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

Proceeding	92071349
Party	Defendant Irina S. Kozodaeva
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

NT-MDT LLC,  
Petitioner,  
v.  
Irina Kozodaeva,  
Registrant.

Opposition No. 92/071,349  
Mark: NT-MDT Design Mark  
Reg. No. 5,753,336  
Filing Date: July 19, 2018  
Registered: May 14, 2019  
VIA ESTTA General Filings

**Registrant Irina Kozodaeva’s Answer to Petitioner NT-MDT LLC’s Petition for  
Cancellation**

Pursuant to TBMP § 311, Registrant Irina Kozodaeva (“Registrant”), the owner of record of Reg. No. 5,753,336 for the NT-MDT Design Mark copied below (“the Mark”) in class 009 for “Apparatus for recording, transmitting and reproducing sound and images; Computer operating software; Computers; Data processing apparatus; Microscopes and their parts; Nautical and photographic apparatus and instruments, namely, underwater housings for cameras, underwater enclosures for cameras and underwater enclosures for photographic lenses; Optical apparatus, namely, a non-lethal security device that uses a light source to detect, warn, repel, temporarily blind, disorient, nauseate, disable, confuse, debilitate, stun, subdue, stop, or incapacitate persons or animals; Scientific apparatus and instruments for measuring relative DNA, RNA and protein and parts and fittings therefor; Transistors; Scanning probe microscopes” (Registrant’s Goods”) hereby respectfully submits, by and through undersigned counsel, her Answer to Petitioner NT-MDT LLC’s (“Petitioner”) Amended Petition for Cancellation (“Petition”).



1. Admitted.
2. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 2 and, on that basis, denies such allegations.
3. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 3 and, on that basis, denies such allegations.
4. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 4 and, on that basis, denies such allegations.
5. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 5 and, on that basis, denies such allegations.
6. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 6 and, on that basis, denies such allegations.
7. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 7 and, on that basis, denies such allegations.
8. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 8 and, on that basis, denies such allegations.
9. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 9 and, on that basis, denies such allegations.
10. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 10 and, on that basis, denies such allegations.
11. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 11 and, on that basis, denies such allegations.
12. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 12 and, on that basis, denies such allegations.
13. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 13 and, on that basis, denies such allegations.

14. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 14 and, on that basis, denies such allegations.

15. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 15 and, on that basis, denies such allegations.

16. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 16 and, on that basis, denies such allegations.

17. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 17 and, on that basis, denies such allegations.

18. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 18 and, on that basis, denies such allegations.

19. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 19 and, on that basis, denies such allegations.

20. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 20 and, on that basis, denies such allegations.

21. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 21 and, on that basis, denies such allegations.

22. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 22 and, on that basis, denies such allegations.

23. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 23 and, on that basis, denies such allegations.

24. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 24 and, on that basis, denies such allegations.

25. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 25 and, on that basis, denies such allegations.

26. Registrant is without knowledge or information sufficient to form a belief about

the truth of the allegations of Paragraph 26 and, on that basis, denies such allegations.

27. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 27 and, on that basis, denies such allegations.

28. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 28 and, on that basis, denies such allegations.

29. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 29 and, on that basis, denies such allegations.

30. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 30 and, on that basis, denies such allegations.

31. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 31 and, on that basis, denies such allegations.

32. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 32 and, on that basis, denies such allegations.

33. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 33 and, on that basis, denies such allegations.

34. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 34 and, on that basis, denies such allegations.

35. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 35 and, on that basis, denies such allegations.

36. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 36 and, on that basis, denies such allegations.

37. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 37 and, on that basis, denies such allegations.

38. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 38 and, on that basis, denies such allegations.

39. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 39 and, on that basis, denies such allegations.

40. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 40 and, on that basis, denies such allegations.

41. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 41 and, on that basis, denies such allegations.

42. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 42 and, on that basis, denies such allegations.

43. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 43 and, on that basis, denies such allegations.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Registrant admits that in January 2005, Nano Technology Instruments (“Nano”) of The Netherlands hired Dimitry Kozodaev as a sales manager under an employment agreement, but denies the allegation that Exhibit A is the employment agreement which was executed between Kozodaev and Nano at the time of employment. Any other allegation of Paragraph 52 is denied.

53. Admitted.

54. Registrant admits that Exhibit B to the Petition is a settlement agreement entered

into between Kozodaev and Nano at the time of the end of Kozodaev's employment with Nano, but denies the remaining allegations of Paragraph 54.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Registrant admits that (i) Kozodaev obtained several internet domain names such as ntmdt.nl and printing and distributing business cards on which he was listed as a Director of NT-MDT B.V. and on which was placed a design mark comprised in part of the words "NT-MDT Europe", (ii) Kozodaeva, through a trademark attorney, filed an intent-to-use trademark application for the below-copied design mark (hereinafter, "the Accused Mark") on July 19, 2018 (Ser. No. 88/045,462), which registered as Reg. No. 5,753,336, the certificate of which is attached to the Petition as Exhibit D, (iii) Kozodaeva, through a trademark attorney, filed a European Union trademark application (Ser. No. 017910749) for the Accused Mark claiming priority to the U.S. trademark application, such application later issuing on October 19, 2018, and (iv) Kozodaeva, through a trademark attorney, filed a statement of use on March 10, 2019 for the U.S. trademark application, but denies the remaining allegations of Paragraph 60.



61. Denied.

62. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegation in Paragraph 62 regarding when Plaintiff learned of Kozodaeva's registration of the Accused Mark, but denies the allegation that her actions constituted an "illegal

scheme.” Any other allegations of Paragraph 62 are denied.

63. Registrant admits that NT-MDT LLC has filed a trademark application for the below-copied design mark (hereinafter, “Asserted Mark”) on April 25, 2019 which was assigned Ser. No. 88/402,894, but is without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 63 and, on that basis, denies such allegations.



64. Denied.

65. Registrant admits that NT-MDT LLC, through counsel, sent correspondence dated April 9, 2019 and attached to the Petition as the first portion of Exhibit E to Kozodaeva’s trademark attorney and that such correspondence demanded that the attorney instruct Kozodaeva to permit for the cancellation of the registration based on allegations of fraud, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 65 and, on that basis, denies such allegation.

66. Registrant admits that the latter portion of Exhibit E to the Petition purports to be a response by Kozodaeva’s trademark attorney to NT-MDT LLC’s counsel, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 66 and, on that basis, denies such allegations

67. Registrant admits that the latter portion of Exhibit E to the Petition purports to be a response by Kozodaeva’s trademark attorney to NT-MDT LLC’s counsel which included the statement repeated in Paragraph 67 of the Petition, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 67 and, on that basis, deny such allegations.



68. Registrant admits that Kozodaeva's trademark attorney withdrew as counsel for Kozodaeva on April 15, 2019 and gave as the reason for withdrawal the reason set forth in the statement repeated in Paragraph 68 of the Petition, but is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 68 and, on that basis, deny such allegations.

69. Denied.

**FIRST GROUND FOR CANCELLATION: REGISTRATION VOID *AB INITIO***

70. Registrant incorporates by reference her responses in the previous paragraphs of this Answer as though fully set forth herein.

71. Denied.

72. Admitted.

73. Admitted.

74. Admitted.

75. Admitted.

76. Admitted.

77. Denied.

78. Denied.

79. Admitted.

80. Denied.

81. Admitted.

82. Denied.

83. Denied.

**SECOND GROUND FOR CANCELLATION: LIKELIHOOD OF CONFUSION**

**UNDER 15 U.S.C. § 1052(d)**

84. Registrant incorporates by reference her responses in the previous paragraphs of

this Answer as though fully set forth herein.

85. Admitted.

86. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 86, and therefore denies the same.

87. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 87, and therefore denies the same.

88. Registrant admits that Petitioner contends that what it terms the “common law NT-MDT Trademark” is distinctive, which is a legal conclusion and, as such, Registrant is without knowledge or information sufficient to form a belief about the truth of that contention or its related allegations, and therefore denies the same.

89. Admitted.

90. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 90, and therefore denies the same.

91. Denied.

**THIRD GROUND FOR CANCELLATION: FRAUD UPON THE U.S. PATENT AND  
TRADEMARK OFFICE: KNOWING USE BY OTHERS AT TIME OF FILING**

92. Registrant incorporates by reference her responses in the previous paragraphs of this Answer as though fully set forth herein.

93. Admitted.

94. Registrant admits that Kozodaev is, during the term of the employment and settlement agreements referenced in Paragraph 94, bound by the terms therein that are legal and enforceable, but denies the remaining allegations of Paragraph 94.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Registrant denies that she made fraudulent representations to the U.S.P.T.O., and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 102, and therefore denies the same.

103. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 103, and therefore denies the same.

**FOURTH GROUND FOR CANCELLATION: FRAUD UPON THE U.S. PATENT AND TRADEMARK OFFICE: NON-USE AT STATEMENT OF USE FILING**

104. Registrant incorporates by reference her responses in the previous paragraphs of this Answer as though fully set forth herein.

105. Admitted.

106. Denied.

107. Denied.

108. Denied.

109. Registrant denies that she made fraudulent representations to the U.S.P.T.O., and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 109, and therefore denies the same.

110. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 110, and therefore denies the same.

**FIFTH GROUND FOR CANCELLATION: FRAUD UPON THE U.S. PATENT AND TRADEMARK OFFICE: LACK OF OWNERSHIP OF THE MARK**

111. Registrant incorporates by reference her responses in the previous paragraphs of

this Answer as though fully set forth herein.

112. Admitted.

113. Registrant admits that Kozodaev is, during the term of the employment and settlement agreements referenced in Paragraph 113, bound by the terms therein that are legal and enforceable, but denies the remaining allegations of Paragraph 113.

114. Denied.

115. Denied.

116. Registrant admits that Kozodaev is, during the term of the employment and settlement agreements referenced in Paragraph 116, bound by the terms therein that are legal and enforceable, but denies the remaining allegations of Paragraph 116.

117. Denied.

118. Denied.

119. Denied.

120. Denied.

121. Denied.

122. Registrant denies that she made fraudulent representations to the U.S.P.T.O., and is without knowledge or information sufficient to form a belief about the truth of the remaining allegations of Paragraph 122, and therefore denies the same.

123. Registrant is without knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 123, and therefore denies the same.

#### **GENERAL DENIAL**

124. Registrant denies any and all allegations that are not specifically admitted above.

#### **AFFIRMATIVE DEFENSES**

125. Registrant incorporates by reference her responses contained in the previous paragraphs of this Answer as though fully set forth herein.

126. Pursuant to Fed. R. Civ. P. 12(b)(6), the Petition fails to state a claim upon which relief can be granted.

127. On information and belief, the Petition is barred by the doctrine of unclean hands by virtue of the wrongful statements, conduct, agreements, and/or omissions of Petitioner made against Registrant.

128. On information and belief, Petitioner is estopped as to any and all rights which Petitioner claims under the doctrine of estoppel by virtue of the wrongful statements, conduct, agreements, and/or omissions (“actions”) of Petitioner made against Registrant, which were reasonably relied upon by Registrant, leading Registrant to infer that any rights that Petitioner has asserted in the Petition would not be asserted against Registrant such that Registrant would suffer material prejudice proximately caused by one or more of Petitioner’s aforementioned actions if the assertion of rights were permitted.

129. On information and belief, the Petition is barred by the doctrine of acquiescence.

130. One or more bases of cancellation set forth in the Petition is not set forth with sufficient particularity pursuant to Fed. R. Civ. P. 9(b) and, as such, is subject to dismissal.

131. One or more claims set forth in the cancellation is barred because Registrant has rightfully acquired ownership of the Accused Mark and the right to use such mark in interstate commerce, with (i) such rights superior to those of Petitioner’s rights in the Asserted Mark, and/or (ii) Petitioner’s rights in the Asserted Mark derivative of Registrant’s rights in the Accused Mark by virtue of Registrant’s acquisition of her trademark rights.

132. One or more of the trademark assignments in the chain of title identified in the Petition is invalid as an assignment in gross and therefore Petitioner may not maintain the claims against Petitioner due to lack of proper ownership of the Asserted Mark.

133. On information and belief, the Petition is barred in whole or in part based on abandonment of the Mark by Petitioner through a substantial period of non-use of the Mark by

Petitioner in the United States with no implied or express intent to resume such use.

134. On information and belief, the Petition is barred in whole or in part by the doctrine of laches.

135. On information and belief, the Petition is barred for lack of standing pursuant to Petitioner's non-usage of the Mark in commerce pursuant to 15 U.S.C. § 1127.

136. On information and belief, there is no likelihood of confusion between Petitioner's use of the Mark and usage by Registrant because Petitioner cannot demonstrate any likelihood that the public will be confused, mistaken, deceived, or misled as to the source of Registrant's goods or that such goods are associated with, or endorsed by Petitioner in that some or all of Registrant's goods are noncompetitive and unrelated to those of Petitioner, and/or some or all of Registrant's goods are offered in a trade territory remote from Petitioner's usage.

137. By virtue of the wrongful statements, conduct, agreements, and/or omissions of Petitioner against Registrant, Petitioner has waived any and all rights which Petitioner claims under the facts alleged in the Petition under the doctrine of waiver.

138. Registrant reserves the right to add, amend, or withdraw any one or more affirmative defense as further investigation or discovery so dictates.

#### **PRAYER FOR RELIEF**

WHEREFORE, Registrant, having fully answered Petitioner's Amended Petition for Cancellation, respectfully prays that the Petition be dismissed.

Dated: January 15, 2020

Respectfully submitted,  
**MotoSalas Law, PLLC**




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/Kenneth M. Motolenich-Salas/  
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*Counsel for Registrant Irina Kozodaeva*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2020, I filed the foregoing via ESTTA with the Trademark Office Trademark Trial and Appeal Board and that a true and complete copy of the foregoing has been served on counsel for Petitioner NT-MDT LLC by forwarding said copy on January 15, 2020 via email to:

Lance Venable  
Law Office of Lance C. Venable, PLLC  
4939 West Ray Road, Suite 4-219  
Chandler, AZ 85226  
Telephone: (602) 730-1422  
Email: lance@venableiplaw.com; uspto@venableiplaw.com

  
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/Kenneth M. Motolenich-Salas/  
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