

ESTTA Tracking number: **ESTTA571105**

Filing date: **11/15/2013**

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

Proceeding	92057938
Party	Defendant Sensa Products LLC
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Date	11/15/2013
Attachments	Sensa Inc v Sensa Products (SENSA - 30 (479)) - Opposition to Motion for Leave to Amend Petition for Cancellation (11-15-13).pdf(97036 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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SENSA, Inc.,)	
)	Cancellation No. 92057938
)	
Opposer,)	
)	Mark: SENSEA
v.)	Serial No. 77388012
)	Filing Date: February 4, 2008
Sensa Products LLC,)	Registration No. 3613479
)	Registration Date: April 28, 2009
)	
Applicant.)	
)	
)	
)	
)	
)	

**OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED PETITION FOR
CANCELLATION AND ANSWER TO AMENDED PETITION**

Registrant Sensa Products, LLC (“Respondent”), by and through counsel, hereby opposes petitioner SENSEA, Inc.’s (“Petitioner”) Motion to Amend its Petition for Cancellation (“Motion”), which was filed with ESTTA on November 2, 2013, for the reasons set forth below. In the alternative, and for purposes of expediency, Respondent consents for Respondent’s prior Answer in this matter, filed on October 22, 2013, being deemed Respondent’s Answer to Petitioner’s proposed Amended Petition for Cancellation, and reproduces such below.

A. PROPOSED AMENDED PETITION FOR CANCELLATION CONTAINS NO MATERIAL CHANGES

T.B.M.P. § 507 states that a party may amend its pleadings once as a matter of course within 21 days after service of a responsive pleading. Leave of the Board is not required for such amendment.

Here, Petitioner filed its Petition for Cancellation on September 27, 2013 ("Petition"). Respondent filed its Answer on October 22, 2013, and Petitioner was within the allotted 21-day window to file an amended petition. Nonetheless, Petitioner sought the Board's leave to amend its Petition in this matter by filing the present Motion.

Regardless of whether Petitioner's Motion should be considered a motion requesting leave to amend, or simply an amendment in due course, Respondent believes that the filing was improper and unnecessary. Petitioner's Motion contains no formal motion at all, but simply is titled "Motion to Amend Petition to [sic.] Cancellation," with no language or citations in support of the Motion. Further, the (proposed) Amended Petition for Cancellation contains no material alterations from the original Petition. It contains the same three bare grounds for cancellation, and no other additional factual support or information concerning these bases for Petitioner's claims against Respondent. Petitioner's failure to understand, and follow, the rules of this tribunal should not be allowed to stand, costing Respondent further time and legal fees. Accordingly, Board should deny Petitioner's Motion and strike the (proposed) Amended Petition for Cancellation from the record in this matter.

B. RESPONDENT STIPULATES TO RELIANCE UPON PREVIOUS ANSWER

If the Board is unwilling to strike Petitioner's pleading or grants Petitioner's Motion, and rules that Petitioner's Amended Petition for Cancellation was filed as of November 2, 2013, Respondent understands it would be required to file its answer to Petitioner's Amended Petition for Cancellation within 14 days after service thereof – i.e. on or before November 18, 2013. See T.B.M.P. § 507.01. In this situation only, and because there are no material changes in Petitioner's the (proposed) Amended Petition for Cancellation from its original Petition, Respondent hereby consents that its Answer, filed on October 22, 2013, may be deemed a full and complete response to the Amended Petition for Cancellation, if it pleases the Board.

Respondent's Answer is restated here:

ANSWER TO (AMENDED) PETITION FOR CANCELLATION

Respondent Sensa Products, LLC ("Respondent"), by and through its attorneys, denies that its U.S. Trademark Registration No. 3613479 (the "Registration") infringes or dilutes any purported rights in Petitioner Sensa, Inc.'s ("Petitioner") U.S. Trademark Registration No. 2027431 ("Petitioner's Mark"), and further denies that Petitioner is and/or will be damaged by the continued registration of the Registration. Respondent hereby answers Petitioner's (Amended) Petition for Cancellation as follows:

1. Denied.
2. Paragraph 2 contains averments in the form of a single, unintelligible sentence fragment. Respondent lacks knowledge sufficient to form a belief as to the truth of these averments contained in paragraph 2, and therefore denies them.
3. Denied.

AFFIRMATIVE DEFENSES

Failure to State a Claim for Relief

1. Petitioner has failed to state facts sufficient to constitute a basis for relief as Respondent is the owner of record for the Registration, and there is no likelihood of confusion with or dilution of Petitioner's Mark.

Waiver

2. Petitioner's alleged claims are barred by the doctrine of waiver.

Laches

3. Petitioner's alleged claims are barred by the doctrine of laches.

Estoppel

4. Petitioner's alleged claims are barred by the doctrine of estoppel.

Acquiescence

5. Petitioner's alleged claims are barred by the doctrine of acquiescence.

6. Respondent gives notice that it intends to rely on any additional affirmative defenses that become available or apparent through discovery and the factual development in this case or otherwise, and thus reserves the right to amend this Answer to assert such additional and/or different defenses.

WHEREFORE, Respondent prays that the (Amended) Petition for Cancellation be denied and that judgment be entered in favor of Respondent.

Dated: November 15, 2013

Respectfully Submitted,

IP LEGAL ADVISORS, P.C.

By:

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Certificate of Service

I hereby certify that on November 15, 2013, a copy of the foregoing was sent by U.S. mail to the following correspondent of record:

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1401 BAY ROAD SUITE 310
MIAMI BEACH, FL 33139-3781

/Eunice Yu/

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