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June 27, 2025 27 juin 2025			
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Court No. \_\_\_\_\_

**FEDERAL COURT**

**ECOVACS ROBOTICS CO., LTD.**

Applicant

- and -

**AMERICAN AIR FILTER COMPANY, INC.**

Respondent

**APPEAL UNDER Section 56 of the *Trademarks Act***

**NOTICE OF APPLICATION**

**TO THE RESPONDENT:**

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6, Canada.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-

represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: June \_\_, 2025

Issued by:

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(Registry Officer)

Address of local office: Federal Court of Canada  
Toronto Local Office  
180 Queen Street West, Suite 200  
Toronto, Ontario  
M5V 3L6

TO: **AMERICAN AIR FILTER COMPANY, INC.**  
9920 Corporate Campus Dr Ste 2200  
Louisville, KY 40223  
United States of America

AND TO: **The Registrar of Trademarks**  
Canadian Intellectual Property Office  
Trademarks Division  
Place du Portage I  
50 Victoria Street

AND TO: **The Attorney General of Canada**  
Ontario Regional Office  
Department of Justice Canada  
120 Adelaide Street West  
Suite #400  
Toronto, Ontario  
M5H 1T1

## **APPLICATION**

THIS APPLICATION is an appeal under section 56 of the *Trademarks Act*, RSC 1985, c T-13, and rule 300(d) of the *Federal Courts Rules*, SOR/98-106, from the decision issued April 30, 2025 by the Registrar of Trademarks (the “Decision”) in respect of proceedings under section 45 of the *Trademarks Act*, which advised that the Applicant’s trademark registration No. TMA1108526 (the “Registration”) for the trademark AIVI (the “Trademark”) will be expunged pursuant to subsection 45(4) of the *Trademarks Act* by reason of a failure to file the evidence required.

## **RELIEF SOUGHT:**

1. The Applicant makes an application for:
  - a. an Order granting the Applicant leave to present evidence on questions of fact that could not be tendered to the Registrar of Trademarks in all the circumstances;
  - b. an Order allowing this appeal, setting aside the Decision, and directing the Registrar not to expunge the Registration;
  - c. the Applicant’s costs of this application; and
  - d. such further and other relief as to this Honourable Court seems just and reasonable.

## **THE GROUNDS FOR THE APPLICATION AS FOLLOWS:**

2. On December 16, 2024, the Registrar issued a notice pursuant to section 45 of the *Trademarks Act* requiring the Applicant to furnish within three months an

affidavit or a statutory declaration showing, with respect to each of the goods specified in the Registration, whether the trademark was in use in Canada at any time during the three-year period immediately preceding the date of the notice. The relevant period for showing use is December 16, 2021, to December 16, 2024 (“Relevant Period”) and if not, the date when it was last in use and the reason for the absence of such use since that.

3. The Applicant did not file evidence in the section 45 proceeding before the Registrar as they were not aware of the notice. As stated by the Applicant’s agent in correspondence to the Registrar on June 3, 2025, the Applicant’s agent did not receive the Section 45 Notice issued on December 16, 2024.
4. As a result, the deadline of March 16, 2025 was not communicated to the registered owner and the Registrar issued the Decision order that the Registration be expunged for failure to file the evidence required.
5. The Applicant used the Trademark in Canada in association with the goods during the Relevant Period.
6. The Applicant appeals the Decision on the following grounds:
  - a. The Applicant is entitled to appeal the Decision under section 56 of the *Trademarks Act*; and

- b. The Registrar erred in expunging the Registration for non-use because the Applicant used the Trademark in Canada in association with the goods during the Relevant Period.
7. The Applicant seeks leave to file further evidence in this application showing its use of the Trademark in Canada during the Relevant Period.
8. The Applicant relies on sections 2, 4, 45, 56, 59 and 60 of the *Trademarks Act*, rules 300(d), 306 and 317 of the *Federal Courts Rules*, and other applicable sections, rules and acts as the Applicant may advise.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIALS:**

9. The application will be supported by the following materials:
  - a. the files maintained by the Registrar in respect of the section 45 proceeding that is the subject of this appeal and in respect of the Registration;
  - b. such further and other supporting affidavits and exhibits as the Applicant may serve and file pursuant to subsection 56(5) of the Trademarks Act and rules 306 and 309 of the *Federal Courts Rules*; and
  - c. such further and other documents as the Applicant may tender and the Court may permit.

Pursuant to Rule 317 of the *Federal Courts Rules* and section 60 of the *Trademarks Act*, the Applicant requests that the Registrar send to the Registry of the Federal Court all documents in the possession of the Registrar's Office, or copies of those documents certified by the Registrar, in relation to the matters in question in this proceeding, and, in particular, the following:

The whole file of the Registrar including all documents in respect of the cancellation of the Registration in respect of Registration No. TMA1108526 for the trademark AIVI as shown below:

**AIVI**

Dated at Hamilton, Ontario this 27<sup>th</sup> day of June, 2025



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Solicitors for the Applicant