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

Proceeding	92047833
Party	Defendant Orica Australia Pty. Ltd.
Correspondence Address	Paul W. Kruse Pillsbury Winthrop Shaw Pittman LLP 1650 Tysons Boulevard, 14th Floor McLean, VA 22102-4859 UNITED STATES docket@hollandhart.com
Submission	Motion to Strike
Filer's Name	Annie C. Haselfeld
Filer's e-mail	docket@hollandhart.com, achaselfeld@hollandhart.com
Signature	/Annie C. Haselfeld/
Date	12/28/2007
Attachments	Respondent's Motion to Strike Petitioner's Motion for Leave to Amend Petition for Cancellation.pdf (4 pages)(83277 bytes)

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

MIOX Corporation,

Petitioner,

v.

Orica Australia Pty. Ltd.,

Respondent.

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)
)
) Cancellation Action No. 92047833
) Registration No. 2598272
) Mark: MIEX
)
)
)

**RESPONDENT’S MOTION TO STRIKE PETITIONER’S MOTION FOR LEAVE TO
AMEND PETITION FOR CANCELLATION**

Respondent, Orica Australia Pty. Ltd., through the undersigned counsel,
respectfully moves to strike Petitioner’s Motion for Leave to Amend Petition for
Cancellation pursuant to Federal Rules of Civil Procedure 12(f) and T.B.M.P. § 517.

PROCEDURAL HISTORY

On July 20, 2007, Petitioner filed a Petition for Cancellation of Registration No.
2,598,272 for the mark MIEX covering “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.”

On December 5, 2007, Respondent filed a Motion to Dismiss Petition for
Cancellation for Lack of Standing, or in the alternative, Motion to Dismiss for Failure
to State a Claim.

Pursuant to 37 C.F.R. § 2.127(d), the Board automatically suspended the case when Respondent's Motion to Dismiss was filed and in its Notice of Suspension on December 12, 2007, the Board stated that it would not consider any matters not germane to the motion to dismiss and that no party should file any paper which is not germane to the motion.

Notwithstanding this suspension, Petitioner filed a Motion for Leave to Amend Petition for Cancellation and filed an Amended Petition for Cancellation on December 10, 2007.

LEGAL ANALYSIS

The Board's Rules provide that, "[w]hen any party files a motion to dismiss . . . the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion and no party should file any paper which is not germane to the motion." 37 C.F.R. § 2.127(d).

Petitioner's Motion for Leave to Amend Petition for Cancellation and Amended Petition for Cancellation are not germane to Respondent's Motion to Dismiss Petition for Cancellation, and therefore, the Board should not consider them.

THEREFORE, Respondent respectfully requests that the Board strike Petitioner's Motion for Leave to Amend Petition for Cancellation and Amended Petition for Cancellation. Should the Board deny this motion, Respondent respectfully requests that the Board grant Respondent twenty (20) days from the Board's denial of this motion to respond to Petitioner's Motion for Leave to Amend Petition for Cancellation.

Dated: Friday, December 28, 2007.

Respectfully submitted,

A handwritten signature in black ink that reads "Annie C. Haselfeld". The signature is written in a cursive style with a large initial 'A' and 'H'.

Andrea Anderson
Annie Haselfeld
HOLLAND & HART LLP
One Boulder Plaza
1800 Broadway, Suite 300
Boulder, Colorado 80302
(303) 473-2700

**ATTORNEYS FOR RESPONDENT
ORICA AUSTRALIA PTY. LTD.**

CERTIFICATE OF SERVICE

I certify that on December 28, 2007, I served a copy of the above **Motion To Strike Petitioner's Motion For Leave To Amend Petition For Cancellation** to the following by:

U.S. Mail, postage prepaid
Hand Delivery
Fax

Deborah A. Peacock
Peacock Myers, P.C.
P.O. Box 26927
Albuquerque, NM 87125-6927

Annie C Haselfeld

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