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

Proceeding no.	92078812
Party	Defendant nMetric, LLC
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Date	06/13/2022
Attachments	Answer.pdf(74484 bytes )

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

In the Matter of:  
Registration No. 4384488

Applied Materials, Inc.,  
  
Plaintiff/Petitioner,  
  
v.

nMetric, LLC.,  
  
Defendant/Registrant.

Cancellation No. 92078812  
Registration No. 4384488

**ANSWER TO PETITION TO CANCEL**

Registrant responds to each ground of the petition to cancel as follows:

1. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.
  
2. Registrant admits that nMetric, LLC (“nMetric”) is a limited liability company of Delaware with an address at 3525 Turtle Creek Blvd., 19B, Dallas, Texas 75219.
  
3. Registrant admits that it is listed as the current owner of US Reg. No. 4,384,488 in class 9 for “Business management systems, namely, suite of computer programs for use in the scheduling, planning, coordination, and execution of business, engineering, manufacturing, services, projects and/or supply chain activities which may include, order management, inventory management, resource allocation, and management, manufacturing processes and

management, services coordination and management, maintenance coordination and management, project and portfolio coordination and management, logistics, data analysis and management.”

4. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

5. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

6. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

7. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

8. Registrant admits that on or about August 12, 2019, nMetric filed a Combined Declaration of Use and Incontestability under Sections 8 & 15 claiming that the SMARTER SCHEDULING mark was being used in commerce with all the goods listed and the mark had been continuously used in commerce for five consecutive years following the date of registration.

9. Registrant denies each and every allegation in this paragraph.

10. Registrant denies each and every allegation in this paragraph.
11. Registrant denies each and every allegation in this paragraph.
12. Registrant denies each and every allegation in this paragraph.
13. Registrant admits that US Reg. No. 4,384,488 is in class 9 for “Business management systems, namely, suite of computer programs for use in the scheduling, planning, coordination, and execution of business, engineering, manufacturing, services, projects and/or supply chain activities which may include, order management, inventory management, resource allocation, and management, manufacturing processes and management, services coordination and management, maintenance coordination and management, project and portfolio coordination and management, logistics, data analysis and management.”
14. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.
15. Registrant admits that it uses the mark SMAERTER SCHEDULING in connection with computer programs for use in scheduling.
16. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.
17. Registrant denies that the mark SMARTER SCHEDULING is a generic term.

18. Registrant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies each and every allegation in this paragraph.

### **AFFIRMATIVE DEFENSES**

Registrant expressly reserves the right to plead additional affirmative and other defenses not listed below should any such defenses be revealed by discovery in this case. As for its affirmative and other defenses, Registrant states as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

Petitioner fails to state a claim upon which relief can be granted because the petition to cancel fails to state any facts that, if true, would support a conclusion that (i) the mark is not in use and (ii) the mark is generic. The petition merely alleges in a conclusory manner that the mark appears to not be in use and is generic without providing any factual allegation to support a determination of non-use or generic.

#### **SECOND AFFIRMATIVE DEFENSE**

One or more of the Petitioner's claims are barred by the equitable defenses of laches, acquiescence, waiver, or estoppels, given that Registrant has continuously used its mark for over five years prior to Petitioner seeking cancellation.

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WHEREFORE, Registrant requests that the Trademark Trial and Appeal Board dismiss the Petition to Cancel and grant all other appropriate relief to Registrant as it deems just.

Respectfully submitted,

Dated: June 13, 2022

By: /Joseph A. Andelin/  
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Attorney for Registrant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing ANSWER TO PETITION  
TO CANCEL has been served on June 13, 2022 via e-mail to:

Charles P. Guarino  
Moser Taboada  
1030 Broad Street  
Suite 203  
Shrewsbury, NJ 07702

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*/Joseph A. Andelin/*  
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