UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: August 27, 2004

Opposition No. **91157012**

LEO STOLLER

v.

HYPERSTEALTH BIOTECHNOLOGY CORP.

By the Trademark Trial and Appeal Board:

On June 18, 2004, the Board issued an order wherein it noted applicant's abandonment without opposer's written consent of its involved application Serial No. 75731216 and consent to judgment in the opposition with regard to that application in International Class 5, entered judgment against applicant in International Class 5 and indicated that applicant's involved application would be forwarded to the Intent to Use Division for issuance of a notice of allowance.

On June 28, 2004, opposer filed an unsigned request for reconsideration of that decision. In response to the Board's July 16, 2004 order, opposer filed a signed copy of the request for reconsideration on July 26, 2004. Accordingly, the Board will consider the request for reconsideration.

In support of his request for reconsideration, opposer contends that, in view of applicant's consent to judgment with regard to his various claims in connection with its application in International Class 5, applicant is not capable of receiving a registration of its mark for goods in International Class 10. Accordingly, opposer contends that the involved application should be remanded to the examining attorney for re-examination in light of applicant's consent to judgment with regard to the the application in International Class 5.

Motions for reconsideration, as provided in Trademark Rule 2.127(a), permit a party to point out any error the Board may have made in considering the matter initially. However, after having reviewed opposer's request for reconsideration, the Board remains of the opinion that the June 18, 2004 order is correct.

The Board notes initially that there is no provision under which a remand of an application to the examining attorney may be made upon motion by a party to an opposition proceeding involving that application. See TBMP Section 515. Further, an application to register a mark in multiple international classes is in effect a series of applications to register that mark in each international class. See TMEP Section 1403. As such, a potential opposer must file an appropriate notice of opposition to the registration of the

mark in each class which it seeks to oppose and submit the appropriate filing fee within the specified time period. See Trademark Act Section 13, 15 U.S.C. Section 1063; and Trademark Rule 2.101(c). Opposer's timely filed notice of opposition opposed registration of the mark with regard to the goods in International Class 5 only and did not seek denial of registration of the mark in connection with the goods in International Class 10.

Based on the foregoing, the Board finds that opposer may not use applicant's abandonment and consent to judgment with regard to the involved application in International Class 5 as a basis for seeking a remand of the involved application with regard to goods in International Class 10, which is not involved in this proceeding. Rather, opposer's remedy is to file a petition to cancel any registration that arises from the involved application in International Class 10 once that registration issues.

In view thereof, opposer's request for reconsideration is hereby denied in all respects.