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

Proceeding	91152940
Party	Plaintiff SINCLAIR OIL CORPORATION SINCLAIR OIL CORPORATION ,
Correspondence Address	JOHN C. STRINGHAM WORKMAN, NYDEGGER & SEELEY 1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111
Submission	Motion to Strike
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Date	10/24/2006
Attachments	023 motion to strike - opposition.pdf (5 pages)(165111 bytes)

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

In the matter of Trademark Application Serial No. 76/212,011
Published in the Official Gazette of May 28, 2002, on page TM 497, Int'l Class 35
Filed: February 20, 2001
Mark: STAACHI'S CO. 1996 & DESIGN

SINCLAIR OIL CORPORATION)	Opposition No. 91152940
Opposer,)	
v.)	MOTION TO STRIKE APPLICANT'S
SUMATRA KENDRICK)	AMENDMENT TO NOTICE OF
Applicant.)	OPPOSITION AND FOR ENTRY OF
)	DEFAULT JUDGMENT

In an Order mailed August 28, 2006, the Board granted Applicant's "Motion to Extend" and allowed Applicant an additional thirty (30) days from the marking date of the Order to file an Answer to the Amended Notice of Opposition and an Opposition to the Motion for Summary Judgment filed by Opposer Sinclair Oil Corporation ("Sinclair"). [See Paper No. 38.] In response to the Order, on September 27, 2006, Applicant filed a document entitled "Amendment to Notice of Opposition." It is unclear what exactly this document is and to what motion or document Applicant's "Amendment to Notice of Opposition" is responsive. As a result, in an attempt to err on the side of caution, Opposer is having to respond to Applicant's "Amendment to Notice of Opposition" by guessing what the document is.

If Applicant's "Amendment to Notice of Opposition" is treated by the Board as Applicant's Answer to the Amended Notice of Opposition, Opposer hereby moves to strike the

Amendment to Notice of Opposition as unresponsive. Accordingly as Applicant has failed to Answer the Amended Notice of Opposition, Sinclair also moves for entry of default judgment.

A. If Applicant's "Amendment to Notice of Opposition" is Treated as Applicant's Answer to the Amended Notice of Opposition, it Should be Stricken as Non-responsive.

The Order dated August 28, 2006, directed Applicant, to among other things, file an Answer to the Amended Notice of Opposition. [See Paper No. 38.] If Applicant's "Amendment to Notice of Opposition" is treated as an Answer to the Amendment to Notice of Opposition it is clearly deficient. "An answer shall state in short plain terms the applicant's defenses to each claim asserted and shall admit or deny the averments upon which opposer relies." 37 C.F.R. § 2.106(b)(1); *see also* TBMP §§ 311.01(a) and 311.02(a). Further the rules clearly require that "The Answer must contain admissions and/or denials of the allegations in the [amended] complaint." TBMP § 311.01(a).

The "Amendment to Notice of Opposition" filed by Applicant does not even come close to comporting with these requirements. Applicant previously filed an Answer as a *pro se* litigant. [See Paper No. 10.] Accordingly, Applicant has shown the ability to file an Answer and should have been able to file an Answer to the Amended Notice of Opposition as clearly directed by the Board in its Order dated August 28, 2006. [See Paper No. 38.] Applicant, however, chose not to do so and instead filed the "Amendment to Notice of Opposition."¹

While a Motion to Strike is generally disfavored (*see* TBMP § 506.01), in some instances such a motion is necessary. *See Isle of Aloe, Inc. v. Aloe Creme Lab., Inc.*, 180 U.S.P.Q. 794, 794 (TTAB 1974). This is such an instance. "The primary purpose of pleadings, under the Federal Rules of Civil Procedure, is to give fair notice of the claims or defenses asserted." *Id.* Applicant's "Amendment to Notice of Opposition" does not do so and prejudices Opposer's

¹ While Applicant is *pro se* and some leeway is obviously allowed, at some point a party who is not *pro se* and is following the rules is prejudiced. The rules of this Board clearly suggest that *pro se* individuals retain counsel. TBMP § 114.01. Even if *pro se* litigants do not obtain counsel at some point they should have to follow the rules. *See, e.g., Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382 (9th Cir. 1997) (acknowledging the rule that "pro se litigants are not excused from following court rules").

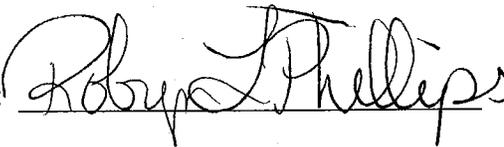
ability to respond. Opposer should not have to guess the purpose or what a document was filed in a proceeding before this Board is responsive to, as Opposer is having to do with the document entitled "Amendment to Notice of Opposition." Accordingly, Sinclair's motion should be granted and Applicant's document be stricken.

B. If Applicant's "Amendment to Notice of Opposition" is Stricken as Requested or if the "Amendment to Notice of Opposition" was not an Answer, Opposer Moves for Entry of a Default Judgment.

If the document entitled "Amendment to Notice of Opposition" was not an Answer to the Notice of Opposition or if it was but is stricken as requested, Opposer hereby moves the Board for Entry of Default with Prejudice against Applicant in the above-referenced matter under 37 C.F.R. § 2.106(a).

On August 28, 2006, this Board directed Applicant to file an Answer to the Amended Notice of Opposition. [See Paper No. 38.] As discussed above, in spite of having filed the original Answer in this matter *pro se* and obviously knowing how to prepare such a pleading, Applicant chose instead to file the "Amendment to Notice of Opposition." For the reasons stated above, this document does not comply with the relevant rules. As a result, no answer that complies with the requirements of 37 C.F.R. § 2.106(b)(1), TBMP § 311.01(a), or TBMP § 311.02(a) has been filed. Sinclair, therefore, requests that a judgment of default with prejudice be entered against Applicant, the Opposition be sustained, and registration to Applicant be refused.

DATED this 24th day of October, 2006.

By: 

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Attorneys for Opposer
SINCLAIR OIL CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION TO STRIKE APPLICANT'S AMENDMENT TO NOTICE OF OPPOSITION AND FOR ENTRY OF DEFAULT JUDGMENT** was served on Applicant by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid, this 24 day of October, 2006, in an envelope addressed as follows:

Sumatra Kendrick
P.O Box 21055
El Sobrante, California 94820



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