UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

PWC

Mailed: June 20, 2002

Opposition No. 91-150,288

KIMBERLY-CLARK CORPORATION

v.

PANO, INC.

Peter Cataldo, Interlocutory Attorney

Withdrawal of Applicant's Attorney

On January 18, 2002, applicant's attorneys filed a request to withdraw as applicant's counsel of record in this case.[1] The request to withdraw as counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, and is accordingly granted. The Brouse McDowell Intellectual Property Group no longer represents applicant in this proceeding.

In addition, the Board notes that applicant's former counsel forwarded with its request to withdraw a paper stating that applicant chooses to represent itself in this proceeding. Office records will be updated accordingly.

[1] A copy of said request has been placed in both the opposition file and the application file.

Applicant's Informal Answer

Applicant filed a communication on January 22, 2002.[2] It is presumed that this communication is intended as an answer to the notice of opposition. A reading of this informal "answer" reveals, however, that it is argumentative and more in the nature of a brief on the case than a responsive pleading to the notice of opposition. As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

> A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of five (5) paragraphs setting forth the basis of opposer's

[2] Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, applicant is allowed until **thirty days** in which to file an answer herein which complies with Fed. R. Civ. P. 8. In the event applicant fails to respond, the Board may issue an order to show cause why judgment by default should not be entered against applicant under Fed. R. Civ. P. 55(a).

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on

the paper when filed, will be accepted as prima facie proof of service.

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice and is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.[3]

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Discovery and trial dates remain as set.

A copy of this order has been sent to all persons listed below.

[3] The Trademark Trial and Appeal Board Manual of Procedure (TBMP) (Stock No. 903-022-00000-1) is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (Telephone (202) 512-1800). The TBMP is also available on the World Wide Web at http://www.uspto.gov.

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