ESTTA Tracking number: **ESTTA217866**
Filing date: **06/14/2008**

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

Proceeding	91175363
Party	Plaintiff Mr.RonaldM.Creatore
Correspondence Address	Mr. Ronald M. Creatore HEVUN Diversified Corporation P.O. Box 3388 BOARDMAN, OH 44513 UNITED STATES rcreatore@hevun.com
Submission	Motion for Default Judgment
Filer's Name	Ronald M. Creatore
Filer's e-mail	rcreatore@hevun.com
Signature	/Ronald M. Creatore/
Date	06/14/2008
Attachments	OPPOSITION 9115363 MOTION FOR DEFAULT 2008 0614.pdf (13 pages)(3165412 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

HEVUN Diversified Corporation P.O. Box 3388 Boardman, OH 44513-3388 Plaintiff, v. Parker-Hannifin Corporation c/o Christopher H. Hunter, Esq. 6035 Parkland Boulevard Cleveland, OH 44214-4141 Defendant.	OPPOSITION NO. 91175363 **MOTION FOR ENTRY OF DEFAULT FINAL JUDGMENT, OR IN THE ALTERNATIVE, FOR REOPENING OF PERIODS OF DISCOVERY AND TESTIMONY FOR THE BENEFIT OF PLAINTIFFS**

The plaintiffs hereby move the Trademark Trial and Appeal Board [the "TTAB"] for entry of a final default judgment as to defendant Parker-Hannifin Corporation, upon the *Opposition to Trademark Filing Serial #76642100* heretofore filed and served upon the defendant and known at TTAB Opposition #91175363, in accordance with the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure. Alternatively, in the absence of a grant of plaintiffs' motion for a final default judgment, in accordance with Fed. R. Civ. P. 6(b), made applicable to TTAB proceedings by 37 CFR § 2.116(a), the plaintiffs hereby move the TTAB for the reopening of discovery pursuant to 37 CFR §2.120(a) and for the reopening of the taking of testimony pursuant to 37 CFR §2.121(a)(1). In support of each separate alternative, the plaintiffs offer the TTAB the following:

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1. On January 16, 2007, the United States Patent and Trademark Office [the "PTO"] published within the Official Gazette a notice that the mark [hereinafter, "Performance Stainless"] contained within the trademark application Serial No. 76642100, was going to be registered by the PTO as being a valid trademark owned by the defendant, Parker-Hannifin Corporation.

2. On or before January 27, 2007, the plaintiffs filed a timely *Opposition to Trademark Filing Serial #76642100*, resulting in the creation of TTAB Opposition #91175363 which is the subject of this Motion.

3. On January 27, 2007, the TTAB mailed a notice [the "Notice," set forth upon ***Exhibit 1***] to defendant Parker-Hannifin Corporation advising of the timely filing of TTAB Opposition #91175363.

4. The Notice specified that Parker-Hannifin Corporation had forty [40] days from the mailing date in which to file its "Answer" to TTAB Opposition #91175363. Accordingly, pursuant to Trademark Rule 2.196, Parker-Hannifin Corporation's Answer had to have been filed no later than Thursday, March 8, 2007.

5. Defendant, Parker-Hannifin Corporation, failed to provide plaintiffs with a copy of any responsive pleading, including, but not limited to, an Answer that defendant purportedly filed on March 6, 2007 [a copy of the purported Answer and the ESTTA cover page showing the filing of a four page answer is enclosed herewith at ***Exhibit 2***].

6. Pursuant to TBMP §113 titled "*Service of Papers*" [which cites to 37 CFR §2.119], it is clearly noted that "[e]very paper filed in the Patent and Trademark Office in

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inter partes cases . . . . must be served upon the other parties . . . . *Proof of such service must be made before the paper will be considered by the Office.*"

7. Defendant Parker-Hannifin Corporation's purported Answer failed to include the proscribed *Certificate of Service* as required by TBMP §110 et seq., and as such, given that the TTAB could not consider the Answer of defendant Parker-Hannifin Corporation in a timely fashion, defendant Parker-Hannifin Corporation has effectively failed to plead or otherwise defend this action within the time specified within the Notice. As a result, plaintiff is entitled under 37 CFR §2.106(a) and TTAB Procedural Rule 312.01 to judgment by default against defendant as it pertains to TTAB Opposition #91175363.

8. Pursuant to the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure, and the procedural rules the TTAB is empowered to enter a default judgment against the defendant for relief sought by plaintiff in its opposition complaint, and written notice of this action has been given to defendant as set forth in the associated affidavit.

9. Due to defendant Parker-Hannifin Corporation's failure to comply with the certificate of service and notice requirements set forth within the TBMP, the plaintiffs were unaware that any responsive pleading had been filed within Opposition #91175363 on account of the fact that the defendant had never served plaintiffs with a copy of any responsive pleading as required pursuant to TBMP §311.01(c), nor did the plaintiffs' possess any constructive notice of the filing of a responsive pleading.

10. In preparation of this *Motion for Default Judgment*, which was to be filed on account of plaintiffs' belief that defendant Parker-Hannifin Corporation had failed to plead or

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otherwise defend this action within the time specified, plaintiffs became aware that defendant Parker-Hannifin Corporation may have filed a responsive pleading in the form of the aforementioned responsive pleading purportedly filed on March 6, 2007.

11. As such, in the absence of a grant by the TTAB of the plaintiffs' *Motion for Default Final Judgment* as requested herein, plaintiffs hereby request in the alternative that the TTAB grant, to plaintiffs' only, a reopening of the periods for discovery and the taking of testimony, given that the failure of the defendant to provide plaintiffs with a copy of the responsive pleading prejudiced plaintiffs in the preparation of their case.

PRAYER

WHEREFORE, plaintiff prays that the TTAB enter a judgment of default against defendant Parker-Hannifin Corporation, and that defendant be enjoined and restrained from being granted ownership of the mark sought within Serial No. 76642100, and a Final Judgment be filed contemporaneously with this Motion adopting as uncontestable findings of fact the statements and allegations set forth within the *STATEMENT IN SUPPORT OF OPPOSITION TO TRADEMARK FILING SERIAL #76642100* filed by the plaintiffs.

ALTERNATIVELY, plaintiffs pray that the TTAB grant a reopening of the period for the taking of discovery and testimony, solely for the benefit of the plaintiffs' and to the exclusion of the defendant, so that the plaintiffs can prepare their case now that plaintiffs are aware of the filing of the purported Answer.

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AFFIDAVIT

I, Ronald M. Creatore, do hereby certify that the statements and allegations set forth in the foregoing Motion are true and accurate to the best of my knowledge and belief, and further, that a copy of this motion has been served upon the defendant as set forth upon the *Certificate of Service & Mailing* attached hereto and incorporated herein by this reference.

Respectfully submitted,

Ronald M. Creatore

Ronald M. Creatore, Individual
Ronald M. Creatore, Trustee
Ronald M. Creatore, President of
HEVUN Diversified Corporation and
PNH, Inc.
P.O. Box 3388
Boardman, OH 44513-3388
(919) 929-8270 Office
(919) 882-1555 Fax

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CERTIFICATE OF SERVICE & MAILING

I do hereby certify that this correspondence is being deposited on June 14, 2008, with the United States Postal Service with sufficient postage as first-class mail, in an envelope addressed to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3514

Trademark Trial And Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Parker-Hannifin Corporation
c/o Christopher H. Hunter, Esq.
6035 Parkland Boulevard
Cleveland, OH 44124-4141

Respectfully submitted,

Ronald M. Creatore

Ronald M. Creatore, Individual
Ronald M. Creatore, Trustee
Ronald M. Creatore, President of
HEVUN Diversified Corporation and
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P.O. Box 3388
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EXHIBIT 1

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 27, 2007

Opposition No 91175363
Serial No. 76642100

CHRISTOPHER H. HUNTER
PARKER-HANNIFIN CORPORATION
6035 PARKLAND BLVD
CLEVELAND, OH 44124-4141

Mr. Ronald M. Creatore

v.

Parker Intangibles LLC

Mr. Ronald M. Creatore
HEVUN Diversified Corporation
P.O. Box 889
Canfield, OH 44446

Janice D. Hyman, Paralegal Specialist:

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. *See* Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov/web/offices/dcom/ttab/.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

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EXHIBIT 1

Discovery period to open:	**2/16/07**
Discovery period to close:	**8/15/07**
30-day testimony period for party in position of plaintiff to close:	**11/13/07**
30-day testimony period for party in position of defendant to close:	**1/12/08**
15-day rebuttal testimony period for plaintiff to close:	**2/26/08**

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled *"Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board,"* 1235 TMOG 68 (June 20, 2000). The notice is available at http://www.uspto.gov. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at http://estta.uspto.gov. Images of TTAB proceeding files can be viewed using TTABVue at http://ttabvue.uspto.gov.

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EXHIBIT 2

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov

ESTTA Tracking number: **ESTTA128315**

Filing date: **03/06/2007**

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

Proceeding	91175363
Party	Defendant Parker Intangibles LLC Parker Intangibles LLC 6035 Parkland Blvd. Cleveland, OH 44124
Correspondence Address	CHRISTOPHER H. HUNTER PARKER-HANNIFIN CORPORATION 6035 PARKLAND BLVD. CLEVELAND, OH 44124-4141 UNITED STATES
Submission	Answer
Filer's Name	CHRISTOPHER H. HUNTER
Filer's e-mail	chunter@parker.com
Signature	/CHRIS HUNTER/
Date	03/06/2007
Attachments	answe001.PDF (4 pages)(108953 bytes)

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EXHIBIT 2

ANSWER OF PARKER INTANGIBLES LLC

For its Answer to the Notice of Opposition and the "Statement" of Plaintiffs in support thereof, Defendant Parker Intangibles LLC ("Parker Intangibles") answers as follows:

FIRST DEFENSE

1. Parker Intangibles is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Statement.

2. Parker Intangibles admits the allegations in paragraph 2 of the Statement.

3. Parker Intangibles is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 3 of the Statement.

4. Parker Intangibles is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 4 of the Statement.

5. Parker Intangibles is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Statement.

6. Parker Intangibles admits that, to its information and belief, on or about August 1, 2003 the United States Bankruptcy Court for the Northern District of Ohio approved a settlement between the Trustee of the Girton, Oates & Burger, Inc. ("GO&B") estate and certain entities and/or persons; however Parker Intangibles denies that such settlement transferred any rights to the "Performance Stainless" trade name, logo and trade dress to Plaintiffs, and further denies that any of those persons or entities possesses any such rights that could have been so transferred. Parker Intangibles is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 6 of the Statement.

7. Parker Intangibles denies the allegations in paragraph 7 of the Statement.

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8. Parker Intangibles denies the allegations in paragraph 8 of the Statement, except admits that Parker-Hannifin Corporation ("Parker-Hannifin"), a corporation of the State of Ohio, and of which Parker Intangibles is a wholly-owned subsidiary, hired Sayavich and purchased from Sayavich the trade dress associated with "Performance Stainless" sanitary flow components.

9. Parker Intangibles admits that the Ohio Secretary of State recorded a tradename/original filing purportedly submitted on behalf of Hevun Diversified Corporation for "Performance Stainless" on November 22, 2004; that it learned of the filing well after Sayavich was hired by Parker-Hannifin; and further states that it has learned that the Hevun filing contained representations that were and remain untrue and that Creatore had reason to know were untrue when and as made. Parker Intangibles is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 9 of the Statement.

10. Parker Intangibles admits that Plaintiffs Creatore, Hevun and PNH filed suit against Parker Hannifin in the County of Summit, State of Ohio, on January 28, 2004, alleging various causes of action. However, Parker Intangibles denies the remainder of the allegations in paragraph 10, including the allegation that there was a cause of action in that case for misappropriation of the "Performance Stainless" trade dress by Parker Hannifin.

11. Parker Intangibles admits the allegations of Paragraph 11 in the Statement.

12. Parker Intangibles admits that Plaintiffs (through their attorneys) dealt with Mr. Hunter subsequent to January 28, 2004, that Mr. Hunter is employed in the legal department at Parker Hannifin, and that Mr. Hunter scheduled a meeting with Plaintiff Creatore (and his

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representative) in May 2004. Parker Intangibles denies the remainder of the allegations in paragraph 12 of the Statement.

13. Parker Intangibles denies the allegations of paragraph 13, except that Thomas A. Piraino is Vice President and Secretary to Parker Hannifin, and submitted the statement in support of its Federal trademark application for "Performance Stainless" as alleged in paragraph 13 of the Statement.

14. Parker Intangibles denies the allegations of Paragraph 14 of the Statement.

15. Parker Intangibles requests that the actions requested in Paragraph 15 be denied.

16. Parker Intangibles requests the sanctions and penalties requested in Paragraph 16 be denied.

SECOND DEFENSE

17. The Notice of Opposition and Statement fail to state a claim upon which relief may be granted.

THIRD DEFENSE

18. Creatore lacks standing.

FOURTH DEFENSE

19. None of the entities identified in paragraph 1 of the Statement properly have been made plaintiffs to this proceeding, and each lacks standing.

FIFTH DEFENSE

20. Creatore is estopped from asserting the claims made in the Notice and Statement.

SIXTH DEFENSE

21. Creatore's claims are barred by his own unclean hands.

SEVENTH DEFENSE

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22. Parker Intangibles, by and through Parker Hannifin, has prior and superior rights to the name and mark "Performance Stainless."

WHEREFORE, having fully answered the Statement, Parker Intangibles requests that the Opposition against it be dismissed, with costs and expenses, including attorneys' fees, assessed against Plaintiffs and for such other equitable or legal relief as this Trademark Trial and Appeal Board deems just and proper.

Respectfully submitted,

Christopher H. Hunter
Parker-Hannifin Corporation
6035 Parkland Blvd.
Cleveland, Ohio 44124
(216) 896-2461
(216) 896-4027 fax

Attorney for Defendant
Parker Intangibles LLC

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