

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

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Mailed: February 10, 2014

Opposition No. 91211895

Dixie Flyers Motorcycle Club, Inc.

v.

William Curtis

By the Board:

The Board notes opposer's motion for summary judgment, filed January 30, 2014.

Opposer moved for summary judgment pursuant to Fed. R. Civ. P. 56 on the issue of "fraudulent procurement and bad faith." In its notice of opposition, opposer did not plead the ground of fraud on the USPTO.¹

A party may not obtain summary judgment on an issue that has not been pleaded. *See* Fed. R. Civ. P. 56(a). *See also* TBMP § 528.07(a) (2013).

Accordingly, opposer's motion for summary judgment is denied.

Discovery and trial dates remain as set in the August 6, 2013 order instituting this proceeding.

¹ To plead the ground of fraud on the USPTO in procuring or maintaining a trademark registration, a plaintiff must sufficiently allege that an applicant for registration, or a registrant in a declaration of use or a renewal application, knowingly made a false, material representation of fact in connection with an application to register, or in a post-registration filing, with the intent of deceiving

the USPTO to obtain or maintain a registration to which it is otherwise not entitled.
See In re Bose Corp., 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009).