

TTAB

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

NEWELL OPERATING COMPANY,

Petitioner,

v.

Cancellation No. 32,59.

11-22-2002
U.S. Patent & TMO/TM Mail Rcpt Dt. #77

KRYPTONITE CORPORATION,

Respondent.

**MOTION TO SET ASIDE DEFAULT, ACCEPT ANSWER TO AMENDED PETITION,
REOPEN PROCEEDINGS, AND RESET SCHEDULING ORDER**

Schlage Lock Company, successor-in-interest to Kryptonite Corporation, hereby moves the Board to set aside the Notice of Default issued on October 15, 2002; accept and enter in the record Schlage's Answer to the Amended Notice of Petition enclosed herewith; reopen proceedings in this matter; and issue an amended scheduling order. The grounds for this motion are set forth hereinafter and are supported by the Declarations of Lori S. Meddings and Dyann L. Kostello, attorneys for Schlage Lock Company, successor-in-interest to Kryptonite Corporation.

Schlage Lock Company is a successor-in-interest to Kryptonite Corporation, and it has filed with the Board in this proceeding both papers indicating the change of name of the owner of this registration, by virtue of the acquisition by Ingersoll-Rand Company, Schlage Lock's parent company, of Kryptonite Corporation and the subsequent merger of Kryptonite Corporation into Schlage Lock Company. Schlage has also filed with the Board documents requesting that the Board enter the undersigned as counsel of record for Schlage Lock Company.

The undersigned counsel did not receive from the Board either of the following documents, which are noted on the United States Patent and Trademark Office website as having

been entered in this case: (1) "Plaintiff's amendment corrects defects noted by Respondent and motion is moot" dated July 22, 2002; and (2) "Notice of default dated October 15, 2002." Thus, counsel for Schlage Lock has not been aware that the Board made a decision on Kryptonite/Schlage's Motion to Dismiss, or that the Board accepted Newell's Amended Petition and required an answer thereto to be filed by Kryptonite/Schlage.

A paralegal in the office of the undersigned counsel for Schlage, in the course of her ordinary duties in monitoring proceedings for Schlage Lock Company, discovered these documents as being entered on the PTO website in the course of checking on the status of this matter.

As counsel for Schlage Lock did not receive from the Board a copy of the Notice of Default mailed on October 15, 2002, it was not aware that it was supposed to file a response thereto. In addition, because counsel for Schlage was not aware that the Board had ever ruled on Kryptonite/Schlage's Motion to Dismiss or had ever accepted and entered the Amended Notice of Petition, it was not aware that an answer was due to be filed.

That counsel for Schlage was waiting for a decision from the Board on Kryptonite/Schlage's Motion to Dismiss and Newell's request to enter the Amended Notice of Petition was known to counsel for petitioner as late as September 30, 2002, and counsel for petitioner agreed that no answer needed to be filed by Schlage until the Board, in fact, ruled on the Motion to Dismiss and the Motion to Accept the Amended Petition. In particular, as noted in the Declaration of Lori S. Meddings, counsel for Schlage spoke to Mark Izraelewicz, counsel for Newell on or about September 30, 2002. In that conversation, Mr. Izraelewicz asked Ms. Meddings if Kryptonite/Schlage was planning to file an answer to the Amended Notice of Petition. Ms. Meddings explained that Schlage was awaiting a decision from the Board on the

Motion to Dismiss and confirmation that the Amended Petition to Cancel had been, in fact, entered in this case before filing an answer but that once such a decision was received, Kryptonite/Schlage would file an answer. Mr. Israelewicz accepted and agreed with this position.

Given the foregoing facts and circumstances, it is respectfully requested that this motion be granted; that proceedings be reopened; and that the Board accept the enclosed Answer to the Amended Petition and reset the scheduling order in this case.

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Respondent

By:


Dyann L. Kostello

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Phone: (262) 956-6560

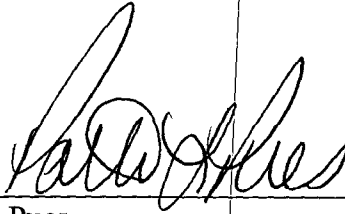
Our Ref No: 056227/9024

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, Attention: TTAB, and that I have mailed a true and correct copy of Respondent's Change of Name to counsel for Petitioner:

Beau D. Barberis
Marshall Gerstein & Borun
6300 Sears Tower
233 South Wacker Drive
Chicago, IL 60606

Dated this 19th day of November, 2002.



Patti L. Pues

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

NEWELL OPERATING COMPANY,

Petitioner,

v.

Cancellation No. 32,595

KRYPTONITE CORPORATION,

Respondent.

11-22-2002

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #77

ANSWER TO AMENDED PETITION TO CANCEL REGISTRATION IN PART

Registrant, Schlage Lock Company, f/k/a Kryptonite Corporation, hereby answers the Amended Petition to Cancel Registration in Part as follows:

1. Admits.
2. Admits.
3. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 3.
4. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 and affirmatively states that a likelihood of confusion is a legal conclusion for the Board to determine.
5. Denies.
6. Denies.

Wherefore, Registrant prays that this cancellation be dismissed on its merits and with prejudice.

Respectfully submitted,

MICHAEL BEST & FRIEDRICH LLP
Attorneys for Respondent

By:


Dyan L. Kostello

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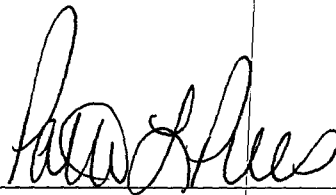
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11-22-2002
U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

DECLARATION OF DYANN L. KOSTELLO UNDER 28 U.S.C. § 1746

I, Dyann L. Kostello, declare under penalty of perjury as follows:

1. I am one of the attorneys for Schlage Lock Company, successor-in-interest to Kryptonite Corporation in this cancellation action. I did not receive from the Board a copy of any paper issued on July 22, 2002 to the effect that plaintiff's amendment corrected the defects noted by respondent and respondent's Motion to Dismiss was moot, nor did my firm receive the same to the best of my knowledge after a reasonable investigation.

2. I did not receive from the Board a copy of the Notice of Default issued on October 15, 2002, nor did my firm receive the same to the best of my knowledge after a reasonable investigation.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated November 19, 2002.


Dyann L. Kostello

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

NEWELL OPERATING COMPANY,

Petitioner,

v.

Cancellation No. 32,595

KRYPTONITE CORPORATION,

Respondent.

DECLARATION OF LORI S. MEDDINGS UNDER 28 U.S.C. § 1746

I, Lori S. Meddings, declare under penalty of perjury as follows:

1. I am an attorney at Michael Best & Friedrich LLP, located in Milwaukee, Wisconsin.
2. On or about September 30, 2002, I telephoned Mark Izraelewicz, attorney for Petitioner. Mr. Izraelewicz had inquired whether Respondent intended to submit an Answer to Petitioner's Amended Petition To Cancel. I informed Mr. Izraelewicz that we were awaiting a decision from the Trademark Trial and Appeal Board (TTAB) on whether the Amended Petition to Cancel was accepted and on whether Respondent's Motion to Dismiss was accepted. He agreed to this approach.
3. In the course of continuing to monitor the status of this matter, on November 18, 2002, I reviewed the Trademark Trial and Appeal Board's (TTAB) website database and discovered that a Notice of Default was entered on this matter on October 15, 2002.

4. As of today's date, neither Michael Best & Friedrich LLP nor I have received a copy of the the TTAB's decision regarding the acceptance of the Amended Petition to Cancel and Respondent's Motion to Dismiss, nor did we receive a Notice of Default.

5. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated November 18, 2002.



Lori S. Meddings

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