

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

DUNN  
Mailed: June 28, 2005

Opposition No. 91164764

Brink's Network,  
Incorporated

v.

The Brinkmann Corporation

This case comes before the Board on (i) applicant's motion to amend its application with respect to the International Class 9 goods and (ii) opposer's motion, in the event that the application is so amended, to deem the notice of opposition amended to refer to the amended goods.

On June 3, 2005, applicant filed a proposed amendment to the identification of goods in application Serial No. 76483115. Applicant described its amendment as a correction of errors to the identification of goods made by the examining attorney in a July 23, 2004 amendment. On June 16, 2005, opposer filed a response objecting to applicant's characterization of the amendment as one made by right, but specifying that opposer did not object to the substance of the amendment as it related to the goods in International Class 9, the only class of goods involved in this proceeding.

The Board agrees that there is no "correction" available to applicant at this time. The application was published for opposition on October 5, 2004. The Trademark Manual of Examining Procedure (4<sup>th</sup>. 2005)("TMEP") states that "If the applicant wishes to object to the examiner's amendment, this should be done immediately (preferably by phone, e-mail or fax), so that the objection can be considered before publication or issue.<sup>1</sup> TMEP §707. Applicant does not allege, and the record does not indicate, that applicant has previously objected to the amendment to the identification of goods made more than eight months ago.

The Board's jurisdiction over this application began April 1, 2005 with the filing of the notice of opposition to registration of the mark with respect to the International Class 9 goods and the commencement of this proceeding. See Trademark Rule 2.101(a). Thus, opposer is correct in its contention that, now that the application is involved in an opposition, any proposed amendment must comply with the Board's rules.<sup>2</sup> In this instance, the relevant rule is Trademark Rule 2.133(a), which states that "An application involved in a proceeding may not be amended in substance nor may a

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<sup>1</sup> An electronic version of the TMEP is available at the USPTO website, [www.uspto.gov](http://www.uspto.gov).

<sup>2</sup> The Board notes that application Serial No. 76483115 includes goods in nine international classes. The notice of opposition is limited to the International Class 9 goods only. See TBMP §304 (2d ed. rev. 2004). As to those goods in eight classes not involved in this proceeding, following the disposition of this opposition, applicant may follow the procedures for post-publication amendments set forth at TMEP §1505.02.

registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion.”

As noted, opposer *sua sponte* offered its consent to entry of the amendment to the International Class 9 goods. By the proposed amendment applicant seeks to change the identification of goods **from**

Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets, batteries, wall mount brackets for battery chargers and flashlight, cooking thermometers; electrical extension cords, electric connectors, electric converters; electronic meters and metal detectors, flashlight and spotlight electronic mineral and metal detectors, flashlight and spotlight accessories sold together or separately, namely, transmitters, lighter plugs, filter caps

to (changes underlined):

Home security systems and components therefor, namely, motion sensitive home security lights, detectors, receivers, transmitters, adapters and wall mount brackets; batteries; wall mount brackets for battery chargers and flashlights; cooking thermometers; electrical extension cords; electric connectors; electric converters; electronic mineral and metal detectors, flashlight and spotlight electronic mineral and metal detectors, flashlight and spotlight accessories sold together or separately, namely, transmitters, lighter plugs and filter caps

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(b), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

With respect to opposer's motion requesting that, if the amendment was approved and entered, the Board would deem the notice of opposition amended to include the amended identification of International Class 9 goods (so as to avoid the need to file an amended notice of opposition), the motion is granted and the notice of opposition considered to be so amended. Absent objection by applicant, the Board also will construe the answer as amended to refer to the amended identification of goods.

Discovery and trial dates remain as set in the Board's April 5, 2005 institution and trial order.

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