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

Proceeding	91197856
Party	Defendant American Beer Company, Inc.
Correspondence Address	MORRIS E. TUREK YOURTRADEMARKATTORNEY.COM 167 LAMP AND LANTERN VLG # 220 CHESTERFIELD, MO 63017-8208 pto@yourtrademarkattorney.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Morris E. Turek
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Signature	/met20/
Date	01/08/2011
Attachments	American Beer Motion to Dismiss.pdf (6 pages)(19964 bytes)

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

T-D Innovations, LLC)
Opposer,)
v.) Opposition No. 91197856
American Beer Company, Inc.)
Applicant.)
_____)

**APPLICANT’S MOTION TO DISMISS OPPOSER’S
NOTICE OF OPPOSITION**

Pursuant to 37 C.F.R. § 2.116(a) and Rule 12(b)(5) of the Federal Rules of Civil Procedure, Applicant American Beer Company, Inc. (“Applicant”) hereby moves the Board to dismiss Opposer’s Notice of Opposition with prejudice for insufficient service of process. Applicant’s Motion embodies its Brief in Support as required by 37 C.F.R. § 2.127(a).

INTRODUCTION

Applicant’s application for LIMELIGHT BEER (Serial No. 85100747) was published for opposition on November 30, 2010. On December 15, 2010, Opposer T-D Innovations, LLC (“Opposer”) filed a Notice of Opposition against Applicant’s application. The 30 day opposition period expired on December 30, 2010. In light of Opposer’s failure to serve its Notice of Opposition upon Applicant’s attorney during the opposition period, Applicant hereby moves the Board to dismiss Opposer’s Notice of Opposition with prejudice for insufficient service of process.

ARGUMENT

Every paper filed in the United States Patent and Trademark Office in inter partes cases must be served upon the other parties. 37 C.F.R. § 2.119(a). Proof of such service *must* be made before the paper will be considered by the Office. *Id.* (emphasis added). Service of papers must be on the attorney or other authorized representative of the party if there be such. 37 C.F.R. § 2.119(b). An opposer must serve a copy of the notice of opposition on the attorney of record for the applicant at the correspondence address of record in the office. 37 C.F.R. § 2.101(b). An opposer must include with the notice of opposition proof of such service at the correspondence address of record in the Office. *Id.*

In this case, the Board should not have instituted this Opposition proceeding because Opposer has failed to comply with the service requirements set forth in the Rules of Practice. Applicant has at all times been represented by attorney Morris E. Turek in the prosecution of Application Serial No. 85100747. Morris Turek's address has always appeared as the correspondence address of record in the Office. However, the Certificate of Service attached to Opposer's Notice of Opposition clearly states that the Notice of Opposition was served upon Applicant (and not Morris Turek) at an address that has never been listed as the correspondence address of record. Furthermore, Applicant has attached as Exhibit A a declaration signed by Morris Turek stating that he was never actually served with the Notice of Opposition. Because Opposer has unquestionably failed to comply with the service requirements, Opposer's Notice of Opposition should have never received a filing date and this proceeding should not have been instituted. Moreover, because the time for properly filing and serving the Notice of Opposition expired on December 30, 2010, Opposer cannot remedy its oversight.

EXHIBIT A

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T-D Innovations, LLC)
Opposer,)
v.) Opposition No. 91197856
American Beer Company, Inc.)
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_____)

DECLARATION OF MORRIS E. TUREK

COMES NOW, Morris E. Turek, under the penalty of perjury and being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares the following:

1. My name is Morris E. Turek and I am over the age of majority and do not suffer from any mental disability or infirmity that prevents me from giving this Declaration. This Declaration is based on my own personal knowledge.

2. I have at all times been the attorney of record on Applicant's application Serial No. 85100747.

3. My address of 167 Lamp & Lantern Village, #220, Chesterfield, MO 63017-8208, has always been listed as the correspondence address of record on application Serial No. 85100747.

4. I have never been located at the address shown on the Certificate of Service attached to Opposer's Notice of Opposition.

5. I was not served with Opposer's Notice of Opposition during the 30 day publication period for application Serial No. 85100747.

