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Filing date: **08/19/2015**

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

Proceeding	91213744
Party	Plaintiff Yuko Fujita
Correspondence Address	ANNETTE P HELLER HELLER & ASSOCIATES 400 CHESTERFIELD CENTER CHESTERFIELD, MO 63017 UNITED STATES tmattorneyheller@aol.com
Submission	Motion to Amend Pleading/Amended Pleading
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Date	08/19/2015
Attachments	KINOKI Motion for Leave to Amend (FINAL).pdf(142005 bytes )

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

**Yuko Fujita** )  
Opposer, )  
v. ) Opposition No. 91213744  
**Pearl Enterprises, LLC** )  
Applicant. )  
\_\_\_\_\_ )

**MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

Opposer Yuko Fujita (“Opposer”) hereby respectfully requests that the Board grant Opposer leave to amend her Notice of Opposition and accept the attached First Amended Notice of Opposition as the operative pleading in this proceeding. In support of her request, Opposer states the following:

1. At the time Opposer filed her original Notice of Opposition, she was unaware of specific facts supporting opposition to the registration of Applicant’s KINOKI mark on the grounds that Applicant’s application was void *ab initio*.
2. Opposer’s Motion for Leave to Amend is not being filed for the purpose of causing undue delay, but rather for the purpose of adding an additional ground for opposition to the registration of Applicant’s KINOKI mark.
3. Applicant will not suffer prejudice as a result of the Board granting Opposer’s Motion for Leave to Amend. Applicant will have no need to take discovery from Opposer to address Applicant’s additional ground for opposition since all facts and documents relating to the additional ground would already be in the possession, custody, or control of Applicant.



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

**Yuko Fujita** )  
Opposer, )  
v. ) Opposition No. 91213744  
**Pearl Enterprises, LLC** )  
Applicant. )  
\_\_\_\_\_ )

**FIRST AMENDED NOTICE OF OPPOSITION**

Yuko Fujita (“Opposer”) is a Japanese citizen located and doing business at 1738-2 Kikugawa, Shimada, Shizuoka 428-0037 Japan.

According to the USPTO records, Pearl Enterprises, LLC (“Applicant”) is a New Jersey limited liability company located and doing business at 379 E. 7<sup>th</sup> St., Lakewood, New Jersey 08701.

Pursuant to 15 U.S.C. §1063, Opposer believes the registration of Application Serial No. 85941092 will damage Opposer and hereby opposes the same.

The grounds for opposition are as follows:

1. Since at least as early as July 2010, Opposer has been using the trademark KINOKI in commerce in connection with bandages, medical adhesives, wound dressings, and other related products.

2. Opposer is the owner of U.S. Registration No. 3,943,580 for the mark KINOKI for “wound dressings; gauze; adhesive bandages; bandages for dressings; medical adhesives for

binding wounds, namely, adhesive pads,” in International Class 5. Opposer has attached a status and title copy of her registration as **Exhibit A**.

3. Opposer’s registration for KINOKI is valid, subsisting, and not abandoned.

4. On May 23, 2013, Applicant filed an application based on §1(a) seeking registration of the trademark KINOKI for “aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream,” in International Class 3. Applicant’s application was assigned Serial No. 85941092.

5. On May 31, 2013, Applicant filed a Voluntary Amendment to its application for KINOKI for the purpose of amending the identification of goods to “aromatic body care products, namely, non-medicated body and foot scrubs in the form of cleansing foot pads for cosmetic purposes.”

6. Per a check of TSDR on August 19, 2015, Applicant’s Voluntary Amendment to its identification of products was never entered by the trademark examining attorney. Therefore, the operative identification of goods remains “aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream.”

**COUNT I**  
**PRIORITY AND LIKELIHOOD OF CONFUSION**

7. Opposer realleges and incorporates by reference the allegations in the preceding paragraphs as if they were fully set forth herein.

8. Opposer's use and registration of KINOKI precedes any date on which Applicant could reasonably rely.

9. Applicant's KINOKI trademark is identical in appearance, sound, and commercial impression to Opposer's KINOKI trademark.

10. The products recited in Applicant's application for KINOKI are strongly related to the products listed in Opposer's registration for KINOKI.

11. Opposer reasonably believes that she will be damaged by the registration of Application Serial No. 85941092 since Applicant's mark, when used on or in connection with its products, so resembles Opposer's KINOKI mark as to be likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's products by Opposer.

12. Opposer reasonably believes that the registration of Application Serial No. 85941092 will further damage Opposer because such registration would give color of exclusive statutory rights to Applicant in violation and derogation of the prior superior rights of Opposer.

**COUNT II**  
**APPLICATION VOID *AB INITIO***

13. Opposer realleges and incorporates by reference the allegations in the preceding paragraphs as if they were fully set forth herein.

14. The specimen submitted with Applicant's application for KINOKI consists of a photograph of Applicant's product packaging.

15. The specimen describes Applicant's KINOKI products as "cleansing detox foot pads."

16. The specimen does not show use of Applicant's KINOKI mark in connection with any of the products recited in Applicant's application, namely "aromatic body care products, namely, body lotion, shower gel, cuticle cream, shampoo, conditioner, non-medicated lip balm, soap, body polish, body and foot scrub and non-medicated foot cream."

17. Applicant's application was void *ab initio* because (1) Applicant's specimen fails to show use of the KINOKI mark in connection with any of the products recited in Applicant's application and/or (2) Applicant has never used its KINOKI mark in connection with the advertising and sale of any of the products recited in Applicant's application.

18. Opposer reasonably believes that the registration of Application Serial No. 85941092 will damage Opposer because such registration would give color of exclusive statutory rights to Applicant in violation and derogation of the prior superior rights of Opposer.

WHEREFORE, Opposer will be damaged by the registration of trademark Application Serial No. 85941092 and prays that this Notice of Opposition be sustained.



# **EXHIBIT A**

**Generated on:** This page was generated by TSDR on 2015-08-19 15:46:46 EDT

**Mark:** KINOKI

# KINOKI

**US Serial Number:** 85092943

**Application Filing Date:** Jul. 26, 2010

**US Registration Number:** 3943580

**Registration Date:** Apr. 12, 2011

**Register:** Principal

**Mark Type:** Trademark

**Status:** Registered. The registration date is used to determine when post-registration maintenance documents are due

**Status Date:** Apr. 12, 2011

**Publication Date:** Jan. 25, 2011

### ▼ Mark Information

[▲ Collapse All](#)

**Mark Literal Elements:** KINOKI

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

**Translation:** The wording "KINOKI" has no meaning in a foreign language.

### ▼ Goods and Services

**Note:**

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** wound dressings; gauze; adhesive bandages; bandages for dressings; medical adhesives for binding wounds,

**International Class(es):** 005 - Primary Class

**U.S Class(es):** 006, 018, 044, 046, 051,

**Class Status:** ACTIVE

**Basis:** 1(a)

**First Use:** Jul. 10, 2010

**Use in Commerce:** Jul. 10, 2010

### ▼ Basis Information (Case Level)

<b>Filed Use:</b>	Yes	<b>Currently Use:</b>	Yes	<b>Amended:</b>
<b>Filed ITU:</b>	No	<b>Currently ITU:</b>	No	<b>Amended:</b>
<b>Filed 44D:</b>	No	<b>Currently 44D:</b>	No	<b>Amended:</b>
<b>Filed 44E:</b>	No	<b>Currently 44E:</b>	No	<b>Amended:</b>
<b>Filed 66A:</b>	No	<b>Currently 66A:</b>	No	

**Filed No Basis:** No

**Currently No Basis:** No

▼ **Current Owner(s) Information**

**Owner Name:** Fujita, Yuko

**Owner Address:** 1738-2 Kikugawa  
Shimada, Shizuoka 428-0037  
JAPAN

**Legal Entity Type:** INDIVIDUAL

**Citizenship:** JAPAN

▼ **Attorney/Correspondence Information**

**Attorney of Record**

**Attorney Name:** Annette P. Heller

**Docket Number:** K181 025TM

**Attorney Primary Email Address:** [tmattorneyheller@aol.com](mailto:tmattorneyheller@aol.com)

**Attorney Email Authorized:** No

**Correspondent**

**Correspondent Name/Address:** ANNETTE P. HELLER  
HELLER & ASSOCIATES  
14323 S OUTER 40 RD STE 512S  
CHESTERFIELD, MISSOURI 63017-5734  
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**Correspondent e-mail Authorized:** No

**Domestic Representative - Not Found**

▼ **Prosecution History**

Date	Description	Proceeding Number
Sep. 24, 2014	COUNTERCLAIM OPP. NO. 999999	213744
Apr. 12, 2011	REGISTERED-PRINCIPAL REGISTER	
Jan. 25, 2011	PUBLISHED FOR OPPOSITION	
Jan. 05, 2011	NOTICE OF PUBLICATION	
Dec. 20, 2010	LAW OFFICE PUBLICATION REVIEW COMPLETED	73797
Dec. 20, 2010	ASSIGNED TO LIE	73797
Nov. 29, 2010	APPROVED FOR PUB - PRINCIPAL REGISTER	
Nov. 23, 2010	EXAMINER'S AMENDMENT MAILED	
Nov. 22, 2010	EXAMINER'S AMENDMENT ENTERED	88888
Nov. 22, 2010	EXAMINERS AMENDMENT -WRITTEN	82437
Nov. 08, 2010	ASSIGNED TO EXAMINER	82437
Jul. 29, 2010	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	

Jul. 29, 2010

NEW APPLICATION ENTERED IN TRAM

▼ **TM Staff and Location Information**

**TM Staff Information - None**

**File Location**

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Apr. 12, 2011

▲ **Assignment Abstract Of Title Information - None recorded**

▼ **Proceedings**

**Summary**

▼ Party type

▼ Proceedir

**Number of Proceedings:** 1

▼ **Type of Proceeding: Opposition**

▲ Collapse All

**Proceeding Number:** [91213744](#)

**Filing Date:** Nov 27, 2013

**Status:** Pending

**Status Date:** Nov 27, 2013

**Interlocutory Attorney:** BENJAMIN U OKEKE

**Defendant**

**Name:** Pearl Enterprises, LLC

**Correspondent Address:** CHRISTOHER R KINKADE  
FOX ROTHSCHILD LLP  
997 LENOX DRIVE, BUILDING 3  
LAWRENCEVILLE NJ , 08648  
UNITED STATES

**Correspondent e-mail:** [lkarczewski@foxrothschild.com](mailto:lkarczewski@foxrothschild.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
KINOKI	Opposition Pending	<a href="#">85941092</a>	

**Plaintiff(s)**

**Name:** Yuko Fujita

**Correspondent Address:** ANNETTE P HELLER  
HELLER & ASSOCIATES  
400 CHESTERFIELD CENTER  
CHESTERFIELD MO , 63017  
UNITED STATES

**Correspondent e-mail:** [tmattorneyheller@aol.com](mailto:tmattorneyheller@aol.com)

**Associated marks**

Mark	Application Status	Serial Number	Registration Number
KINOKI	Registered	<a href="#">85092943</a>	<a href="#">3943580</a>

**Prosecution History**

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Nov 27, 2013	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Nov 27, 2013	Jan 06, 2014
3	PENDING, INSTITUTED	Nov 27, 2013	
4	D MOT FOR EXT W/ CONSENT	Jan 02, 2014	
5	EXTENSION OF TIME GRANTED	Jan 02, 2014	
6	D MOT FOR EXT W/ CONSENT	Mar 06, 2014	
7	EXTENSION OF TIME GRANTED	Mar 06, 2014	
8	D MOT FOR EXT W/ CONSENT	Apr 03, 2014	
9	EXTENSION OF TIME GRANTED	Apr 03, 2014	
10	D MOT TO DISMISS: FRCP 12(B)	May 06, 2014	
11	CHANGE OF CORRESP ADDRESS	May 07, 2014	
12	SUSP PEND DISP OF OUTSTNDNG MOT	May 10, 2014	
13	Confidential Plaintiff's Opposition/Response to Motion	May 14, 2014	
14	P OPP/RESP TO MOTION	May 14, 2014	
15	D REPLY IN SUPPORT OF MOTION	May 29, 2014	
16	PROCEEDINGS RESUMED	Aug 27, 2014	
17	ANSWER AND COUNTERCLAIM ( FEE)	Sep 16, 2014	
18	TRIAL DATES RESET	Sep 22, 2014	
19	ANSWER TO COUNTERCLAIM	Oct 13, 2014	
20	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Oct 27, 2014	
21	TRIAL DATES REMAIN AS SET	Nov 28, 2014	
22	STIP TO SUSP PEND SETTL NEGOTIATIONS	Jan 07, 2015	
23	SUSPENDED	Jan 07, 2015	