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

Proceeding no.	91274685
Party	Defendant Tellus Equipment Solutions, LLC
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Date	04/04/2022
Attachments	Answer.pdf(24388 bytes)

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

In the Matter of Application Serial No.: 90/541,231
Filed: February 23, 2022
Mark: TELLUS and design
Published: October 26, 2021

TELUS CORPORATION,)	
)	
Opposer,)	
)	Opposition No. 91274685
v.)	
)	
TELUS EQUIPMENT)	
SOLUTIONS, LLC,)	
)	
Applicant.)	
)	

**ANSWER AND AFFIRMATIVE DEFENSES
OF APPLICANT TELLUS EQUIPMENT SOLUTIONS, LLC**

For its Answer to the February 23, 2022 Notice of Opposition (“Notice”) filed by Telus Corporation (“Opposer”) in this action (the “Opposition”), Applicant Tellus Equipment Solutions, LLC (“Tellus” or “Applicant”) responds as follows:

In response to the first unnumbered paragraph of the Notice, Applicant admits that it filed U.S. Application Serial No. 90/541,231 (the “Application”) to register the mark TELLUS and design (“Applicant’s Mark”), as set forth in the Application, on February 23, 2021, admits that Applicant’s Mark was published for opposition on October 26, 2021, denies that Opposer would be damaged by the registration of Applicant’s Mark, and is without knowledge or information sufficient to form a belief as to the truth of the factual allegations set forth in the remainder of the paragraph, and therefore denies them.

Applicant responds to the numbered paragraphs of Opposer’s Notice as set forth below. Applicant denies each and every allegation by Opposer not expressly admitted herein.

1. Applicant admits that the present Application seeks to register TELLUS **and design** (but not the TELLUS word mark by itself, for which Applicant already owns U.S. Reg. No. 6,503,815) as a mark for the services set forth in the Application, admits that the Application was published on October 26, 2021, and respectfully refers the Board to the Application for its contents.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 and therefore denies them.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 and therefore denies them.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 and therefore denies them.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 and therefore denies them.

6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 and therefore denies them.

7. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 and therefore denies them, but notes that Opposer has not stated that it has provided “all of the aforementioned services under its TELUS trademark” in commerce **in the United States**.

8. Denied, particularly as Opposer has not claimed that the TELUS mark is inherently distinctive in connection with any particular goods or services.

9. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 and therefore denies them.

10. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 and therefore denies them, but notes that Opposer has not stated that it has “used its TELUS trademark with various services in the agriculture field since at least as early as 2019” in commerce **in the United States**.

11. Applicant admits that Opposer has cited four U.S. registrations and a pending U.S. application, respectfully refers the Board to those registrations and that application for their contents, and is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations set forth in paragraph 11, and therefore denies them, but notes that Opposer has not stated that it has “substantial common law trademark rights in its TELUS trademark for its various agricultural-related services” **in the United States**.

12. Denied.

13. Applicant admits that the Application was filed on an intent-to-use basis, and respectfully refers the Board to that application for its contents.

14. Denied, both with respect to the TELLUS word mark and the TELLUS and design mark that is the subject of the Application.

15. Denied.

16. Denied, and Applicant notes that Opposer has not stated that the services it purported “provides through its TELUS Agriculture business” are provided in commerce **in the United States**.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied, except to the extent that Paragraph 21 consists of a purported statement of law to which no response is required.

In response to the unnumbered WHEREFORE paragraph of the Notice, Applicant denies that registration of Applicant's Mark should be refused, that this opposition should be sustained, or that Opposer is entitled to any of the relief it seeks in its Notice, or any relief whatsoever.

AFFIRMATIVE DEFENSES

Subject to the responses above, and without assuming any burden other than that imposed by operation of law, Applicant alleges and asserts the following affirmative defenses in response to the allegations of Opposer's Notice. In addition to the defenses described below, and subject to its responses above, Applicant reserves the right to modify, amend and/or expand upon these defenses as discovery proceeds, and to allege additional defenses that become known through the course of discovery.

1. The Notice fails to state a claim upon which relief may be granted.
2. Opposer is barred by the doctrine of waiver, estoppel, and/or laches.
3. Applicant has priority in its use of the TELLUS word mark in connection with agricultural services in the United States, as evidenced by, *inter alia*, its U.S. Registration No. 6,503,815 for "dealerships in the field of lawn and garden equipment, lawn mowers, tractors, bulldozers, construction equipment, heavy equipment, and all-terrain vehicles; retail store services featuring parts and accessories for lawn and garden equipment, lawn mowers, tractors, bulldozers, construction equipment, heavy equipment, and all-terrain vehicles," and "repair and maintenance services for lawn and garden equipment, lawn mowers, tractors, bulldozers, construction equipment, heavy equipment, and all-terrain vehicles," registered September 28, 2021 based on use since September 1, 2020 and use in commerce since September 16, 2020 (in International Class 35) and September 9, 2020 (in International Class 37).

4. The Notice fails to comply with the “short and plain statement” standard of 37 C.F.R. § 2.104(a) and TBMP § 309.03. As a result, Applicant is not required to separately admit or deny each of the allegations contained therein.

WHEREFORE, Applicant requests that the Notice of Opposition be dismissed with prejudice, that Application Serial No. 90/541,231 proceed to registration, and that the Board grant to Applicant such other and further relief as the Board deems just and proper.

Dated: April 4, 2022

Respectfully submitted by,

ROPES & GRAY LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April, 2022, a true and correct copy of the foregoing Answer and Affirmative Defenses of Applicant Tellus Equipment Solutions, LLC was served on Opposer’s counsel of record at the following email address:

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/Nicole Mollica/

Nicole Mollica, Ropes & Gray LLP