

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mail date: June 7, 2003

Opposition No. 154,042

Illinois Tool Works, Inc.

v.

Graco, Inc.

Cheryl Butler, Interlocutory Attorney

Applicant's answer was due by February 4, 2003, by order of the Board dated December 26, 2002 instituting this opposition.

Applicant's requests to extend time to answer

Applicant filed a series of timely consented requests to extend its time to answer. Those extension requests were filed on February 3, 2002; March 10, 2003; March 23, 2003; and March 31, 2003, requesting until May 5, 2003 to file an answer. Each request is granted, and applicant's answer, filed May 5, 2003, is noted and entered.

Applicant's motion to amend application Serial no. 75/621,248, filed in Opposition Nos. 125,525; 125,767; and 125,779

Application Serial No. 75/621,248 is the subject application of this opposition and of Opposition Nos. 125,525; 125,558;

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125,767; and 125,779. On January 13, 2003, applicant filed an unconsented motion to amend its application in Opposition Nos. 125,525; 175,767; and 125,779 only. By its motion, applicant proposes to amend the identification of goods **from**

airless paint sprayers

to

portable electric and gasoline powered airless paint sprayers for use by professional painters and professional contractors.

The amendment is clearly limiting in nature as required by Trademark Rule 2.71(a). However, applicant has not sought and provided the consent of each of the opposers. See Trademark Rule 2.133(a). As a matter of fact, applicant did not even file the proposed amendment in Opposition Nos. 125,588¹ and 154,042. In addition, opposer in Opposition No. 125,779 contests the proposed amendment.

The Board generally will defer determination of an unconsented motion to amend in substance until final decision, or until the case is decided upon summary judgment. See TBMP Section 514.03. The Board notes that a fully briefed summary judgment motion is pending in Opposition No. 125,525.

Accordingly, further consideration of applicant's proposed unconsented (and contested in at least one case) amendment to application Serial No. 75/621,248 is deferred. Applicant's motion to amend its application will be before the Board in

¹ Opposer in Opposition No. 125,588 comments on this at footnote 1 of its response (filed March 24, 2003) to applicant's motion to strike.

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Opposition No. 125,525 when the summary judgment motion is considered. At that time, the Board will either make a determination on whether applicant's proposed amendment can be accepted or will defer determination until final decision, as appropriate.

Proceedings suspended

In the meantime, this instant opposition is suspended.

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