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

Proceeding	92049206
Party	Defendant FACEBOOK, INC.
Correspondence Address	FACEBOOK, INC. 156 UNIVERSITY AVENUE PALO ALTO, CA 94301 UNITED STATES
Submission	Motion to Strike
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Date	06/10/2008
Attachments	Motion to Strike.pdf (4 pages)(85559 bytes)

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

THINK COMPUTER CORPORATION

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

Cancellation No. 92049206

Mark: FACEBOOK

Reg. No. 3,122,052

Reg. Date: July 25, 2006

MOTION TO STRIKE AMENDED PETITION

I. INTRODUCTION

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, Registrant Facebook, Inc. (“Facebook”) hereby moves the Trademark Trial and Appeal Board (the “Board”) for an order striking petitioner Think Computer Corporation’s (“Petitioner”) Amended Petition for Cancellation (“Amended Petition”), because Petitioner filed and served the Amended Petition without asking leave of the Board or the consent of Facebook as clearly required by Rule 15(a).

II. STATEMENT OF FACTS

Petitioner filed the present action, seeking to cancel Facebook’s federal trademark registration for the FACEBOOK mark, on February 24, 2005 (“Petition”). On May 27, 2008 Facebook filed an Answer to the Petition. Concurrently, Facebook filed its Motion to Dismiss Count III of Think’s Petition (titled “Fraud on the Patent and Trademark Office”), on the basis that Think failed to plead each element of the fraud claim with the particularity required by Federal Rule of Civil Procedure 9(b). Petitioner filed the Amended Petition to Cancel on June 3, 2008, without giving prior notice, in an attempt to respond out of turn to issues raised in Facebook’s Motion to Dismiss.

III. THE BOARD SHOULD STRIKE THE AMENDED PETITION TO CANCEL

Where “applicable and appropriate,” procedure in inter partes trademark proceedings is governed by the Federal Rules of Civil Procedure. 37 CFR § 2.116(a); *see also* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 315. Relevant here, Federal Rule of Civil Procedure 15(a) provides that a party is free to amend its pleadings once as a matter of course before being served with a responsive pleading. Thereafter, a party may amend its pleading only by written consent of every adverse party or by leave of the Board. *See* TBMP § 507.02. Facebook’s timely Answer on May 27, 2008 constitutes a responsive pleading that precludes unilateral amendment of the Petition under Rule 15(a). *See* Fed. R. Civ. P. 12. Petitioner made no attempt to meet and confer with Facebook before filing its amended pleading, nor has it obtained the permission of the Board to amend, therefore, the Amended Petition should be stricken in its entirety.

In any event, the Amended Petition does not even adequately address the issues raised in Facebook’s Motion to Dismiss. The Amended Petition does not correct the deficiencies in Count III of the Original Petition, nor does it otherwise state a claim for fraud upon which relief may be granted by the Board.

IV. CONCLUSION

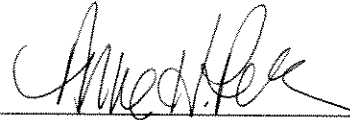
For all the reasons stated above, Facebook hereby moves the Board for an order that Think’s Amended Petition should be stricken in its entirety.

MOTION TO STRIKE AMENDED PETITION FOR CANCELLATION
CANCELLATION NO. 92049206

Dated: June 10, 2008

COOLEY GODWARD KRONISH LLP
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EMILY F. BURNS (228123)

By:



Anne H. Peck (124790)

Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Registrant's MOTION TO STRIKE AMENDED PETITION was mailed, first-class postage prepaid, to Petitioner:

Think Computer Corporation
Attn: Aaron Greenspan
884 College Avenue
Palo Alto, CA 94306-1303

Date: June 10, 2008



Anne H. Peck (124790)