

ESTTA Tracking number: **ESTTA580399**

Filing date: **01/07/2014**

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

Proceeding	92056168
Party	Defendant Quentin Davis
Correspondence Address	QUENTIN DAVIS PO BOX 47893 TAMPA, FL 33646 UNITED STATES nevisbaby@hotmail.com, ThaRilest@yahoo.com
Submission	Other Motions/Papers
Filer's Name	Quentin Davis
Filer's e-mail	nevisbaby@hotmail.com, tharilest@yahoo.com
Signature	/Quentin Davis/
Date	01/07/2014
Attachments	REGISTRANT PETITION TO THE DIRECTOR CONCERNING 9_4_2013 INTERLOCUTORY ORDER.pdf(361764 bytes)

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

IN THE MATTER OF REGISTRATION NO.: **4,106,459**

for the mark **LEGENDARY**

Date of Issue: February 28, 2012

LEGEND PICTURES, LLC,)	
)	
Petitioners,)	
)	
v.)	Proceeding No. <u>92056168</u>
)	
)	
QUENTIN DAVIS)	
Registrant.)	
)	

**REGISTRANT’S PETITION TO THE DIRECTOR CONCERNING 9/4/2013
INTERLOCUTORY ORDER**

Pursuant to 37 CFR § 2.146 (e)(2), TBMP 905(e)(2) and 37 CFR § 2.6 (a)(15), Registrant does hereby petition to the Director of the Trademark Trial and Appeal Board for review, evaluation and correction of the 9/4/2013 Interlocutory Order for proceeding# 92056168 (hereafter, “the Order”) on the grounds that the decisions presented appear to have been made with the inclusion of error, omission, oversight and a possibility of subjective interest.

Registrant would like to immediately state that the Registrant (myself, Quentin Davis) is acting without any legal counsel whatsoever and also has no relevant legal training or experience. This is a fact that has been expressly presented to the Board and to the Petitioner’s legal counsel(s) on several occasions.

On 9/4/2013 examining Interlocutory Attorney Cheryl S. Goodman presented an interlocutory order pertaining to matters including...

1. Registrant's objection to Petitioner's interrogatories due to their excessive length
2. Petitioner's motion to compel [&] Registrant's objection of stated motion
3. Petitioner's motion for leave to amend [&] Registrant's objection of stated motion

While not the first issue addressed in the Order, the most disconcerting issue is the examining Attorney's decision to grant Petitioner's amended petition despite the guidelines and procedures intended to prevent untimely, non-compliant amendments. Petitioner's motion for leave to amend petition was untimely and non-compliant with trademark and civil procedures TBMP 507 and FED. R. CIV. P. 15(A) & (B) which both require the amendment of the original petition to occur either 21 days after serving it, 21 days after its responsive pleading [FED. R. CIV. P. 15(A) & (B)], or "...by written consent of every adverse party..." TBMP 507.02 [Note 3.]

Registrant clearly and thoroughly listed the guidelines and requirements for amendments of this nature as listed pursuant to **TBMP 507** and **FED. R. CIV. P. 15(A) & (B)** and did also inform the Board that Petitioner had made no request whatsoever for Registrant's written consent to amend original petition and also that Registrant had not voluntarily granted any such consent.

Despite Registrant's explanation concerning the opposition and the thorough listing of procedural guidelines supporting the Registrant's opposition to the motion, the examining

Interlocutory Attorney appeared to have overlooked the facts and civil procedures which were clearly presented in the opposition, and summarized the Registrant's stance as follows:

"In response, respondent argues that the amendment is untimely and he has provided no consent for leave to amend. Respondent further argues that justice does not require amendment." (Please see Page 8 [Paragraph 1] of 9/4/2013 Interlocutory Order [TTAB Document# 28])

The examining Attorney did also reference summaries of past proceedings...

*"The **timing** of a motion for leave to amend is a major factor in determining whether **the adverse party would be prejudiced by allowance of the proposed amendment**. Commodore Electronics Ltd. v. CBM Kabushiki Kaisha, 26 USPQ2d 1503, 1505-6 (TTAB 1993)." (bold and underline added by Registrant for specific emphasis)*

*"In deciding Petitioner's motion for leave to amend, **the Board must consider whether there is any undue prejudice to applicant** and whether the amendment is legally sufficient. See Cool-Ray, Inc. v. Eye Care, Inc., 183 USPQ 618 (TTAB 1974)." (bold and underline added by Registrant for specific emphasis)*

Registrant has made all entities involved in this proceeding expressly aware that Registrant is without legal counsel. Response to yet another petition at this point in the proceeding is unduly burdensome as Registrant is without legal assistance. Furthermore the proposed amendments are not legally sufficient and **further untimely** as they mostly respond to information and concerns that the Registrant has already made apparent in Registrant's answer to the original petition (submitted 10/22/2012).

TBMP 507.02(a) states:

The **timing** of a motion for leave to amend under Fed. R. Civ. P. 15(a) plays a large role in the Board's determination of whether **the adverse party would be prejudiced** by allowance of the proposed amendment. [Note 1.] **A long and unexplained delay in filing a motion to amend a pleading (when there is no question of newly discovered evidence) may render the amendment untimely.** [Note 2.] TBMP 507.02(a)

The concerns from the Registrant of which the Petitioner alleges grounds for amendment were made apparent in Registrant's response to the original petition which means that Petitioner's current counsel was or should have been aware of these concerns as early as 3/7/2013 (the date listed that Petitioner acquired Ms. Carla Calcagno as new legal counsel).

Though Petitioner alleges that the motion is timely because Section 7(e) requests of the Lanham Act (requests pertaining to registration amendments contained in the original petition) were pending at the time of petition's filing, Registrant has thoroughly examined Section 7 of the Lanham Act and could find no guidelines in support of Petitioner's claim.

Petitioner's proposed amendments are wholly untimely, non-compliant with civil procedure, unduly burdensome to the Registrant, and legally insufficient. Furthermore **Petitioner has not proven a requirement of justice on its behalf** which would require these amendments. Despite these circumstances, Petitioner's motion for leave was still approved by the examining Interlocutory Attorney. The examining Attorney neither acknowledged nor addressed the Registrant's primary concerns in this matter.

The Registrant requests that the Director re-evaluate and reconsider this Interlocutory Order and deny Petitioner's motion for leave.

Another matter addressed in the Order was the Registrant's objection to the Petitioner's interrogatories on the grounds of their exceeding 75 in number. Registrant did convey with great detail the manners in which Petitioner's interrogatories exceed 75 in number including citing specific portions of civil procedure which support Registrant's claims and contradict Petitioner's count of only 21 interrogatories (TBMP 405.03(d) Notes 1-8).

Despite Registrant's concerns and listing of applicable civil procedure in support of Registrant's stance, the examining Interlocutory Attorney did not address these concerns and did not accurately summarize registrant's stance on either issue.

While the Registrant is aware of the Petitioner's counsel's (Ms. Carla Calcagno) extensive employment history with the USPTO, it is not solely this fact which lends to the notion of subjective favoritism on the Petitioner's behalf. The lax manner in which the Registrant's objections were summarized in the Interlocutory Order and the omission of attention and response to the Registrant's listed concerns contribute greatly to idea of this possibility.

The Registrant does respectfully request that the Director re-evaluate the 9/4/2013 Interlocutory Order for proceeding# 92056168 and issue in its stead, a new, just and objective order based solely on the facts and guidelines of civil procedure applicable to the issues at hand. Registrant does request most specifically that Petitioner's motion for leave be denied and that a valid re-count of Petitioner's interrogatories be conducted under the guidelines listed in TBMP 405.03(d) Notes 1-8

Respectfully Submitted,

/Quentin Davis/
Quentin Davis – Registrant
P.O. Box 47893
Tampa Fl. 33646

10/4/2013
Date

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2014, a true and complete copy of the foregoing **REGISTRANT'S PETITION TO THE DIRECTOR CONCERNING 9/4/2013 INTERLOCUTORY ORDER** was served to Petitioner via electronic mail to:

Carla Calcagno at e-mail addresses:

carla.calcagno@calcagnolaw.com

Calcagno Law
2300 M Street, N.W., Suite 800
Washington, D.C. 20037

/Gloria Walters/

Gloria Walters
Administrative Assistant to the Registrant
P.O. Box 47893
Tampa, Florida 33646