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

Proceeding	92048732
Party	Plaintiff Altwater Gessler - J.A. Baczewski International (USA) Inc. and Altwater Gessler - J.A. Baczewski GmbH
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Submission	Opposition/Response to Motion
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Date	07/01/2013
Attachments	Altwater Reply to Opposition to Motion to Amend.pdf(1965962 bytes)

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

In the Matter of Registration No. 2,731,948

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ALTVATER GESSLER – J.A. BACZEWSKI	:	
INTERNATIONAL (USA) INC. and ALTVATER	:	
GESSLER – J.A. BACZEWSKI LIKÖRERZEUGUNG	:	
GESELLSCHAFT M.B.H. d/b/a	:	
ALTVATER GESSLER – J.A. BACZEWSKI GMBH,	:	
	:	
Petitioners,	:	Cancellation No. 92048732
	:	
v.	:	
	:	
RONALD BECKENFELD,	:	
	:	
Registrant.	:	
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**REPLY TO RESPONDENT’S OPPOSITION TO PETITIONERS’
MOTION FOR LEAVE TO AMEND THE PETITION FOR CANCELLATION**

Petitioners hereby reply to Respondent’s Opposition to Petitioners’ Motion for Leave to Amend the Petition for Cancellation. Respondent requests that the Board give no consideration to Petitioners’ motion for leave to amend their Petition for Cancellation because proceedings are currently suspended, pursuant to Rule 2.127(d), with respect to all matters not germane to the pending motion for summary judgment. However, T.B.M.P. § 528.03 expressly identifies a motion for leave to amend a party’s pleadings as an example of a paper which is germane to a motion for summary judgment. *See also Capital Speakers, Inc. v. Capital Speakers Club of Washington, D.C., Inc.*, 41 U.S.P.Q. 1030, 1032 (T.T.A.B. 1996) (holding that the petitioner could file its motion for leave to amend, filed simultaneously with the petitioner’s opposition to respondent’s motion for summary judgment, because, “if petitioner is not allowed to raise the matter of amending its petition to cancel at the present point, and respondent is successful in its

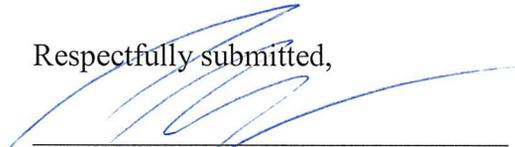
motion for summary judgment, petitioner will be without recourse to raise the additional ground for cancellation.”). Indeed, T.B.M.P. § 528.07(b) further states that “a party which seeks to defend against a motion for summary judgment by asserting the existence of genuine disputes of material fact regarding an unpleaded claim or defense, may move to amend its pleading to allege the matter.”

Accordingly, Petitioners properly seek to amend their Petition for Cancellation to assert additional grounds for cancellation, based upon facts adduced during discovery, demonstrating that fraud was committed in obtaining and renewing the registration at issue and that the registration should be further cancelled on the ground of abandonment. If Petitioners are not permitted to amend their Petitioner for Cancellation to allege these additional grounds, and if Respondent succeeds in his motion for summary judgment, Petitioners will be without recourse for trying their additional claims before the Board.

Based upon the above, as well as for the reasons asserted in Petitioners’ Motion for Leave to Amend the Petition for Cancellation, Petitioners respectfully request that the Board grant leave to amend and enter the First Amended Petition for Cancellation into the record.

Dated: July 1, 2013
White Plains, New York

Respectfully submitted,



Peter S. Sloane
Cameron S. Reuber

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing **REPLY TO RESPONDENT'S OPPOSITION TO PETITIONERS' MOTION FOR LEAVE TO AMEND THE PETITION FOR CANCELLATION** was served upon counsel for Registrant, this 1st day of July, 2013, by First-Class mail, postage prepaid, addressed as follows:

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