

ESTTA Tracking number: **ESTTA620176**

Filing date: **08/07/2014**

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

Proceeding	91217099
Party	Defendant ENERMAX TECHNOLOGY CORPORATION
Correspondence Address	William J. Seiter Seiter Legal Studio 2500 Broadway, Bldg F, Suite F-125 Santa Monica, CA 90404  williamjseiter@seiterlegalstudio.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	08/07/2014
Attachments	Motion to Dismiss (91217099).pdf(321595 bytes )



“[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice” and are not accepted as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

In the present proceeding, the document entitled “Notice of Opposition,” filed on June 30, 2014 by Opposer Jens-Uwe Schreiber, consists solely of the TTAB form docket “cover sheet” created online, without attaching any notice of opposition whatsoever.

In oppositions filed with the Board, the form of a complaint must meet the general requirements for submissions to the Board as set forth in 37 CFR § 2.126. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 106.03. The complaint must include a pleading of the substance of the complaint. TBMP § 309.03.

In particular, a notice of opposition must include a short and plain statement of the reasons why opposer believes opposer would be damaged by the registration of the opposed mark, and a short and plain statement of one or more grounds for opposition. TBMP §309.03(a)(2). All averments should be made in numbered paragraphs, the contents of each of which should be limited as far as practicable to a statement of a single set of circumstances. *Isle of Aloe, Inc. v. Aloe Creme Laboratories, Inc.*, 180 USPQ 794, 794 (TTAB 1974) (while paragraphs were numbered, none of the paragraphs were limited to a statement of a single set of circumstances).

A pleading must include enough detail to give the defendant fair notice of the basis for each claim. *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007) (elements of each claim should be stated concisely and directly, and include enough detail to give the defendant fair notice); *McDonnell Douglas Corp. v. National Data Corp.*, 228 USPQ 45, 48 (TTAB 1985) (petitioner’s allegations were merely conclusory and unsupported by factual averments).

Since Opposer in the present case has filed no notice of opposition whatsoever with the cover sheet he filed, and thus has stated no factual allegations whatsoever, he has failed to give Applicant fair notice of the basis for his claims, and it would be unfair to require Applicant to answer Opposer’s filing.

As such, the “Notice of Opposition” filed by Opposer does not provide a valid claim for opposing registration, nor does it provide sufficient basis with which Opposer may seek relief.

For the foregoing reasons, Applicant respectfully requests that the Board dismiss Opposer’s Notice of Opposition pursuant to Fed. R. Civ. P. 12(b)(6), for failure to state a claim and suspend proceedings pending disposition of this motion.

August 7, 2014

Respectfully submitted,  
SEITER LEGAL STUDIO

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Dismiss has been forwarded via First Class Mail, postage prepaid, to Opposer to his address of record, as follows:

Jens-Uwe Schreiber  
Bauhof 06  
Burg Stargrad, 17094  
Germany

on this 7<sup>th</sup> day of August, 2014.

\_\_\_\_\_  
/s/  
William J. Seiter