

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

Mailed: May 8, 2007

Opposition No. 91176065

Lenovo (Singapore) Pte. Ltd

v.

H. Co. Computer Products

George C. Pologeorgis, Interlocutory Attorney:

This case comes up on applicant's motion (filed April 13, 2007) to dismiss for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6). As grounds therefor, applicant alleges that opposer has failed to plead properly standing and any grounds for opposition. As example, applicant contends that opposer fails (1) to allege that it will be damaged by the registration of applicant's proposed mark and (2) to state a statutory ground for denial of applicant's application.

In response, opposer filed an amended notice of opposition motion¹ which included allegations that cured the deficiencies claimed by applicant. Additionally, opposer

¹ The Board construes this filing as an implied motion to leave to amend the notice of opposition. The Board notes that the better practice would have been to file a separate motion for leave to amend accompanied by a signed copy of the proposed amended pleading. See TBMP Section 507.01 (2d ed. rev. 2004).

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filed a formal response to applicant's motion indicating that, while it does not concede the correctness of applicant's motion, the submission of its amended notice of opposition nonetheless renders applicant's motion to dismiss moot.

As applicant's motion to dismiss does not constitute a responsive pleading, and because the additional allegations set forth in the amended pleading cure the deficiencies asserted by applicant, opposer's motion to amend is granted and the amended notice of opposition is accepted as a matter of course. See Fed. R. Civ. P. 15(a) and 15 U.S.C. §1065.

In view thereof, the motion to dismiss is deemed moot. Applicant has until **THIRTY DAYS** from the mailing date of this order to file a response to the amended notice of opposition.

Discovery and trial dates remain as set in the Board's March 7, 2007 institution order.