

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: January 31, 2006

Opposition No. 91152940

Sinclair Oil Corporation

v.

Sumatra Kendrick

Andrew P. Baxley, Interlocutory Attorney:

Opposer's motion (filed September 19, 2005) for leave to file an amended notice of opposition is hereby granted as conceded.¹ See Fed. R. Civ. P. 15(a); Trademark Rule 2.127(a); TBMP Section 507.02 (2d ed. rev. 2004). Opposer's concurrently filed amended notice of opposition, captioned "[PROPOSED] AMENDED NOTICE OF OPPOSITION," is the operative complaint herein.

¹ In the amended notice of opposition, opposer adds claims (i) that applicant's involved application Serial No. 76212011 is void *ab initio* because the application was filed based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. Section 1051(a), despite not having used her involved mark in commerce, and (ii) that, by asserting that she had used her involved mark in commerce when she had not, applicant made false, material statements in her application.

An applicant under Trademark Act Section 1(a), who is involved in a Board *inter partes* proceeding, can move to amend its application to substitute Trademark Act Section 1(b), 15 U.S.C. Section 1051(b), as its filing basis and maintain its original filing date. See Trademark Rules 2.34, 2.35 and 2.133(a). If applicant wishes to file a motion to amend its application to substitute Section 1(b) as its filing basis, it should do so promptly.

Proceedings herein are resumed. Applicant is allowed until thirty days from the mailing date of this order to file her answer to the amended notice of opposition. The parties are allowed until thirty days from the mailing date of this order to serve responses to any outstanding written discovery requests. Discovery and trial dates are reset as follows.

DISCOVERY PERIOD TO CLOSE: **3/3/06**

Plaintiff's 30-day testimony period to close: **6/1/06**

Defendant's 30-day testimony period to close: **7/31/06**

Plaintiff's 15-day rebuttal testimony period to close: **9/14/06**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.