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

Proceeding	91176065
Party	Defendant H. Co. Computer Products
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TRADEMARK
Docket No. 110.2-2/H644

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

Lenovo (Singapore) PTE Ltd. Opposer, v. H. Co. Computer Products Applicant.	Opposition No. 91176065
AND RELATED COUNTERCLAIM	

H. CO. COMPUTER PRODUCTS' OPPOSITION TO LENOVO (SINGAPORE) PTE LTD.'S MOTION TO DISMISS COUNTERCLAIM

I. INTRODUCTION AND PROCEDURAL HISTORY

Lenovo's most recent motion to dismiss is merely its latest effort to delay these proceedings. Rather than addressing all issues in a single motion, Lenovo (Singapore) PTE Ltd. ("Lenovo") has made a piecemeal attack on H. Co. Computer Products' ("HCCP") pleadings, resulting in a nearly two-year delay in the progression of these proceedings. For example, rather than bringing a motion to dismiss HCCP's counterclaim for priority, Lenovo brought a motion for a more definite statement, which is a disfavored and uncommon motion that resulted in the suspension of proceedings. When HCCP corrected the alleged deficiencies, Lenovo then brought a motion to dismiss under Rule 12(b)(6), again resulting in the suspension of proceedings. These suspensions prevented the parties from taking any discovery over the last two years. Nevertheless, HCCP took this opportunity to independently investigate the history of

the marks Lenovo[1] has asserted against HCCP. This investigation resulted in information supporting allegations of fraud in the procurement of some of Lenovo's asserted registrations. Of course, HCCP could not make these allegations because proceedings had been suspended.

Finally, when proceedings resumed in July 2009, HCCP promptly sought to amend its counterclaim to assert fraud. Lenovo did not oppose this motion when it had the opportunity. Instead, Lenovo allowed for the maximum time possible to pass while the Board determined that Lenovo was not going to oppose the motion, thus resulting in the motion being granted as conceded. Lenovo then unilaterally requested an extension of time to respond to the counterclaim for fraud, which the Board granted. On October 5, 2009, on the last day possible, Lenovo finally responded to the counterclaim by filing a motion to dismiss under Rule 12(b)(6). As part of that motion, Lenovo has complained of prejudice caused by the nearly two year delay in this case when, in fact, all of the delay has been caused by Lenovo's own actions.

Lenovo's motion is untimely, relies on irrelevant extrinsic evidence, and incorrectly argues that HCCP's counterclaim for fraud should be dismissed without leave to amend. It is time for these proceedings to move forward, and Lenovo should not be rewarded for its continued delay tactics. HCCP therefore requests that the Board deny Lenovo's motion, or at the very least, grant HCCP leave to amend its counterclaim for fraud, particularly given that this is HCCP's first attempt to assert its fraud claim and given that Lenovo's relies on a purported intervening change in the law as a basis for dismissal.

1 As Lenovo explains in its moving papers, Lenovo is the assignee of the registrations at issue. For simplicity, HCCP refers to both Lenovo and the assignor of the registrations as "Lenovo" in this opposition.

II. LENOVO IS ESTOPPED FROM SEEKING TO DISMISS HCCP'S FRAUD COUNTERCLAIM AND HAS CONCEDED THAT THE CLAIM IS SUFFICIENTLY STATED

On July 20, 2009, HCCP filed a motion to amend its counterclaim to include a claim for fraud. [Dkt. No. 25.] Lenovo did not oppose that motion, and the Board subsequently granted the motion as conceded pursuant to 37 C.F.R. 2.127(a) and entered HCCP's Second Amended Counterclaim as the operative pleading in this proceeding, including the claim for fraud stated therein. [Dkt. No. 26.] By failing to challenge HCCP's request for leave to amend and thus conceding that amendment was proper, Lenevo tacitly conceded that the HCCP stated a claim for fraud and is now estopped from challenging HCCP's pleading for failure to state a claim.

Pleadings in opposition and cancellation proceedings may be amended in the same manner and to the same extent as in a civil action in a United States district court. 37 C.F.R. § 2.107, 2.115. In deciding whether to grant leave to amend, a tribunal may consider undue delay, prejudice to the opposing party, bad faith or dilatory motive, whether the party has previously amended its pleadings, and ***futility of the amendment***. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). Thus, while it is true that leave of the court is freely given, leave to amend should be denied where the amended claim appears to be futile or legally insufficient. *See, e.g. Miller v. Rakeoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988); *Hip Hop Beverage Corp. v. Ric Representacoes Importacao E Comercio LTDA*, 220 F.R.D. 614, 622-23 (C.D. Cal. 2003); TBMP § 507.02 ("where the moving party seeks to add a new claim or defense, and the proposed pleading thereof is legally insufficient, or would serve no useful purpose, the Board normally will deny the motion for leave to amend"). ***The proper test to apply when determining the legal sufficiency or futility of an amended counterclaim is identical to the test under Rule 12(b)(6).***

Miller, 845 F.2d at 214. Thus, leave to amend to add a new claim should be denied where the new claim does not sufficiently state a claim for relief.

By not opposing HCCP's motion for leave to amend its counterclaim to add allegations of fraud, Lenovo conceded that amendment was proper and not futile. As a result, Lenovo also conceded HCCP sufficiently stated a claim for fraud so as to survive a motion under Rule 12(b)(6). Lenovo is therefore estopped from seeking to dismiss the claim, and its motion should therefore be denied.

III. MATTERS OUTSIDE OF THE PLEADINGS CANNOT BE CONSIDERED ON A MOTION TO DISMISS

Lenovo argues HCCP's claim for fraud should be dismissed without leave to amend because Alexander Tognino, the party that signed the documents at issue, has died, and as a result, HCCP cannot meet its burden of proof with respect to the intent element of its fraud claim. Lenovo is mistaken for two reasons.

First, on a motion to dismiss a counterclaim, all of the counterclaim's allegations must be taken as true, and a motion to dismiss must therefore be based solely on the counterclaim's allegations, as well as on matters as to which judicial notice may be taken. *See, e.g., eCash Techs. v. Guargliardo,* 127 F. Supp. 2d 1069, 1074 (C.D. Cal. 2000) ("in ruling on a 12(b)(6) motion, a court generally cannot consider material outside of the complaint" but "it is proper for the court to consider matters subject to judicial notice pursuant to Federal Rule of Evidence 201"); *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001) ("extraneous evidence should not be considered in ruling on a motion to dismiss"); *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) ("[o]n a motion to dismiss, we may take judicial notice of matters of public record outside the pleadings"); *see also Welcome Foundation*

Ltd. v. Merck & Co., 46 U.S.P.Q. 2d 1478, 1479 n.2 (T.T.A.B. 1998) (matters outside those pleaded in the petition for cancellation excluded). Mr. Tognino's death is not discussed in HCCP's counterclaim, nor is his obituary mentioned.[2] The Board therefore should not consider this extrinsic evidence – which at best goes to the ultimate question of proof – when determining on a Rule 12(b)(6) motion whether HCCP has stated a claim for fraud.

Second, on a motion to dismiss, all allegations in the counterclaim must be accepted as true. Whether the allegations can actually be proven is a matter to be determined after the introduction of evidence at trial or in connection with a proper motion for summary judgment. TBMP § 507.02 & n.120 (collecting cases). Thus, even if the Board considered the obituary in ruling on Lenovo's motion, the obituary in itself does not bar HCCP's fraud claim. Even assuming the accuracy of the obituary, the death of Mr. Tognino cannot forever insulate Lenovo from any allegation of fraud. Indeed, discovery may result in any number of documents related to Mr. Tognino's intent, and there may be third-parties who can provide circumstantial evidence concerning the topic. *See In re Bose*, 580 F.3d at 1240 ("[t]he appropriate inquiry is . . . not into the registrant's subjective intent, but rather into the objective manifestations of that intent . . . We understand the Board's emphasis on the 'objective manifestations' to mean that 'intent must often be inferred from the circumstances and related statement made.' . . . We agree.") (citations omitted, other alterations in original).

Nothing in Lenovo's motion excuses compliance with the typical means of proving disputed facts – and again, a 12(b)(6) motion is not the proper venue in which to raise such

2 In ruling on a motion to dismiss, it is appropriate to consider documents whose contents are alleged in a pleading, and whose authenticity no party questions, but which are not physically attached to the pleadings. *See, e.g., Anderson v. Clow* (*In re Stac Elecs. Securities Litig.*), 89 F.3d 1399, 1405, n.4 (9th Cir. 1996). Mr. Tognino's obituary is neither discussed nor even referenced in the pleadings.

disputes, for a 12(b)(6) motion tests whether a claim has been ***stated*** and ***not*** whether it ***can be proved***. The "evidence" presented by Lenovo concerning Mr. Tognino's death should be excluded in determining whether HCCP can state a claim upon which relief can be granted. Again, this determination is one that is proper at trial or on summary judgment, not on a motion to dismiss.

IV. HCCP HAS SUFFICIENTLY PLEADED ITS CLAIMS

In its motion to dismiss, Lenovo conflates the standards for stating a claim sufficiently to survive a motion to dismiss with those for ultimately proving a claim on summary judgment or at trial. For example, many of the cases cited by Lenovo deal with the ultimate issue of proof and not the sufficient statement of a claim. *See, e.g.*, *In re Bose*, 580 F.3d 1240 (Fed. Cir. 2009); *Smith Int'l, Inc. v. Olin Corp.*, 209 U.S.P.Q. 1033, 1044 (T.T.A.B. 1981). Indeed, Lenovo even goes so far as to state that "[a]llegations of fraud in a cancellation proceeding must be proven 'to the hilt,' without relying on speculation and inferences, and with doubts resolved in against [sic] the charging party." [Motion at p. 3.] Although this is the standard required to ultimately carry a party's burden at trial for a fraud claim, it is not the standard on a motion to dismiss.

Instead, it is well settled that, "[f]or purposes of determining a motion to dismiss for failure to state a claim upon which relief can be granted, all of plaintiff's well-pleaded allegations ***must be accepted as true***, and the complaint must be construed in the light most favorable to the plaintiff." TBMP § 503.02 (emphasis added); *Ritchie v. Simpson*, 170 F.3d 1092, 1097 (Fed. Cir. 1999); *Young v. AGB Corp.*, 152 F.3d 1377, 1379 (Fed. Cir. 1998). Thus, "[d]ismissal for insufficiency is appropriate ***only if*** it appears ***certain*** that the plaintiff is entitled to no relief under any set of facts that could be proved in support of its claim." TBMP § 503.02 (emphasis added); *Young*, 152 F.3d at 1379. Thus, rather than resolving doubts in Lenovo's favor as the

Board would at trial, all doubts in the ruling on this motion must be resolved in HCCP's favor.

Contrary to Lenovo's assertions, HCCP need not plead sufficient facts to prove fraud. A valid petition to cancel need only meet the requirements of 37 C.F.R. § 2.112(a). This section provides that "[t]he petition for cancellation must set forth a short and plain statement showing why the petitioner believes he, she or it is or will be damaged by the registration [and] state the ground for cancellation . . .." 37 C.F.R. § 2.112(a). This section has been uniformly interpreted to mandate two requirements for a valid petition for cancellation. The petition must allege that (1) the plaintiff has standing to maintain the proceeding and (2) a valid ground exists for canceling the subject registration. TBMP § 503.02; *Kelly Services, Inc. v. Greene's Temporaries, Inc.*, 25 U.S.P.Q. 2d 1460 (T.T.A.B. 1992) ("a petition for cancellation need only allege such facts as would, if proved, establish (1) the petitioner has standing to maintain the proceeding, and (2) a valid ground exists for cancelling the subject registration.") (citing *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024 (C.C.P.A. 1982)).

In meeting these requirements, a party's pleadings need only give fair notice of the claims asserted. *See Harsco Corp. v. Elec. Scis., Inc.*, 9 U.S.P.Q. 2d 1570, 1571 (T.T.A.B. 1998) (since the function of pleadings is to give fair notice of a claim, a party is allowed reasonable latitude in its statement of its claims); *Ohio State Univ. v. Ohio Univ.*, 51 U.S.P.Q. 2d 1289, 1292 (T.T.A.B. 1999) (since the purpose of pleadings is to give fair notice of the claims, the Board may in its discretion decline to strike even objectionable pleadings where their inclusion will not prejudice the adverse party but rather will provide fuller notice of basis for claim). As a result, HCCP does not need to respond by submitting proofs in support of its pleadings, and the determination of whether HCCP can actually prove its allegations is a matter to be decided not upon Lenovo's motion to dismiss but rather at a final hearing or upon summary judgment, after the parties have

had an opportunity to submit evidence in support of their respective positions. *See* TBMP § 503.02.

Lenovo is correct that, because HCCP's counterclaim sounds in fraud, it must satisfy Federal Rule of Civil Procedure 9(b), which requires that:

> In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind ***may be alleged generally***.

Fed. R. Civ. P. 9(b) (emphasis added). Thus, to state a claim for fraud, HCCP is only required to plead (1) with particularity that a false, material representation of fact was made in connection with the applications that matured into Lenovo's registrations, and (2) generally that the applicant knowingly made these representations. *See generally Torres v. Cantine Torressella S.r.l*, 808 F.2d 46, 48 (Fed. Cir. 1986) (setting forth elements of fraud).

Taking HCCP's allegations as true – as they must be on a motion to dismiss –HCCP's counterclaim alleges sufficient facts to state a claim for fraud, and the Board should therefore deny Lenovo's motion to dismiss.

A. <u>HCCP Has Pleaded A Material Misrepresentation</u>

Lenovo quotes only selected portions of HCCP's counterclaim in support of the assertion that "HCCP does not detail these allegations of fraud [with respect to material misrepresentation] beyond a generalized, blanket statement that Lenovo did not use the marks for ***any*** goods described in the recitation of goods and services." [Motion at p. 8 (emphasis added).] This statement is ***patently false***.

To the contrary, HCCP sets forth in detail which goods form the basis of its fraud claim. For instance, as HCCP explains in its counterclaim, the '462 Registration recites approximately

twelve goods. [Counterclaim ¶ 5 (listing all of the goods in the registration).] HCCP then alleges that, as of the date Lenovo filed its statement of use, it was not using the subject mark of the '462 on or in association with ***seven of the twelve goods***. [Counterclaim ¶ 26 (listing the seven goods forming the basis for fraud).] The same is true of the other registrations at issue. [*Cf.* Counterclaim ¶ 6 with ¶27 (five of seven goods listed in the '692 Registration as basis for fraud claim) and ¶2 with ¶ 28 (also listing specific goods lacking in the '709 registration).] HCCP could not be any more clear. It has specifically laid out which specific goods of the many listed in the registrations were not being sold at the time the statements of use for these registrations were filed. HCCP has expressly detailed what goods are at the heart of its fraud claim.

Moreover, HCCP has also explained that it discovered that the subject marks of these registrations were not being used on these ***specific*** goods through historical research. This fact, which must be taken as true at the pleading stage, is sufficient to state a claim for fraud, and Lenovo has cited no authority to the contrary.[3]

Lenovo is correct that a party cannot blindly file a complaint for fraud and then use discovery to find support for the claim. [*See* Motion at p. 8.] HCCP is not, however, broadly alleging fraud so that it can later search for evidence. Instead it has specifically stated that

3 Lenovo relies on a large number of patent inequitable conduct cases, all of which are inapposite to fraud in the procurement of a trademark registration. Contrary to Lenovo's statement on page 4 of its motion, the Federal Circuit did not state that inequitable conduct cases apply with equal force in trademark cases. Rather, it stated that "[t]he principle that the standard for finding intent to deceive is stricter than the standard for negligence or gross negligence, even though announced in patent inequitable conduct cases, applies with equal force to trademark fraud cases." *In re Bose*, 580 F.3d at ___. Nonetheless, none of these cases even go so far as to support the position that HCCP's specific recitation of Lenovo's material misrepresentations and its discovery of those misrepresentations through research would be insufficient to state a claim.

material misrepresentations were made by explaining Lenovo was not using its marks on all of the goods listed in its statements of use as of the signing and filing of those statements and by explaining which specific goods were not in use at that time. This is sufficient factual detail to support a fraud claim, and Lenovo's motion should therefore be denied.

B. Intent

Without relying on any published decision directly addressing the adequate pleading standard required to state a claim for fraud in the procurement of a trademark application, Lenovo argues that HCCP has failed to sufficiently plead intent. In particular, Lenovo argues that HCCP's assertion that Lenovo "knew or should have known" that the assertions made in the statements of use were false is fatal to HCCP's claim. Lenovo is mistaken. Intent need not be pleaded with specificity, and instead, it may be pleaded generally. Fed. R. Civ. P. 9(b).

Although *In re Bose* makes it clear that HCCP cannot ultimately succeed on its fraud claim by merely proving that Lenovo should have known that its statements were false, that does not mean that HCCP cannot state a claim by asserting that Lenovo knew the statements were false. Indeed, the Federal Circuit in the *Bose* case directly stated that its decision was consistent with the precedent using the "knew or should have known" language because in those cases, the party making the false statement knew the statement was false. *In re Bose*, 580 F.3d at ___. Taking HCCP's allegations as true, as they must be on a motion to dismiss, it is reasonable to infer that HCCP has pleaded the requisite level of intent. This is especially true given that HCCP's counterclaim was filed before the *Bose* decision issued, so HCCP did not have the Federal Circuit's guidance on this issue. Thus, even if HCCP did not state a claim by alleging that Lenovo "should have known" it was making a material misrepresentation to the PTO, HCCP's allegation that Lenovo "knew" it was making a misrepresentation should be sufficient to

survive Lenovo's motion to dismiss. This is particularly true given that HCCP has identified the specific documents that were signed resulting in the fraud and the specific portions of those documents at issue and given that HCCP has identified its research indicating that Lenovo was in no way using the marks at issue on certain goods, thus indicating that the person who signed the documents did so despite his knowledge that in doing so, he was making a material misstatement to the PTO.

Moreover, in *Bose* the Federal Circuit did not hold that a "reckless disregard" for the truth in the filing of a trademark application is insufficient to prove fraud. HCCP's specific allegations that Lenovo was not using the marks at issue on specific goods when it told the PTO that it was, combined with the fact that HCCP has pleaded that Lenovo knew this to be the case indicates, at the very least, a reckless disregard for the truth, which is sufficient to state a claim for fraud. Lenovo's motion to dismiss should therefore be denied.

V. IF HCCP HAS NOT SUFFICIENTLY PLEADED ITS CLAIM FOR FRAUD, IT SHOULD BE GRANTED LEAVE TO AMEND

Even if the Board determines that HCCP's counterclaim fails to state a claim upon which relief can be granted, the Board generally will allow the opportunity to file an amended pleading. *See* TBMP §503.03; *see also, e.g.*, *Intellimedia Sports Inc. v. Intellimedia Corp.*, 43 U.S.P.Q. 2d 1203, 1208 (T.T.A.B. 1997) (allowed time to perfect fraud claim). Lenovo has not established with certainty that HCCP is not entitled to relief under any set of facts that could be proved in support of HCCP's claim. Absent such circumstances, HCCP should be allowed to amend its counterclaim if the Board grants Lenovo's motion to dismiss. *See* TBMP § 503.02; *Young*, 152 F.3d at 1379.

A. HCCP Has Only Attempted To Plead Fraud Once And Is Therefore Entitled To Amend

Lenovo disingenuously argues that the Board should deny leave to amend because this will be the third time that HCCP has amended its pleadings. This is untrue. If the Board dismisses HCCP's fraud claim, this will be the ***first*** time this claim was dismissed. HCCP should be allowed to amend at least ***once*** to state this claim for fraud. Lenovo has not cited any precedent to the contrary. The multiple amendments that have occurred in this proceeding, and the delay caused by those amendments, has been the result so Lenovo's piecemeal attack on HCCP's pleadings. Lenovo's prior Rule 12(b) motions were directed to HCCP's other counterclaim, which has now been properly stated through amendment. Moreover, rather than immediately seeking to dismiss that counterclaim, Lenovo instead first sought a more definite statement. Without holding that HCCP had not stated a claim, the Board reluctantly granted Lenovo's motion and directed HCCP to make minor clarifications requested by Lenovo. When HCCP did so, Lenovo then filed a motion to dismiss for failure to state a claim, resulting in another amendment. Each time Lenovo filed these motions, proceedings were suspended, thus preventing the parties from taking discovery and thus preventing HCCP from asserting its fraud counterclaim until proceeding resumed in July 2009. Lenovo has chosen to attack HCCP's pleading in various ways, one at a time, and Lenovo cannot now complain about the delay its strategy has caused. Nevertheless, at the end of the day, HCCP has attempted to assert a claim for fraud once, and it only did so after it investigated the history behind the marks at issue. Thus, even if the Board dismissed this claim, HCCP should be granted leave to amend at least once.

B. HCCP Should Be Granted Leave To Amend In Light Of The Fact That *In Re Bose* Was Decided After HCCP Filed Its Counterclaim

HCCP filed its counterclaim to assert fraud on July 20, 2009. At that time, the language HCCP used in its allegations was consistent with Board precedent. *See, e.g.*, *In re Bose*, 580 F.3d at ___ ("The Board in *Medinol* purportedly relied on this court's holding in *Torres* to justify a 'should have known' standard."). On August 31, 2009, over a month later, the Federal Circuit issued its decision in *In re Bose*. If this decision represents a change in law that now makes HCCP's prior pleading of intent insufficient as Lenovo argues [Motion at p. 4], then it would be improper and prejudicial not to allow HCCP to amend its pleadings to comply with this purported change in law. Thus, if the Board grants Lenovo's motion to dismiss, HCCP should be granted leave to amend.

C. HCCP Can Plead Fraud And Still Comply With Its Rule 11 Obligations

Lenovo incorrectly argues that, because Mr. Tognino – the person who signed the statements of use at issue in HCCP's counterclaim for fraud – has died, HCCP cannot plead fraud consistent with its Rule 11 obligations. Lenovo is again mistaken. In the *Bose* case, the Federal Circuit specifically affirmed that an ***inference*** of ***objective*** manifestations of intent based on the circumstances is sufficient to prove fraud. *In re Bose*, 580 F.3d at ___ ("[t]he appropriate inquiry is . . . not into the registrant's subjective intent, but rather into the objective manifestations of that intent . . . We understand the Board's emphasis on the 'objective manifestations' to mean that 'intent must often be inferred from the circumstances and related statement made.' . . . We agree.") (citations omitted, other alterations in original).

While Mr. Tognino's testimony certainly would have been helpful in this instance, *inter partes* discovery and third-party discovery can still be used by the parties to determine whether

there are sufficient objective manifestations of intent to prove fraud. Contrary to Lenovo's claims, the unavailability of a witness does not prevent HCCP from seeking relief. Indeed, the Federal Rules of Evidence specifically allow the introduction of otherwise inadmissible evidence where a witness becomes unavailable. *See, e.g.*, Fed. R. Evid. 804(a)(4) (allowing certain types of hearsay when declarant unavailable).[4]

Lenovo has cited not authority to support the proposition that the death of the signatory of critical documents bars a claim for fraud. The simple fact is that such a rule does not exist. HCCP should therefore be granted leave to amend it claim for fraud.

VI. CONCLUSION

Lenovo has delayed these proceedings for over two years by making piecemeal attacks on HCCP's pleadings. It is time for these attacks to stop and for this proceeding to move forward on the merits. HCCP has pleaded facts that, if taken as true as they must be on a motion to dismiss, state a claim for fraud. As a result, Lenovo's motion to dismiss should be denied. If, however, the Board grants Lenovo's motion, then HCCP should be granted leave to amend given that this will be the first dismissal of HCCP's fraud claim.

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4 *Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 U.S.P.Q. 2d 1540 (T.T.A.B. 2001), which Lenovo cites, is not to the contrary. Moreover, as explained above, the delay in this proceeding has been caused by Lenovo's multiple motions in the pleading stage, and Lenovo waived the right to assert undue delay when it failed to oppose HCCP's motion to amend its counterclaim.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date 10/26/09

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TRADEMARK
Docket No. 110.2*2/H644
Opposition No. 91176065

CERTIFICATE OF FILING AND SERVICE

I certify that on October 26, 2009, the foregoing **H. CO. COMPUTER PRODUCTS' OPPOSITION TO LENOVO (SINGAPORE) PTE LTD.'S MOTION TO DISMISS COUNTERCLAIM** is being electronically filed with:

Trademark Trial and Appeal Board
P.O. Box 1451
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It is further certified that on October 26, 2009, the foregoing **H. CO. COMPUTER PRODUCTS' OPPOSITION TO LENOVO (SINGAPORE) PTE LTD.'S MOTION TO DISMISS COUNTERCLAIM** is being served by mailing a copy thereof by first-class mail addressed to:

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