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

Proceeding	92051014
Party	Defendant "White Gold", LLC
Correspondence Address	Vladimir I. Prokopenko Dellett & Walters P.O. Box 82788 Portland, OR 97282-0788 UNITED STATES ip@patenttm.us
Submission	Motion to Dismiss - Rule 12(b)
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re the Matter of Trademark Reg. Nos. 3399843 & 3399844

Registrant: "White Gold", LLC

Marks: WHITE GOLD and WHITE GOLD & design

MECKATZER LÖWENBRÄU BENEDIKT WEIß KG)
Petitioner)
v.) Cancellation No. 92051014
"White Gold", LLC)
Registrant)

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Sir:

Registrant, "White Gold", LLC, hereby moves, for reasons set forth below, to dismiss the opposition 92051014 filed by petitioner MECKATZER LÖWENBRÄU BENEDIKT WEIß KG.

Factual Background

Registrant "White Gold", LLC applied for and ultimately was granted Trademark Reg. Nos. 3399843 & 3399844. Petitioner MECKATZER LÖWENBRÄU BENEDIKT WEIß KG filed cancellations to cancel the noted registrations, alleging that petitioner's trademark applications 79/025,059 and 79/038,317 have been "preliminarily refused" under section 2(d) based on "White Gold", LLC's registrations, and concludes that petitioner will be unable to obtain federal registration if "White Gold", LLC's registrations are permitted to remain on the Principal Register.

Argument

This cancellation should be dismissed because petitioner has not stated a claim upon which relief can be granted.

1 - Petitioner alleges that its applications have been "preliminarily refused" registration. It is respectfully submitted that preliminary refusal does not provide grounds for standing for cancellation.

TBMP §309.03(b) lists as grounds for standing related to citation of registrations as "Plaintiff has been refused registration of its mark because of defendant's registration, or has been advised that it will be refused registration when defendant's application matures into a registration, or has a reasonable belief that registration of its application will be refused because of defendant's registration."

Petitioner's allegation, preliminary refusal, is respectfully submitted to not be within the grounds for standing.

2 - Petitioner cites its application for registration of MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD as partial grounds for cancellation. Petitioner's allegation that it will be unable to obtain registration of its MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD application if "White Gold" LLC's registrations are permitted to remain on the principal register ignores the fact that six (6) additional registrations not owned by "White Gold" LLC were cited as grounds for refusal against that application

and petitioner chose to make no response to the Examiner's rejections based on those registrations, so even if White Gold" LLC's registrations were canceled, petitioner will still be unable to obtain registration because petitioner did not respond to or refute the Examiner's citation of those additional six registrations. The Examining attorney in the its MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD application noted that opposer failed to address the Section 2(d) refusal concerning U.S. Registration Nos. 0328194, 0712604, 1195333, 1443481, 1834670 and 3052947.

The above information and comments of the Examining Attorney from the 79/038,317 MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD application are believed relevant to be considered as part of the complaint as filed based on 37 CFR 2.122(b), which recites:

37 CFR 2.122(b) Application files.

(1) The file of each application or registration specified in a notice of interference, of each application or registration specified in the notice of a concurrent use registration proceeding, of the application against which a notice of opposition is filed, or of each registration against which a petition or counterclaim for cancellation is filed forms part of the record of the proceeding without any action

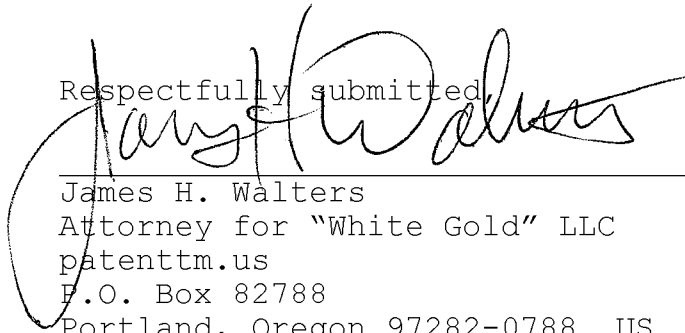
by the parties and reference may be made to
the file for any relevant and competent
purpose.

Accordingly, even if "White Gold" LLC's registrations were
to be canceled, opposer would still be unable to obtain
registration for its MECKATZER MECKATZER LÖWENBRÄU WEISS GOLD
application as a result of non-response to the issue raised by
the six additional registrations cited.

Conclusion

For the foregoing reasons, petitioner has not stated a
timely claim against 3399843 & 3399844 registrations and "White
Gold" LLC respectfully requests that the Board dismiss the
cancellations.

Respectfully submitted

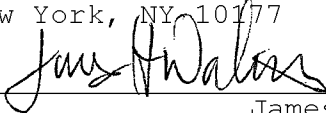


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the MOTION
TO DISMISS was served on this August 4, 2009, by first class mail,
postage pre-paid, addressed to the Petitioner's attorney:

Robert M. Wasnofski, Jr.
Dorsey & Whitney LLP
250 Park Ave., 15th Floor
New York, NY 10177



James H. Walters