

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

Baxley

Mailed: August 28, 2006

Opposition No. **91152940**

Sinclair Oil Corporation

v.

Sumatra Kendrick

**Andrew P. Baxley, Interlocutory Attorney:**

In a January 31, 2006 order, the Board granted opposer's motion for leave to file an amended notice of opposition as conceded and allowed applicant thirty days in which to file an answer to the amended notice of opposition.

As an initial matter, the January 31, 2006 order is hereby modified to state that opposer's motion for leave to file an amended notice of opposition is granted as conceded and as well-taken.<sup>1</sup> The January 31, 2006 order otherwise stands.

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<sup>1</sup> The Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would be prejudicial to the rights of the adverse party or would violate settled law. See Fed. R. Civ. P. 15(a); and TBMP Section 507.02 (2d ed. rev. 2004) and cases cited therein. If no prejudice is found, the amendment generally will be allowed. See Wright, Miller and Kane, *Federal Practice and Procedure: Civil 2d*, Section 1488 (1990); Chapman, Tips from the TTAB: Amending Pleadings: The Right Stuff, 81 Trademark Rep. 302, 307 (1991).

The Board finds that opposer's proposed additional claims are legally sufficient. In addition, this case is still in the discovery stage, and there has been no showing that any of applicant's witnesses and evidence have become unavailable as a

On March 1, 2006, i.e., the due date for applicant's answer to the amended notice of opposition, opposer filed a motion for summary judgment on its newly added claims of nonuse and fraud. The Board deems the filing of the motion for summary judgment to have tolled applicant's time to file an answer to the amended notice of opposition. See TBMP Section 510.03(a) (2d ed. rev. 2004).

This case now comes up for consideration of applicant's motion (filed April 4, 2006) to extend time to respond to opposer's amended petition to cancel and motion for summary judgment. Opposer has filed a brief in response thereto.

Opposer served its motion for summary judgment by first-class mail on March 1, 2006. Accordingly, applicant's motion was filed prior to the expiration of time to respond thereto. See Trademark Rules 2.117(c) and 2.127(e)(1). The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b); TBMP section 509. The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of

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result of the delay caused by the addition of the new claims. Thus, the record does not indicate that applicant would be prejudiced by the inclusion of the additional claims herein. See *Pratt v. Philbrook*, 109 F.3d 18 (1st Cir. 1997). Accordingly, the Board finds that it is appropriate to grant opposer leave to file an amended notice of opposition that raises those claims.

extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

After reviewing the parties' arguments and given the Board's liberal application of the Rule 6(b) standard, the Board finds that the circumstances herein are appropriate for granting petitioner's motion to extend time to file an answer to the amended notice of opposition and brief in response to the motion for summary judgment. In particular, the Board finds that applicant's recent problems with postal delivery constitute good cause for granting the extension sought. In addition, the Board finds that there is no evidence of negligence or bad faith on the part of applicant and that applicant has not abused the privilege of extensions, and that respondent has pointed to no actual prejudice beyond a delay of these proceedings.

In view thereof, applicant's motion to extend time to file an answer to the amended notice of opposition and a brief in response to the motion for summary judgment is hereby granted. Applicant is allowed until thirty days from the mailing date set forth in the caption of this order to file an answer to the amended notice of opposition and a brief in response to the motion for summary judgment.

Proceedings herein otherwise remain suspended.