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

Toyo Lex Industry Corporation)
)
Opposer)
)
v.)
)
Owens-Corning Fiberglas)
Technology Inc.)
)
Applicant)

Opposition No. 91159581
Serial No. 78147329



04-16-2004

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

OPPOSER'S MOTION FOR DEFAULT JUDGMENT

Opposer, Toyo Lex Industry Corporation, by and through their attorneys, and pursuant to 37 C.F.R. § 2.106(a) and Fed. R. Civ. P. 55, respectfully moves the Trademark Trial and Appeal Board ("TTAB") to enter an order granting Default Judgment against Applicant, Owens-Corning Fiberglas Technology Inc., based on Applicant's failure to respond to Opposer's Notice of Opposition and Applicant's stated intention that it does not intend to respond to Opposer's Notice of Opposition. In support of its motion, Opposer states as follows:

1. On February 11, 2004, Toyo Lex Industry Corporation filed a Notice of Opposition against Owens-Corning Fiberglas Technology Inc.'s application for registration of the mark "MATEX INSULITE."

2. Applicant's counsel informed Opposer's counsel via correspondence dated March 23, 2004, that Applicant does not intend to defend this opposition and thus will not respond to Opposer's Notice of Opposition. See *Exhibit A*.

3. Pursuant to the Notice mailed February 25, 2004, Applicant's Answer was due April 5, 2004. See *Exhibit B*.

4. Upon information and belief, Applicant has not filed an Answer to Opposer's Notice of Opposition. See *Exhibit C*.

WHEREFORE, for the reasons set forth herein, Toyo Lex Industry Corporation requests that a default judgment now be entered against Owens-Corning Fiberglas Technology Inc., and the proceedings be dismissed with prejudice.

Respectfully submitted,

Date: April 14, 2004

Karen L. Lynd

Karen L. Lynd
Amy B. Berge
Greenebaum Doll & McDonald PLLC
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
(502) 589-4200

Counsel for Opposer, Toyo Lex Industry
Corporation

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing Motion for Default Judgment was served, by first-class mail, postage prepaid, addressed to Owens-Corning Fiberglas Technology Inc.'s counsel, Stephen K. Krull, Owens Corning, One Owens Corning Parkway, Toledo, Ohio 43659, this 14th day of April, 2004.

Karen A. Lyndel
Counsel for Opposer, Toyo Lex Industry
Corporation

OWENS CORNING SCIENCE & TECHNOLOGY CENTER
2790 COLUMBUS ROAD, ROUTE 1
GRANVILLE, OHIO 43023.1200
740.321.7173 FAX: 740.321.8024
INTERNET: inger.eckert@owenscorning.com

INGER H. ECKERT
DIRECTOR, INTELLECTUAL PROPERTY

MAR 29 2004

March 23, 2004



Karen M. Lynd, Esq.
Greenebaum Doll & McDonald PLLC
3500 National City Tower
101 South Fifth St.
Louisville, KY 40202

Re: Opposition No. 91159581
Toyo Lex Industry Corp. v. Owens-Corning Fiberglas Technology Inc.
Trademark Matex Insulite

Dear Ms. Lynd:

We are in receipt of the Notice of Opposition your firm filed on behalf of your client, Toyo Lex Industry Corp.

Owens Corning advised Mr. Suzuki of Toyo Lex last fall that we would abandon our application for the trademark Matex Insulite as soon as Trademark Office procedure would permit. We explained that while we could not withdraw the application at that time because the application had been approved for publication and we needed to wait for the application to be published, we would abandon the application once the publication process was completed. A copy of that correspondence is enclosed.

As it was our expressed intention to withdraw the application immediately after the publication process, we will not respond to the Notice of Opposition.

Sincerely,

A handwritten signature in black ink, appearing to be "I. Eckert", written over a circular stamp or mark.

Inger H. Eckert
Director, Intellectual Property

cc: Mr. Suzuki (Toyo Lex) via e-mail
Mr. Del Warner (OC)

Encl.

Thompson, Sherry L.

From: Warner, Del
Sent: Thursday, October 23, 2003 3:28 PM
To: yasufumi-suzuki@nitto-matex.co.jp
Cc: Poole, Paul W.; Logsdon, Darlene; Relation, Joseph
Subject: Trademark

Mr. Suzuki,

I hope this note finds you well. I received an update on the trademark of "Matex Insulite" and wanted to pass it along. By the time Owens Corning attempted to stop the process, the trademark had been "published for opposition" in the name of Owens Corning. During this stage of the process, the trademark office does not allow abandonment of the application. There is no set time period for this stage, but our Legal Department estimates a few months. If no opposition is filed, the trademark office will issue a notice of allowance. Once that happens, we can officially abandon the application.

I've been advised that your trademark counsel seems quite familiar with the process and are welcomed to contact Darlene Logsdon of our Legal Department. Darlene's phone number is 419-248-7444. I hope this helps.

Sincerely,
Del Warner

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

Mailed: February 25, 2004

Opposition No 91159581
Serial No. 78147329

Stephen K. Krull
Owens Corning
One Owens Corning Parkway
Toledo, OH 43659

Toyo Lex Industry Corporation

v.

Owens-Corning Fiberglas Technology
Inc.

Karen L. Lynd
GREENEBAUM DOLL & MCDONALD PLLC
3500 National City Tower; 101 South Fifth St.
Louisville, KY 40202

Helen Johnson, Legal Assistant

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

ANSWER IS DUE FORTY DAYS after the mailing date hereof.
(See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68

Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at www.uspto.gov.

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open:	March 16, 2004
Discovery period to close:	September 12, 2004
30-day testimony period for party in position of plaintiff to close:	December 11, 2004
30-day testimony period for party in position of defendant to close:	February 09, 2005
15-day rebuttal testimony period for plaintiff to close:	March 26, 2005

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the

Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

New Developments at the Trademark Trial and Appeal Board

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Adversary Proceeding Data

Proceeding Number: 91159581
Proceeding Status and Date: Pending 2004-02-25
Interlocutory Attorney Name: ANDREW P BAXLEY
Proceeding Location: 845 - TTAB
Proceeding Location Date: 2004-03-16
Proceeding Charged To Location: 84K - TTAB-Pending Docket Shelf
Proceeding Charged To Employee Name:
Date Proceeding Filed: 2004-02-12

Prosecution History

Entry#	Entry Date	Due Date	History Text
3	2004-02-25		PENDING, INSTITUTED
2	2004-02-25	2004-04-05	NOTICE AND TRIAL DATES SENT; ANSWER DUE:
1	2004-02-12		FILED AND FEE

Defendant Name Information:

Owens-Corning Fiberglas Technology Inc.
Owner Address:
Owens-Corning Fiberglas Technology Inc.
7734 West 59th Street
Summit, IL 605010907
Correspondence Address:
Stephen K. Krull
Owens Corning
One Owens Corning Parkway
Toledo, OH 43659

Defendant Property Information:

Serial Number: 78147329
Registration Number: 0
International Classes: 017
Application Status: 774 - An opposition is now pending at the Trademark Trial and Appeal Board.
Application Status Date: 2004-02-25
Application Location: 657 - Pre-Publication Final Review
Application Date in Location: 2003-12-09
Law Office Assigned: M10 - TMO Law Office 110
Attorney: Stephen K. Krull
Domestic Representative:
Application Charged to Location:
Application Charged to Employee:
Registration Date:
Examiner Name: PRISCILLA W MILTON
Mark: MATEX INSULITE
Application Filing Date: 2002-07-25

Plaintiff Name Information:

Toyo Lex Industry Corporation

Correspondence Address:

**Karen L. Lynd
GREENEBAUM DOLL & MCDONALD PLLC
3500 National City Tower; 101 South Fifth St.
Louisville, KY 40202**

Plaintiff Property Information:

**Serial Number: 0
Registration Number: 0**