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

Proceeding	91207895
Party	Plaintiff Hokie Objective Onomastics Society LLC
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Attachments	HOOS - Reply in Support of Motion for Reconsideration of Sua Sponte Dismissal of Claim Under 15 U.S.C. sec 1068 (00101454).pdf(220589 bytes )

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

HOKIE OBJECTIVE ONOMASTICS	)	
SOCIETY LLC,	)	
	)	
Opposer,	)	
v.	)	Opposition No. 91207895
	)	
VIRGINIA POLYTECHNIC INSTITUTE	)	Serial No. 85-531,923
AND STATE UNIVERSITY,	)	
	)	
Applicant.	)	

**REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION  
OF THE BOARD’S *SUA SPONTE* DISMISSAL OF OPPOSER’S CLAIM FOR  
RECTIFICATION OF THE REGISTER UNDER 15 U.S.C. § 1068**

Opposer Hokie Objective Onomastics Society LLC (“Opposer”) submits this reply in support of its Motion for reconsideration of the portion of the Board’s Order of January 8, 2014 (the “Order”) dismissing paragraphs 27 and 28 of the Amended Notice of Opposition.

**1. Section 18 Permits the Board to Rectify Applications, Not Just Registrations.**

Applicant argues that Section 18 of the Lanham Act, 15 U.S.C. § 1068, only gives the Board power “to revise the Register in respect of a *registered* mark” and does not give the Board power to revise an application for registration. (Opp’n at 3.) However, the Board has held that Section 18 does indeed give the Board the power to rectify applications:

While the [1988] amendment [to Section 18] speaks of rectifying the “register” to change the ownership of “registrations, “ we believe the Section is broad enough to authorize the Board to take similar action with respect to an application to register (as in this case), particularly in light of the language of Section 18 authorizing the Board to “register the mark . . . for the person or persons entitled thereto, as the rights of the parties . . . may be established in the proceedings. . . .”

*Sigrune Marlene Chapman v. Mill Valley Cotton*, 17 U.S.P.Q.2d 1414, 1990 TTAB LEXIS 35, at \*4 n.2 (1990) (ordering, pursuant to Section 18, that application be amended to change name of applicant); *see also 8440 LLC v. Midnight Oil Co. LLC*, 59 U.S.P.Q.2d 1541, 2001 TTAB

LEXIS 409, at \*5 (2001) (same). Applicant's statement of law is therefore incorrect, and Section 18 does give the Board power to correct the ludicrous first-use date in Applicant's application for registration.

**2. Applicant's Arguments Relating to Fraud Are Irrelevant, Because the Amended Opposition Does Not Claim Fraud Based on First-Use Date.**

The bulk of Applicant's argument seems to presuppose that paragraphs 27 and 28 of the Amended Opposition seek to bring a claim of fraud on the USPTO. (*See* Opp'n at 2, 3-4.) However, as stated in Applicant's original Motion for Reconsideration, paragraphs 27 and 28 of the Amended Opposition do not purport to set forth a claim of fraud on the USPTO. Rather, these paragraphs seek rectification of the Register pursuant to Section 18 of the Lanham Act, 15 U.S.C. § 1068. Applicant's arguments relating to fraud therefore are irrelevant.

For these reasons, Opposer respectfully requests that the Board reconsider its decision to dismiss *sua sponte* paragraphs 27 and 28 of the Amended Opposition, and instead withdraw the portion of its Order that effected that dismissal.

HOKIE OBJECTIVE ONOMASTICS SOCIETY LLC

By:



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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2014, I served the foregoing by first-class mail upon the following:

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