

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

Olympus Optical Co., Ltd.,)	Opposition No. 91150270
)	
Opposer,)	
)	Application Serial No. 76/191,390
v.)	Mark: OLYMPIA
)	Filed on January 9, 2001
Wright Medical Technology, Inc.)	
)	Published in the Official Gazette
Applicant.)	August 21, 2001, TM Page 282

TO: BOX TTAB
 NO FEE
 Commissioner for Trademarks
 2900 Crystal Drive
 Arlington, Virginia 22202-3513



OPPOSER: Olympus Optical Co., Ltd.
 2-3, Kuboyama-cho
 Hachioji-shi, Tokyo 192 Japan

OPPOSER'S RESPONSE IN OPPOSITION TO
APPLICANT'S MOTION TO AMEND APPLICATION

Opposer herein submits this memorandum in opposition to Applicant's motion to amend the identification of goods in the above-captioned application. The applicable trademark rules and established Board practice make clear that once an opposition has commenced, the application that is the subject of the opposition may not be substantively amended except with the consent of the other party and the approval of the Board or upon motion granted by the Board. Opposer does not consent to Applicant's request to amend its application and respectfully submits that the Board should deny Applicant's request.

The procedural rules on this issue state that an application involved in a proceeding may not be amended in substance, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion. 17 C.F.R. Section 2.133(a); TBMP 514.03. Altering the identification of goods is a substantive amendment, and the identification of goods is a matter of considerable importance in this proceeding.

Accordingly, Opposer does not consent to Applicant's proposed amendment.

The identified goods in connection with which Applicant intends to use the proposed OLYMPIA designation are closely related if not identical to the goods in connection with which Opposer has used, continues to use and is likely in the future to use its OLYMPUS marks. Amending the identified goods to specify a medical apparatus and related surgical instrumentation would not eliminate likelihood of confusion among the relevant public.

Opposer owns numerous active registrations and pending applications to register the term OLYMPUS (in whole or in part) with the PTO as a trademark in International Class 010 for a wide range of medical devices, including a pending Intent to Use application, Serial No. 76/278,965, for "artificial limbs," "orthopedic articles," and related "parts and accessories." Therefore, applicant's proposal to particularize the original, broad definition does not eliminate the likelihood of confusion that gave rise to the opposition proceeding.

Moreover, the Board has long recognized that action on an unconsented motion to amend should wait until after a final hearing, and be granted only if the party seeking amendment prevails in the proceeding and the amendment is consistent with the evidence produced at trial. See *Mason Engineering and Design Corp. v. Mateson Chemical Corp.*, 225 U.S.P.Q. 956 (TTAB

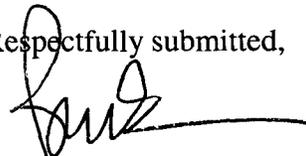
1985); *Fort Howard Paper Co. v. G. V. Gambina Inc.*, 4 U.S.P.Q.2d 1552 (TTAB 1987); *Space Base Inc. v. Stadis Corp.*, 17 U.S.P.Q.2d 1216, 1220 (TTAB 1990).

CONCLUSION

Allowing the sought after amendment to Applicant's identification of goods will not eliminate the likelihood of confusion. The applicable procedural rules as well as long-standing Board practice mandates that Applicant cannot substantively amend its application until after conclusion of the opposition or with Opposer's consent, which Applicant does not provide in this matter. Accordingly, Opposer respectfully requests that the Board deny Applicant's request to amend the identification of goods in its application.

Dated: January 9, 2002

Respectfully submitted,



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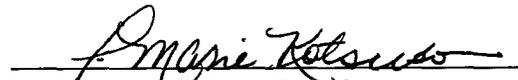
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CERTIFICATE OF MAILING

Express Mail mailing label number:

Date of Deposit: January 9, 2002

I hereby certify that on January 9, 2002, an original and one copy of the foregoing OPPOSER'S RESPONSE IN OPPOSITION TO APPLICANT'S MOTION TO AMEND APPLICATION was deposited with the United States Postal Service utilizing Express Mail Post Office to Addressee service under 37 C.F.R. 1.10, addressed to the Assistant Commissioner for Trademarks, Box TTAB, 2900 Crystal Drive, Arlington, VA 22202-3513.


Marie Kotsubo

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2002, one copy of the foregoing OPPOSER'S RESPONSE IN OPPOSITION TO APPLICANT'S MOTION TO AMEND APPLICATION was deposited with the United States Postal Service, addressed to the Applicant's counsel, Russell H. Walker of Walker McKenzie & Walker PC, 6363 Poplar Avenue, Suite 434, Memphis, TN 38119-4896.


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January 9, 2002

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01-09-2002

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Re: Opposition No. 91150270
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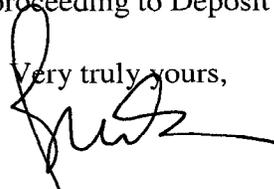
Dear Sir:

Enclosed herewith for filing in the above-identified matter are the following:

1. Opposer's Response In Opposition to Applicant's Motion To Amend Application (in duplicate); and
2. Postcard for date-stamped return as confirmation of receipt of these items.

Please charge any fees associated with this proceeding to Deposit Account No. 11-0600.

Very truly yours,


Allen J. Baden

Certificate of Mailing (37 C.F.R. 1.10(a)) By Express Mail

I certify that this correspondence is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" under 37 C.F.R. 1.10 as Express Mail No. EL566279709US, addressed to the Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on January 9, 2002, by I. Marie Kotsubo.

Date: 1/9/02

