

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EJW

Mailed: April 26, 2011

Opposition No. 91196411

EKCO Housewares, Inc.

v.

SINDIVIDRO - Sindicato da
Indústria de Vidros e
Cristais Planos e Ocos no
Estado de São Paulo

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On September 9, 2010, opposer filed an amended notice of opposition in this case. Thereafter, in response to the Board's order mailed on September 17, 2010, opposer filed (also on September 17, 2010) a copy of its transmittal letter to applicant (with the amended pleading) as its proof of service of its amended pleading on applicant along with a complete copy of its amended notice of opposition. Inasmuch as applicant clearly has notice of the amended notice of opposition,¹ opposer's letter is accepted as its proof of service of its amended pleading.

¹ See applicant's motion (at 1) (filed October 18, 2010) for an extension of time to file an answer. Applicant's uncontested motion for an extension of time is moot inasmuch as the answer due date was not previously reset. Accordingly, said motion will

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Amended Notice of Opposition

Fed. R. Civ. P. 15(a) provides, in relevant part, that a party may amend its pleading once as a matter of course at any time before a responsive pleading is served. See TBMP § 507.02 (2d ed. rev. 2004). An amendment filed as a matter of course need not be accompanied by a motion for leave to amend. See also Beth A. Chapman, *TIPS FROM THE TTAB: Amending Pleadings: The Right Stuff*, 81 Trademark Rep. 302 (1991).

Inasmuch as there was no responsive pleading filed in connection with opposer's notice of opposition, opposer's amended notice of opposition filed on September 17, 2010 is accepted and made of record, and is now considered to be opposer's operative pleading in this case.

Proof of Service under Section 2.119

As noted in the Board's order mailed on September 17, 2010, 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

be given no further consideration. Additionally, applicant is referred to Trademark Rule 2.126 with respect to the form of its paper submissions to the Board. Applicant's continued use of Electronic System for Trademark Trials and Appeals (ESTTA) is encouraged.

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of all papers which opposer may subsequently file in this proceeding 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. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service. This written statement should take the form of a "certificate of service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

Trial Dates are Reset; Answer is Due

In view of the foregoing, the answer due date and all trial dates, including conferencing, disclosures and the discovery period are reset as shown below. Applicant is allowed until **FORTY DAYS** from the mailing date of this order to submit its answer to opposer's amended pleading.

Time to Answer	6/5/2011
Deadline for Discovery Conference	7/5/2011
Discovery Opens	7/5/2011
Initial Disclosures Due	8/4/2011

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Expert Disclosures Due	12/2/2011
Discovery Closes	1/1/2012
Plaintiff's Pretrial Disclosures Due	2/15/2012
Plaintiff's 30-day Trial Period Ends	3/31/2012
Defendant's Pretrial Disclosures Defendant's 30-day Trial Period Ends	4/15/2012 5/30/2012
Plaintiff's Rebuttal Disclosures Plaintiff's 15-day Rebuttal Period Ends	6/14/2012 7/14/2012

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.
