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

Proceeding	91246810
Party	Defendant Carrier Corporation
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Submission	Answer
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Date	04/10/2019
Attachments	Answer and Affirmative Defenses.pdf(30523 bytes)

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

In the Matter of Trademark Application Serial No.	87864138
Filed:	April 5, 2018
Mark:	CORTX
Published for Opposition	September 4, 2018

INNOVISE LIMITED

Opposer,

v.

CARRIER CORPORATION,

Applicant.

Opposition No. 91246810

ANSWER AND AFFIRMATIVE DEFENSES

Pursuant to TBMP §§ 310 and 311, Applicant Carrier Corporation (“Applicant”), acting by and through its undersigned counsel, hereby responds to Opposer Innovise Limited’s (“Opposer”) Notice of Opposition as follows:

1. Applicant denies that Opposer will be damaged by the issuance of a registration for the mark CORTIX (“the CORTIX Mark”) as applied for in U.S. Trademark Application Serial No. 87864138 (“the ‘138 Application”). Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the Notice of Opposition, and, therefore, denies the same.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Notice of Opposition, and, therefore, denies the same.

3. Applicant admits that U.S. Trademark Registration No. 4297152 (“the ‘152 Registration”) for the trademark CORTEX (the “CORTEX Mark”) and the public records speak for themselves. In further answering, Applicant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Notice of Opposition, and, therefore, denies the same.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition, and, therefore, denies the same.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Notice of Opposition, and, therefore, denies the same.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Notice of Opposition, and, therefore, denies the same.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Notice of Opposition, and, therefore, denies the same.

8. Applicant denies that on April 5, 2019 it filed the ‘138 Application. Applicant admits the remaining allegations contained in paragraph 8 of the Notice of Opposition, and further admits that the ‘138 Application speaks for itself, including the filing date of April 5, 2018.

9. Applicant denies the allegations contained in paragraph 9 of the Notice of Opposition.

10. Applicant denies the allegations contained in paragraph 10 of the Notice of Opposition.

11. Applicant admits that Applicant's CORTIX Mark is used in connection with software and software related services, intelligent data collection, transmission, and analysis. Applicant denies the remaining allegations contained in paragraph 11 of the Notice of Opposition.

12. Applicant denies the allegations contained in paragraph 12 of the Notice of Opposition.

WHEREFORE, Opposer's Request for Relief does not state any factual allegations, and, therefore, no response is required. Applicant denies that Opposer is entitled to any such relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Opposer's claims alleged in the Notice of Opposition fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Opposer's claims alleged in the Notice of Opposition lack merit and are insufficient to support an opposition against the '138 Application.

THIRD AFFIRMATIVE DEFENSE

Opposer will not suffer any damages or harm by Applicant's registration and use of its CORTIX Mark as identified in the '138 Application.

FOURTH AFFIRMATIVE DEFENSE

Applicant applied for its CORTIX Mark as identified in the '138 Application in good faith.

FIFTH AFFIRMATIVE DEFENSE

Opposer's claims are barred by unclean hands, laches, acquiescence, waiver, and/or estoppel.

SIXTH AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake, or deception between Applicant's CORTIX Mark as identified in the '138 Application and the CORTEX Mark as identified in the '152 Registration that Opposer asserted in the Notice of Opposition because the marks are not confusingly similar.

SEVENTH AFFIRMATIVE DEFENSE

There is no likelihood of confusion, mistake, or deception between Applicant's CORTIX Mark as identified in the '138 Application and the CORTEX Mark as identified in the '152 Registration that Opposer asserted in the Notice of Opposition at least because the marks are different, the goods and services are dissimilar, and the consumers are sophisticated.

EIGHTH AFFIRMATIVE DEFENSE

Carrier reserves its right to amend its Answer to the Notice of Opposition, to amend its Affirmative Defenses, to assert such additional Affirmative Defenses as it deems appropriate and such Counterclaims as may be permitted that may now exist or in the future are available based on discovery and further factual investigation in this proceeding.

WHEREFORE, Applicant Carrier Corporation respectfully requests that the Trademark Trial and Appeal Board dismiss the above-captioned Notice of Opposition in its entirety, that the Board allow United States Trademark Application Serial No. 87864138 for the mark CORTIX to register and that a Notice of Allowance be issued forthwith, and that the Board grant Applicant Carrier Corporation such other relief as it deems just and appropriate.

Dated: April 10, 2019

Respectfully submitted,

Carrier Corporation

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CERTIFICATE OF SERVICE

I, Tasia E. Perkins, Esq. counsel to Carrier Corporation in Opposition No. 91246810, certify that, on the 10th day of April 2019, I served a copy of ANSWER AND AFFIRMATIVE DEFENSES, via electronic mail, upon:

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