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Filing date: **12/10/2007**

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

Proceeding	92047833
Party	Plaintiff MIOX Corporation
Correspondence Address	Deborah A. Peacock Peacock Myers, P.C. P.O. Box 26927 Albuquerque, NM 87125-6927 UNITED STATES achaselfeld@hollandhart.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Vidal A. Oaxaca
Filer's e-mail	jmyers@peacocklaw.com
Signature	/Vidal A. Oaxaca/
Date	12/10/2007
Attachments	Motion to Amend Petition_121007.pdf (7 pages)(247630 bytes) Amended Petition_121007.pdf (3 pages)(91112 bytes)

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

MIOX CORPORATION	,)	
)	Cancellation No. 92047833
Petitioner,)	
)	Trademark Reg. No. 2,598,272
v.)	
)	
ORICA AUSTRALIA PTY. LTD.,)	Mark: MIEX
)	International Class: 36
Respondent)	

**MOTION FOR LEAVE TO AMEND
PETITION FOR CANCELLATION**

MIOX Corporation (“Petitioner”), by and through its attorneys, Peacock Myers, P.C. files this motion for leave to Amend Petition for Cancellation as follows and prays for an order granting such leave:

A. BRIEF

1. On July 20, 2007, Petitioner filed its Petition for Cancellation of the mark MIEX, belonging to Orica Australia Pty. LTD. (“Respondent”) using the ESTTA online filing system of United States Patent and Trademark Office. In the field wherein an attachment providing a statement of the grounds is required, Petitioner made a statement pursuant to, and in reliance on, 15 U.S.C. § 1052(d), likelihood of confusion. In the Petition, Petitioner referenced its mark, MIOX, Reg. No. 1,805,225, as the basis for the cancellation, and the Petition, apart from the attached statement, further alleged priority of use and likelihood of confusion.

2. Because Respondent failed to answer the Petition, On October 31, the Trademark Trial and Appeal Board issued a notice of Default on October 31, 2007 giving Respondent until November 30 to show cause why judgment of default should not be entered.

3. Petitioner agreed to an extension of time for Respondent to file its answer, and upon Respondent's filing of a consented motion for same noting ongoing settlement negotiations between Petitioner and Respondent, the Board granted the extension until December 30, 2007.

4. On December 7, 2007, Petitioner received service of Respondent's motion to dismiss for lack of standing or for failure to state a claim. Respondent alleges that Petitioner failed to allege that it would be damaged and that Petitioner failed to allege any rights in any mark. As noted above, Petitioner did cite, and relied upon, its mark MIOX and did allege a likelihood of confusion. Petitioner notes that the copy of the Petition for Cancellation appearing in the Trademark Trial and Appeal Board Inquiry System does not reference Petitioner's mark; however, the Receipt of the filing of the Petition (copy attached as Exhibit A) shows the grounds and the reference to Petitioner's mark. As such, Petitioner has alleged a likelihood of confusion and has relied upon its mark MIEX as the basis for the filing of the Petition.

5. Notwithstanding the facts set out in the Petition for Cancellation giving Respondent the notice required, and in response to Respondent's motion to dismiss, Petitioner files this motion and moves for leave to amend the Petition for Cancellation to provide a more traditional Petition stating Petitioner's standing and the grounds of priority of use and likelihood of confusion.


6. The proposed Amended Petition for Cancellation is being filed contemporaneously herewith, and Petitioner requests that such filing be given effect.

B. PRAYER FOR RELIEF

Wherefore, Petitioner prays that leave to amend the Petition for Cancellation be granted and that the filing of the contemporaneously filed Amended Petition for Cancellation be accepted.

Dated this 10th day of December, 2007

Respectfully submitted,



Vidal A. Oaxaca

Peacock Myers, P.C.
P.O. Box 26927
Albuquerque, NM 87125-6927
(505) 998-1505

Attorneys for Petitioner
MIOX Corporation

CERTIFICATE OF TRANSMISSION

I hereby certify that this Motion for Leave to Amend Petition for Cancellation is being deposited under 37 CFR 1.8 as an electronic filing via Electronic System for Trademark Trials and Appeals (ESTTA) addressed to: Commissioner for Trademarks, Trademark Trial and Appeal Board, USPTO, on December 10, 2007.



Vidal A. Oaxaca,

December 10, 2007

(Date Signed)

Peacock Myers, P.C.
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Motion for Leave to Amend Petition for Cancellation has been served on Attorneys for Registrant, Scott S. Havlick, Holland & Hart, LLP, One Boulder Plaza, 1800 Broadway, Ste. 300, Boulder, Colorado 80302 mailing said copy on December 10, 2007, via First Class Mail, postage prepaid, to said Attorneys at said address.



Vidal A. Oaxaca,

December 10, 2007

(Date Signed)

Peacock Myers, P.C.
Attorneys for Petitioner



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Electronic System for Trademark Trials and Appeals

Receipt

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA152288**Filing date: **07/20/2007**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	MIOX Corporation		
Entity	Corporation	Citizenship	New Mexico
Address	5601 Balloon Fiesta Parkway NE Albuquerque, NM 87113 UNITED STATES		

Attorney information	Deborah A. Peacock Peacock Myers, P.C. P.O. Box 26927 Albuquerque, NM 87125-6927 UNITED STATES jmyers@peacocklaw.com Phone:505-998-1500		
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Registration Subject to Cancellation

Registration No	2598272	Registration date	07/23/2002
International Registration No.	NONE	International Registration Date	NONE
	Orica Australia Pty. Ltd.		

EXHIBIT
A

tabbles

Registrant	1 Nicholson Street Melbourne, Victoria, 3000 AUSTRALIA
Goods/Services Subject to Cancellation	Class 001. First Use: 1994/00/00 , First Use In Commerce: 2001/08/00 Goods/Services: ARTIFICIAL RESINS, INCLUDING ION EXCHANGE RESINS HAVING MAGNETIC PROPERTIES, FOR USE IN THE REMOVAL OF CONTAMINANTS IN INDUSTRIAL PROCESSES, WASTE WATER FLOWS AND POTABLE WATER SOURCES, THE EXTRACTION OF MATERIALS FROM INDUSTRIAL AND ORE PROCESSING APPLICATIONS, AND FOR USE IN ION EXCHANGE APPLICATIONS

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1805225	Application Date	02/27/1992
Registration Date	11/16/1993	Foreign Priority Date	NONE
Word Mark	MIOX		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 011. First use: First Use: 1992/05/15 First Use In Commerce: 1993/02/15 water purification units for domestic, commercial and industrial use, and replacement parts therefor		

Attachments	Statement.pdf (1 page)(27500 bytes)
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Signature	/Deborah A. Peacock/
Name	Deborah A. Peacock
Date	07/20/2007

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
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MIOX CORPORATION)	
)	Cancellation No. 92047833
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)	Trademark Reg. No. 2,598,272
v.)	
)	
ORICA AUSTRALIA PTY. LTD.,)	Mark: MIEX
)	International Class: 36
Respondent)	

AMENDED PETITION FOR CANCELLATION

Pursuant to 37 C.F.R. § 2.111, MIOX Corporation (“Petitioner”) (1700 Paseo de Peralta, Ste. A, Santa Fe, NM 87501), by and through its attorneys, Peacock Myers P.C., petitions for cancellation of Trademark Reg. No. 2,598,272.

1. Petitioner owns the mark MIOX, Reg. No. 1,805,225 for “water purification units for domestic, commercial and industrial use, and replacement parts therefore”, registered November 16, 1993. The first use date in commerce for that mark is February 15, 1993.

2. Orica Australia Pty. Ltd. (“Respondent”) (Orica Australia Pty. Ltd., 1 Nicholson Street, Melbourne, Victoria 3000 Australia) owns the mark MIEX, Reg. No. 2,598,272 for “artificial resins, including ion exchange resins having magnetic properties, for use in the removal of contaminants in industrial processes, waste water flows and potable water sources, the extraction of

materials from industrial and ore processing applications, and for use in ion exchange applications”, registered July 23, 2002.” The first use date for Respondent’s mark is 1994, and the first use date in commerce is August 2001.

3. Petitioner is and/or will be damaged by the continued registration of Respondent’s mark in that there is a likelihood of confusion between Petitioner’s mark and Respondent’s mark. Respondent’s mark so resembles Petitioner’s mark as to be likely, when used on or in connection with the goods or services of Respondent, to cause confusion, to cause mistake, or to deceive.

4. Respondent’s mark, MIOX, should be cancelled because there is a likelihood of confusion between the two marks.

WHEREFORE, Petitioner prays that Trademark Registration No. 2,598,272 be cancelled.

Dated this 10th day of December, 2007

Respectfully submitted,



Vidal A. Oaxaca

Peacock Myers, P.C.
P.O. Box 26927
Albuquerque, NM 87125-6927
(505) 998-1505

Attorneys for Petitioner
MIOX Corporation

CERTIFICATE OF TRANSMISSION

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Vidal A. Oaxaca,

December 10, 2007

(Date Signed)

Peacock Myers, P.C.
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Amended Petition for Cancellation has been served on Attorneys for Registrant, Scott S. Havlick, Holland & Hart, LLP, One Boulder Plaza, 1800 Broadway, Ste. 300, Boulder, Colorado 80302 mailing said copy on December 10, 2007, via First Class Mail, postage prepaid, to said Attorneys at said address.



Vidal A. Oaxaca,

December 10, 2007

(Date Signed)

Peacock Myers, P.C.
Attorneys for Petitioner