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

Proceeding	91175363
Party	Defendant Parker Intangibles LLC
Correspondence Address	CHRISTOPHER H. HUNTER PARKER-HANNIFIN CORPORATION 6035 PARKLAND BLVD. CLEVELAND, OH 44124-4141 UNITED STATES
Submission	Other Motions/Papers
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Date	06/27/2008
Attachments	Parker Intangibles Response to Motion for Default.pdf (10 pages)(324612 bytes)

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

HEVUN DIVERSIFIED CORPORATION

Opposer

v.

PARKER-INTANGIBLES LLC

Applicant.

Opposition No. 91175363

RESPONSE TO MOTION FOR ENTRY OF DEFAULT FINAL JUDGMENT, OR
IN THE ALTERNATIVE, FOR REOPENING OF PERIODS OF
DISCOVERY AND TESTIMONY FOR THE BENEFIT OF PLAINTIFFS
and
REQUEST FOR RESET OF TRIAL SCHEDULE

Pursuant to 37 C.F.R. § 2.127, Parker Intangibles LLC ("Applicant"), through its counsel Thompson Hine, LLP, by Roger H. Bora and Thomas F. Zych, timely submits its response to Hevun Diversified Corporation's ("Opposer") Motion For Entry of Default Final Judgment, Or In The Alternative, For Reopening of Periods of Discovery And Testimony For the Benefit Of The Plaintiffs and submits its Request For Reset Of Trial Schedule. Applicant respectfully states the following:

1. On July 1, 2005, Applicant filed an application to register the mark PERFORMANCE STAINLESS. That application was assigned Application Serial No. 76/642,100.

2. On January 16, 2007, the subject mark was published for opposition.
3. On January 16, 2007, Opposer filed this Opposition to the registration of the subject mark.
4. On March 6, 2007, Applicant timely filed an answer to this Opposition.

However, Applicant's answer was not properly served upon Opposer pursuant to 37 C.F.R. §2.119. Opposer is well aware of the fact that Applicant asserts ownership of the PERFORMANCE STAINLESS mark and contests Opposer's competing claims to it. That issue is a subject of long-running litigation between them, currently in a case pending in the Court of Common Pleas for Mahoning County, Ohio styled PNH, Inc., et al. v. Parker Hannifin Corporation, Case Number 07 CV 3757. Opposer cannot claim any surprise at or prejudice resulting from Applicant's assertion of rights in and to PERFORMANCE STAINLESS or to its rejection of Opposer's claim of rights to it.

5. On June 14, 2008, Opposer filed a Motion For Entry Of Default Final Judgment, Or In The Alternative, For Reopening of Periods of Discovery And Testimony For the Benefit Of The Plaintiffs due to Applicant's failure to serve its answer to this Opposition upon Opposer.

6. 37 C.F.R. § 2.119 requires that every paper filed in the Patent and Trademark Office in inter partes cases, including notice of appeal, are to be served upon the other parties except the notice of interference, the notification of opposition, the petition for cancellation and the notice of concurrent use proceedings, which are mailed by the Patent and Trademark Office.

7. 37 C.F.R. § 2.119 also requires that proof of service must be made before the paper will be considered by the Office.

8. On June 27, 2008, less than two weeks after Applicant became aware that it had failed to properly serve Opposer with a copy of its answer pursuant to 37 C.F.R. § 2.119,

Applicant served a copy of its answer upon Opposer. Applicant attaches hereto at Exhibit A evidence of such service.

9. Applicant respectfully requests that the Board accept, as timely filed, and consider its answer to this Opposition in view of Applicant's service of its answer upon Opposer.

10. Good cause exists for not entering default judgment against Applicant in this Opposition, namely Applicant's delay in serving its answer upon Opposer was not the result of willful conduct or gross neglect on the part of Applicant, the Opposer will not be substantially prejudiced by the delay caused, and Applicant as a meritorious defense to this Opposition. *See* TBMP § 312.02. Therefore, Applicant respectfully requests that the Board deny Opposer's motion for entry of default judgment.

11. Applicant respectfully requests that the Board also deny Opposer's motion for the reopening of Opposer's discovery and testimony periods only, if the Board does not grant Opposer's motion for entry of default judgment. To grant such a motion would be tantamount to granting Opposer's motion for default judgment.

12. Applicant also respectfully requests that the Board reset the trial schedule for all parties to this Opposition.

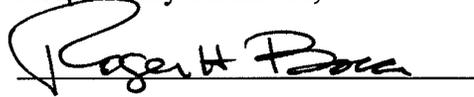
13. This response to Opposer's Motion For Entry of Default Final Judgment, Or In The Alternative, For Reopening of Periods of Discovery And Testimony For the Benefit Of The Plaintiffs is being timely filed pursuant to 37 C.F.R. § 2.127.

WHEREFORE, Applicant respectfully requests that the Board deny Opposer's Motion For Entry of Default Final Judgment, Or In The Alternative, For Reopening of Periods of Discovery And Testimony For the Benefit Of The Plaintiffs, consider its answer as being timely

filed and properly served, and grant Applicant's request that the Board reset the trial schedule for all parties involved in this Opposition.

Dated June 27, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger H. Bora", is written over a horizontal line.

Roger H. Bora
Thomas F. Zych
Thompson Hine LLP
2000 Courthouse Plaza, N.E.
Dayton, Ohio 45402-8801
Counsel for Applicant
Parker Intangibles LLC
937-443-6817

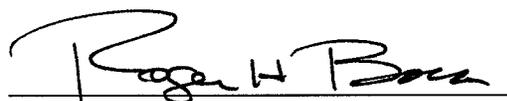
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing response to Opposer's Motion For Entry of Default Final Judgment, Or In The Alternative, For Reopening of Periods of Discovery And Testimony For the Benefit Of The Plaintiffs and Applicant's Request For Reset Of Trial Schedule has this 27th day of June 2008, been sent by first class mail, postage prepaid, and by facsimile to 919-882-1555 to:

Ronald M. Creatore
HEVUN Diversified Corporation and PNH, Inc.
P.O. Box 3388
Boardman, Ohio 44513-3388

June 27, 2008 _____

Date



Roger H. Bora
Attorney for Applicant



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.

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

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

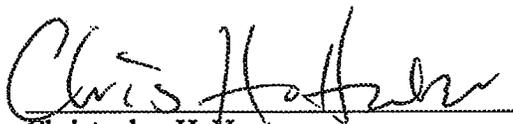
21. Creatore's claims are barred by his own unclean hands.

SEVENTH DEFENSE

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,

A handwritten signature in black ink, appearing to read "Chris Hunter", written over a horizontal line.

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

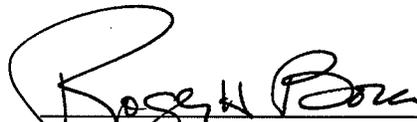
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Answer of Parker Intangibles LLC has this 27th day of June 2008, been sent by first class mail, postage prepaid, and by facsimile to 919-882-1555 to:

Ronald M. Creatoro
HEVUN Diversified Corporation and PNH, Inc.
P.O. Box 3388
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June 27, 2008

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Roger H. Bora

Attorney for Applicant