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

Proceeding	92068068
Party	Defendant Insight Energy Ventures LLC DBA Powerley
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Date	04/19/2018
Attachments	Registrants Answer to Petition to Cancel and Affirmative Defenses.pdf(34913 bytes)

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

In re Trademark of:

Registrant: Insight Energy Ventures LLC dba Powerley
Registration No. 5,156,080
Registration Date: March 7, 2017
Mark: P (Stylized/Design)

PURE STORAGE, INC.,

Plaintiff/Petitioner,

v.

Cancellation No. 92068068

INSIGHT ENERGY VENTURES LLC
DBA POWERLEY,

Defendant/Registrant.

**DEFENDANT/REGISTRANT'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF/PETITIONER'S PETITION TO CANCEL**

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Defendant, Insight Energy Ventures LLC dba Powerley, ("Registrant"), through its attorneys, Howard & Howard Attorneys PLLC responds to Plaintiff's Pure Storage, Inc. ("Petitioner") Petition to Cancel and submits the following Answer and Affirmative Defenses to the Petition to Cancel:

Registrant denies the allegation in the introductory paragraph that Petitioner is and will continue to be damaged by the continued registration of U.S. Trademark Registration No. 5,156,080 for the mark P (Stylized/Design).

In response to the enumerated allegations, Registrant submits the following response:

1. In response to the allegations in Paragraph 1, Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies the allegations.

2. In response to the allegations in Paragraph 2, Registrant admits the allegations in Paragraph 2.

3. There is no Paragraph 3 and Registrant lacks knowledge or information sufficient to form a belief about the truth of any allegations and therefore denies any allegations.

4. In response to the allegations in Paragraph 4, Registrant admits U.S. Registration Nos. 4,165,143 and 4,436,830 were registered on June 26, 2012 and November 19, 2013, respectively, and admits U.S. Registration No. 4,165,143 is for “Flash memory array” in Class 9 and U.S. Registration No. 4,436,830 is for “Installation, maintenance and repair of computer hardware; technical support services, namely, troubleshooting in the nature of the repair of computer hardware” in Class 37, but denies the remaining allegations as lacking knowledge or information sufficient to form a belief about the truth of the allegations.

5. In response to the allegations in Paragraph 5, Registrant admits the allegations in Paragraph 5.

6. In response to the allegations in Paragraph 6, Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies the allegations.

7. In response to the allegations in Paragraph 7, Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies the allegations.

8. In response to the allegations in Paragraph 8, Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies the allegations.

9. In response to the allegations in Paragraph 9, Registrant denies the allegations as factually and legally untrue.

10. In response to the allegations in Paragraph 10, Registrant admits that the “mark consists of stylized symbol geometrically shaped like the letter ‘P’”, but denies the remaining allegations as factually and legally untrue.

11. In response to the allegations in Paragraph 11, Registrant admits the allegations in Paragraph 11.

12. In response to the allegations in Paragraph 12, Registrant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore denies the allegations.

13. In response to the allegations in Paragraph 13, Registrant denies the allegations as factually and legally untrue.

14. In response to the allegations in Paragraph 14, Registrant denies the allegations as factually and legally untrue.

15. In response to the allegations in Paragraph 15, Registrant denies the allegations as factually and legally untrue.

16. In response to the allegations in Paragraph 16, Registrant denies the allegations as factually and legally untrue.

17. In response to the allegations in Paragraph 17, Registrant denies the allegations as factually and legally untrue.

18. In response to the allegations in Paragraph 18, Registrant admits the allegations in Paragraph 18.

AFFIRMATIVE DEFENSES

Insight Energy Ventures LLC dba Powerley, (“Registrant”), through its attorneys, Howard & Howard Attorneys PLLC, for its Affirmative or Special Defenses states as follows:

1. Petitioner has failed to state a claim upon which relief can be granted.
2. Registrant’s use of the mark P (Stylized/Design) has not created and will not create any likelihood of confusion in the marketplace.
3. Petitioner’s claims are barred by the doctrines of estoppel and equitable estoppel.
4. Petitioner has failed to assert it rights in a timely manner and Petitioner’s claims are barred by laches.
5. Petitioner’s claims are barred by the doctrine of waiver.
6. Petitioner has acquiesced in Registrant’s use of the mark P (Stylized/Design).
7. Registrant is entitled to a registration of the registered mark for the goods and services offered by Registrant in International Classes 9 and 42.
8. Petitioner’s Petition to Cancel is overreaching, a form of trademark misuse, trademark bullying, and constitutes unclean hands.
9. Registrant reserves the right to plead additional affirmative defenses as discovery progresses as Registrant has not had the opportunity to complete discovery to know all of the available Affirmative Defenses at this stage of the Cancellation Proceeding.

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WHEREFORE, Registrant prays that trademark U.S. Registration No. 5,156,080 not be canceled and that this Petition to Cancel be denied and dismissed with prejudice.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: April 19, 2018

By: /Daniel H. Bliss/
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dba Powerley*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing **DEFENDANT/REGISTRANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF/PETITIONER'S PETITION TO CANCEL** has been served upon all parties, via electronic mail at their email address of record on this date.

Date: April 19, 2018

By: /Daniel H. Bliss/
Daniel H. Bliss

Filer Information

Fill in the information below. You will receive an email confirmation of your filing within 24 hours. Your paper will be considered by the Board in due course.

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