

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

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Mailed: March 8, 2010

Opposition No. 91185310

Big O Tires, LLC

v.

Weems Industries, Inc. dba
Legacy Manufacturing Company

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of (1) applicant's motion to divide filed on February 19, 2010, (2) applicant's unconsented motion to amend the identification of goods of its involved application filed on February 19, 2010, and (3) opposer's motion for discovery sanctions in the form of judgment under Trademark Rule 2.120(g)(2) filed on March 1, 2010.

Turning first to applicant's motion to divide, applicant's motion to divide its involved application Serial No. 77109547 is granted as well taken.¹

In view thereof, involved application Serial No. 77109547 will be divided into a "parent" application to include the goods identified in International Classes 7, 9

¹ The deposit account of applicant's counsel has been billed for the filing fee for a request to divide an application.

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and 21 and a "child" application to include the identified goods in International Classes 6, 8, 17 and 20. See TMEP § 1105.06(a) (2nd ed. rev. 2004). The "parent" application will retain application Serial No. 77109547, while the "child" application will be assigned a new serial number.

The child application file will be forwarded to the Publication and Issue section of this Office for issuance of a registration. The opposition will otherwise continue apace on the original application containing only the goods in International Classes 7, 9 and 21.

We next turn to applicant's unconsented motion to amend its application.

By the proposed amendment applicant seeks to change the identification of goods in only International Classes 7 and 9 as follows:

International Class 7

Delete the wording "**needles for pumps for inflating tires; tire inflation nozzles**" from the identification; and

International Class 9

Delete the wording "**tire pressure gauges, tire tread depth gauges**" from the identification.

The parties are advised, however, that the Board generally will defer determination of a timely filed (i.e., pre-trial) unconsented motion to amend in substance until final decision, or until the case is decided upon summary

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judgment. *See Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990) (motion to amend identification of goods deferred). *See also* Louise E. Rooney, TIPS FROM THE TTAB: Rule 2.133 Today, 81 Trademark Rep. 408 (1991).

Accordingly, insofar as applicant's motion to amend its application is unconsented, albeit timely, the motion is nonetheless hereby deferred until final decision or until such time that the case may be decided upon summary judgment.

Finally, opposer's motion for sanctions filed on March 1, 2010 is noted. Proceedings herein are therefore **suspended** pending the disposition of opposer's motion. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).