	ETROL TECHNOLOGIES (USA) INC. Suite 105 Bellevue, WA 98007 UNITED STATES		

Goods/Services Affected by Opposition

Class 009. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Microprocessor-based hardware for use in remote electronic monitoring and control of oil and gas production facilities, water and sewage systems, communications systems, and environmental monitoring systems

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3911662	Application Date	03/31/2009
Registration Date	01/25/2011	Foreign Priority Date	NONE
Word Mark	DANPAC		

Design Mark	<h1>DANPAC</h1>
Description of Mark	NONE
Goods/Services	Class 009. First use: First Use: 2009/04/21 First Use In Commerce: 2009/04/21 Measurement system controls, namely, control panels housing components for communicating with and controlling flow meters, gas chromatographs, pressure transmitters, and sensors; Computer software for use in reporting conditions in gas and liquid flow meters

Attachments	77702936#TMSN.png(bytes) Notice_of_Opposition_DATAPACK_1787-74800.pdf(22465 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Thomas L. Warden/
Name	Thomas L. Warden
Date	09/27/2016

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

In re U.S. Trademark Application Serial No. 86/923,972 for the mark DATAPACK, filed on February 29, 2016, published on August 2, 2016, and having the current owner of record Etrol Technologies (USA) Inc.

Daniel Measurement and Control, Inc.	§	
	§	
Opposer,	§	
	§	
vs.	§	Opposition No. _____
	§	
Etrol Technologies (USA) Inc.,	§	
	§	
Applicant.	§	

NOTICE OF OPPOSITION

Commissioner:

Daniel Measurement and Control, Inc. (“Opposer”), a corporation organized under the laws of the state of Delaware and having a principal place of business at 11100 Brittmoore Park Drive, Houston, Texas 77041, United States, believes that it will be damaged by Etrol Technologies (USA) Inc.’s registration of the mark DATAPACK in International Class 009 as shown in U.S. Trademark Application Serial No. 86/923,972. Accordingly, Opposer hereby opposes the same under the provisions of the Trademark Act of 1946, § 1063 of Title 15 of the United States Code.

Opposer alleges the following as standing to oppose the application and as grounds for the opposition:

1. The Opposed U.S. Trademark Application Serial No. 86/923,972 for the mark DATAPACK (the “Opposed Application”) was filed on February 29, 2016 by Etrol Technologies (USA) Inc. (“Applicant”).

2. The Opposed Application seeks registration of the mark DATAPACK for the following goods: US 021 023 026 036 038. G & S: “Microprocessor-based hardware for use in remote electronic monitoring and control of oil and gas production facilities, water and sewage systems, communication systems, and environmental monitoring systems.” The Opposed Application is based on Applicant’s stated intent to use the mark.

3. The Opposed Application published on August 2, 2016. The U.S. Trademark Trial and Appeal Board granted Opposer one or more extensions of time to file this opposition through October 1, 2016.

4. Pursuant to the U.S. Trademark Office records, the current owner of the Opposed Application is Etrol Technologies (USA) Inc. of 15400 SE 30th Place, Suite 105, Bellevue, Washington, 98007.

5. Opposer is the owner of the trademark DANPAC, a mark that is used by Opposer in connection with goods that include: measurement system controls, namely, control panels housing components for communicating with and controlling flow meters, gas chromatographs, pressure transmitters, and sensors; computer software for use in reporting conditions in gas and liquid flow meters. DANPAC is registered under U.S. Trademark Registration No. 3,911,662 and issued on the Principal Register on January 25, 2011.

6. Opposer's use of its DANPAC mark began at least as early as April 21, 2009 in interstate commerce on, or in connection with, the above-identified goods, and such use has been continuous and continues to date.

7. Opposer's rights with respect to the DANPAC mark predate any rights Applicant can claim to the mark DATAPACK which is the subject of Applicant's Opposed Application.

8. By virtue of Opposer's long and exclusive use of the DANPAC mark and the substantial advertising, marketing, sales and quality control exercised over the years, the DANPAC mark has become well known and recognized as an indication of high-quality products that emanate from a single source. As such, Opposer has built up and thereby acquired valuable and significant goodwill symbolized by its DANPAC mark, and the DANPAC mark has become an important asset of substantial value as a symbol of Opposer's identity and its longstanding business activities. The relevant consumers and purchasers have come to know the DANPAC mark as an indicator of products that originate solely from Opposer.

9. The goodwill embodied in the DANPAC trademark, and consequently Opposer's valuable reputation and credibility in the oil and gas industry, and in the other industries in which Opposer markets and sells, depends on the integrity and distinctiveness of the DANPAC trademark as an identifier that is used exclusively by Opposer, and not used by any other source of products.

10. Applicant's opposed DATAPACK mark is highly similar to that of Opposer's registered mark DANPAC, including in both sound and in appearance. The goods and services with which Applicant intends to use the DATAPACK mark, include "microprocessor-based hardware for use in remote electronic monitoring and control of oil and gas production facilities." These goods are highly similar to, and overlap with, the goods with which Opposer

has long used its DANPAC mark, such goods including “measurement system controls, namely, control panels housing components for communicating with and controlling flow meters, gas chromatographs, pressure transmitters, and sensors” as are marketed and sold to oil and gas producers, among other customers. Pursuant to §2(d), 15 U.S.C. § 1052(d), Opposer asserts, and intends to prove at trial, that Applicant’s mark, as applied to goods or services set forth in the Opposed Application for the mark DATAPACK, so resembles Opposer’s previously used and previously registered mark DANPAC as to be likely to cause confusion, mistake, or deception. In short, Applicant’s mark so resembles a mark previously used in the United States by Opposer and not abandoned, as to be likely, when used on or in connection with the goods or services of the Applicant, to cause confusion, or to cause mistake, or to deceive.

11. Applicant’s opposed DATAPACK mark so resembles Opposer’s DANPAC mark as to be likely, when applied to Applicant’s goods or services, to cause confusion, to cause mistake or to deceive with respect to Opposer’s DANPAC mark, and Opposer will be damaged by the registration sought by Applicant.

12. Additionally, Applicant’s opposed DATAPACK mark so resembles Opposer’s DANPAC mark as to be likely, when applied to Applicant’s goods or services, to dilute Opposer’s DANPAC mark, and Opposer will be damaged by the registration sought by Applicant.

WHEREFORE, Opposer prays that registration of the mark shown in U.S. Trademark Application Serial No. 86/923,972 be refused, and that the Opposition of this Notice be sustained in favor of Opposer.

Authorization is hereby granted to the U.S. Patent and Trademark Office to deduct the filing fee for the present opposition in the amount of \$300.00 from Conley Rose Deposit Account

No. 501515. Should any additional fees be due, please also charge them to Deposit Account No. 501515.

Respectfully submitted,

Dated: September 27, 2016

By: /Thomas L. Warden/

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ATTORNEYS FOR OPPOSER

CERTIFICATE OF TRANSMISSION UNDER TBMP 110

I HEREBY CERTIFY that a true and correct copy of this document, *Notice of Opposition*, opposing registration of U.S. Trademark Application Serial No. 86/923,972 for the mark DATAPACK, is being filed electronically through <http://estta.uspto.gov> via the Trademark Trial and Appeal Board Electronic Filing System.

On the 27th day of September, 2016.

/Melissa Kirchhoff/
Melissa Kirchhoff

CERTIFICATE OF SERVICE UNDER TBMP 113

I HEREBY CERTIFY that a true and correct copy of the foregoing *Notice of Opposition*, opposing registration of U.S. Trademark Application Serial No. 86/923,972 for the mark DATAPACK, is being sent by First Class U.S. Mail, postage prepaid, to counsel for Applicant, Etrol Technologies (USA) Inc., as follows:

Gregory F. Buhyoff
1781 VILLAGE CENTER CIRCLE
SUITE 120
LAS VEGAS, NEVADA 89134
United States

On the 27th day of September, 2016.

/Juliya Schuck/

Juliya Schuck