

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

Baez/Ryan

Mailed: June 27, 2003

Opposition No. 154,722

ECOLAB INC.

v.

Ecotech, Inc.

Before Karyn K. Ryan, Interlocutory Attorney
Trademark Trial and Appeal Board.

By the Board:

This case now comes up for consideration of applicant's April 28, 2003 consented request to amend his application Serial No. 76/347,298, contingent upon entry of the proposed amendment.

Applicant, by application Serial No. 76/347,298, seeks registration of the mark ECOPREP in International Classes 1, 3 and 4.¹ By the proposed amendment, applicant seeks to amend the application to delete all goods identified in International Class 3, specifically **deleting:**

"Industrial cleaners used to clean and maintain industrial machinery and machinery parts in the nature of fluids, namely, cleaners corrosion inhibitors, corrosion removers and surface treatments" in International Class 3.

¹ Opposer filed a notice of opposition opposing registration of the applicant's mark in three classes.

Applicant seeks to amend the International Class 1 and 4 goods, to the following:

"Industrial chemicals used in the manufacturing of metal parts and products" in International Class 1.

"Industrial lubricants used to maintain machinery and machinery parts" in International Class 4.

Because the proposed amendment is limiting in nature as required by Trademark Rule 2.71(b), and because opposer has consented thereto, the amendment is approved and entered. See Trademark Rule 2.133(a).

In an opposition to an application having multiple classes, if the applicant files a request to amend the application to delete an opposed class, the request for amendment is, in effect, an abandonment of the application with respect to that class, and is governed by Trademark Rule 2.135. That rule provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

Applicant's proposed amendment to delete all of the International Class 3 goods identified in the application is, in effect, an abandonment of the application as to that class. Inasmuch as opposer's written consent to the abandonment has been submitted, the Board shall not enter judgment against applicant. See Trademark Rule 2.135.

In view thereof, application Serial No. 76/347,298 stands abandoned as to International Class 3.

On April 28, 2003, the parties filed a stipulation to suspend² this proceeding during the pendency of the Board's action which included a statement that:

The parties have reached a settlement agreement whereby Opposer Ecolab Inc. has agreed to dismiss the above-captioned Opposition proceeding upon acceptance of Applicant's requested amendment.

We have construed this as opposer's request to withdraw the opposition, contingent on entry of the proposed amendment.

The contingency in opposer's withdrawal having now been met, the opposition is dismissed in accordance with the agreement between the parties. Application Serial No. 76/347,298, as amended, will move forward on the remaining International Classes, namely, classes 1 and 4.

***By the Trademark Trial
and Appeal Board***

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² In view of the dismissal of this proceeding, the motion to suspend is now moot.