

ESTTA Tracking number: **ESTTA168730**

Filing date: **10/15/2007**

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

Proceeding	91176065
Party	Plaintiff Lenovo (Singapore) Pte. Ltd
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Attachments	THINKCP Reply Brief.pdf (5 pages)(151330 bytes)

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

In the matter of trademark application Serial No. 78/636,480
For the mark THINKCP
Published in the Official Gazette on November 7, 2006

Lenovo (Singapore) PTE Ltd.)	
)	Opposition No. 91176065
Opposer,)	
)	
vs.)	
)	
H. Co. Computer Products)	
)	
Applicant.)	
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H. Co. Computer Products)	
)	
Counterclaimant,)	
)	
vs.)	
)	
Lenovo (Singapore) PTE Ltd.)	
)	
Respondent.)	
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**REPLY BRIEF IN SUPPORT OF THE
MOTION FOR A MORE DEFINITE STATEMENT**

Introduction

H. Co. Computer Products (“Counterclaimant”) has filed defective counterclaims petitioning to cancel various marks covering various classes that are owned by Respondent, namely, THINKLIGHT, THINKSCRIBE, THINKSTATION, THINKVISION, THINKCETRE and THINKVANTAGE. In order to properly respond and provide an Answer to these counterclaims without prejudicing itself, Lenovo

(Singapore) PTE Ltd. (“Respondent”) requested that the Trademark Trial and Appeal Board (the “Board”) issue an order for Counterclaimant to file a more definite statement.

Counterclaimant has now filed a brief opposing the motion (“Opposing Brief”) that inadvertently further establishes the need for the issuance of an order for a more definite statement. While citing case law regarding motions to strike rather than motions for more definite statements, and emphasizing broad generalities with respect to complaints, Counterclaimant goes on to admit error and further obfuscates its own pleadings in attempting to explain its clarity.

Motions for More Definite Statements

Filing a motion for a more definite statement is appropriate where the pleading states a claim, but that claim is so vague or ambiguous that the movant cannot make a responsive pleading *in good faith* or *without prejudice to itself*. TBMP §505.01 (emphasis added). Accordingly, when counterclaims are unintelligible or where the pleadings are so general that *an ambiguity arises* in determining the nature of the claim, a Rule 12(e) motion is permissible before interposing a responsive pleading. F.R.C.P. 12(e) (emphasis added).

Alternatively, if the movant believes that the pleading does not state a claim upon which relief can be granted, its proper remedy is a motion to dismiss for failure to state a claim upon which relief can be granted, not a motion for a more definite statement. TBMP §505.01. Respondent also notes that a motion to strike has not been filed, although Counterclaimant cites several TTAB rulings directed to motions to strike, but rather a motion for a more definite statement.

Ambiguity and Vagueness of Counterclaims

Counterclaimant asserts that “no reasonable person” would “misperceive” the allegations of the counterclaims. Opposing Brief §III., ¶2. Unfortunately, the pleadings now appear less clear after attempting to perceive meaning from Counterclaimant’s Opposing Brief.

The Opposing Brief attempts to explain how ¶2 of the counterclaims “only lists Class 9 and the goods contained therein” of Registration No. 2,995,709, which “is directed to goods and services in both Classes 9 and 16.” Opposing Brief §III., ¶4. Apparently this information is offered to help a reasonable person understand that only one class (i.e. Class 9) of two possible classes (i.e. Classes 9 and 16) pertains to the allegation. Respondent would like to point out that Registration No. 2,995,709 is raised in ¶3 and lists both Classes 9 and 16, which are also the only classes registered for that mark. Further, ¶2 of the counterclaims raises Registration No. 2,550,628 and lists the only class of that mark (i.e. Class 9). Thus, it would seem that the proffered clarity by Counterclaimant provides ample support in its obfuscation of the pleadings for the issuance of the order for a more definite statement by the Board.

The Opposing Brief goes on to state the Counterclaimant has “listed each affected class and the goods contained therein” that are at issue. Opposing Brief §III. ¶4. This would loosely imply that Counterclaimant is seeking the cancellation of seven marks and each class in those seven marks for a total of ten classes has paid the appropriate fees. Thus, if Counterclaimant were seeking cancellation of seven marks in Class 9 in addition to Class 16 for three of those seven marks, Respondent is left to wonder why none of the recited “HCCP Goods” fell into Class 16. This is not even taking into account that

several of the alleged “HCCP Goods” for unregistered marks were commercially unknown to mankind “since prior to 1996.” Counterclaim ¶8. Again, without further clarity, Respondent cannot make a responsive pleading without prejudice to itself.

Conclusion

Counterclaimant’s pleadings are defective and so ambiguous that the drafters of the counterclaims are unable to interpret them adequately as evidenced in the Opposing Brief. Accordingly, Respondent is unequivocally prevented from providing a responsive pleading without prejudice to itself. In addition, Respondent also believes that Counterclaimant should amend ¶8 of its pleading to be more specific about which goods were commercially used and when and how those relate to Respondents marks for specific classes as grounds for cancellation. Respondent thus requests, at a minimum, that the Board issue an order for a more definite statement from Counterclaimant requiring that their pleadings be amended to define exactly which marks and which classes within each mark its seeks cancellation for each specific grounds.

Respectfully Submitted,

FERENCE & ASSOCIATES LLC

Dated: October 15, 2007

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CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that the foregoing REPLY BRIEF IN SUPPORT OF A MOTION FOR A MORE DEFINITE STATEMENT is being electronically filed with:

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

and that the forgoing REPLY BRIEF IN SUPPORT OF A MOTION FOR A MORE DEFINITE STATEMENT is being served by first-class mail, postage pre-paid,
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This 15th day of October, 2007.

By: /s/ Stanley D. Ference III

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