

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

Mailed: March 22, 2006

Opposition No. 91169245

Nextel Communications, Inc.

v.

InterTAN Canada Ltd.

Cheryl Goodman, Interlocutory Attorney:

On February 21, 2006, after this opposition proceeding was filed and instituted, applicant filed its motion to correct a mistake in the identification of the owner of the involved application with the Trademark Examining Operation. A request to amend an application which is the subject of a Board inter partes proceeding must be filed with the Board, not with the Trademark Examining Operation. TBMP Section 514.01. Therefore, the Board will consider this amendment.¹ Trademark Rule 2.133.

In this case, applicant seeks to correct the name of the owner from "Orbyx Electronics, a division of InterTAN Canada Ltd." to "InterTAN Canada Ltd." due to a mistake in

¹ Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. It is possible the Board's institution order crossed in the mail with applicant's communication. In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer.

identification in which a division of applicant, which is not a legal entity, was named as owner.

Under TMEP Section 1201.02(c) and 1201.02(d), if the applicant mistakenly names an operating division that is not a legal entity as the owner, applicant may correct this mistake by amendment. This mistake is correctable because an operating division is not a legal entity that can sue and be sued and does not have standing to own a mark or to file an application to register a mark. Therefore, "the application must be corrected to name of the company of which the division is a part." *In re Cambridge Digital Systems*, 1 USPQ2d 1659, 1660 n.1 (TTAB 1986).

Accordingly, the Board finds it appropriate to grant the amendment at this time since under the TMEP it is a correctable error and not one "in substance." Applicant's application will be amended to correct the name of the owner to InterTAN Canada LTD and the caption of the opposition proceeding will also be corrected to reflect the amendment.

It has come to the Board's attention that prior to the institution of this proceeding, applicant filed, on November 17, 2005, a motion to amend its identification of goods in Class 9 that has not yet been considered by the examining attorney. If a timely opposition is filed while the amendment is still pending before the examining attorney, the Board will institute the opposition, and at the same

time the Board will normally suspend the opposition pending consideration of the amendment by the examining attorney.

Accordingly, proceedings herein are suspended pending consideration of applicant's amendment by the examining attorney.

After the examining attorney's takes action on the amendment, the case will be called up for appropriate action.