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

Proceeding	92056259
Party	Plaintiff Fox Entertainment Group, Inc. and Twentieth Century Fox Film Corporation
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Date	12/19/2012
Attachments	92056259 Mot for Leave to Amend and For Enlargement of Time.pdf ( 4 pages ) (13941 bytes )

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

In The Matter of Registration No. 3,913,147: SQRAT  
Registration Date: February 1, 2011

FOX ENTERTAINMENT GROUP, INC.	)	
	)	
and	)	
	)	
TWENTIETH CENTURY FOX	)	
FILM CORPORATION,	)	
	)	
Petitioners,	)	
	)	
v.	)	Cancellation No. 92056259
	)	
IVY SILBERSTEIN,	)	
	)	
Registrant.	)	

**MOTION FOR LEAVE TO AMEND & FOR ENLARGEMENT OF TIME**

Fox Entertainment Group, Inc. and Twentieth Century Fox Film Corporation, (collectively, Petitioners), request leave to amend and supplement the Petition for Cancellation (“Petition”) and seek an enlargement of time to file this motion and for granting of their requests as set forth herein.

When the Petition was filed on September 27, 2012, Exhibit 1 was inadvertently omitted in the electronic filing. Exhibit 1 is a copy of the TTAB’s decision in *Fox Entertainment Group Inc. & Twentieth Century Fox Film Corp. v. Silberstein*, TTAB Opposition Nos. 91156005 and 91156138 (July 20, 2009).

Immediately upon noticing that the Exhibit was not attached to the electronic filing, Petitioners contacted the Board and were instructed to file the Exhibit electronically when the Petition was posted on TTABVUE. Petitioners thereafter electronically filed the Exhibit on October 2, 2012. Petitioners did not re-file the Petition, nor did Petitioners make any changes to

the Petition in any respect. However, the filing of Exhibit 1 is recorded as an amendment in the docket based upon administrative language included in the online form.

On November 21, 2012, Registrant moved to dismiss the Petition on technical grounds (“Motion to Dismiss”). In response to the Motion to Dismiss, on December 3, 2012, Petitioners submitted their Amended Petition for Cancellation (“First Amended Petition”) as of right to address the technical grounds (the purported lack of a statutory reference) claimed in the Motion to Dismiss. The First Amended Petition is the only pleading filed by Petitioners that includes revised language to the Petition.

Petitioners respectfully submit that the First Amended Petition was filed as a matter of right and that the filing of Exhibit 1 referenced in that original Petition on October 2<sup>nd</sup> did not constitute an amended pleading. Petitioners are now aware, however, that the Registrant is taking the position that she need not respond to the First Amended Petition because the TTAB docket shows the filing of the Exhibit to be an amendment, so that she claims Petitioners had no right to file the First Amended Petition without leave. While Petitioners believe Registrant’s position to be wholly without merit, to eliminate any possibility of confusion, Petitioners respectfully request leave to amend the original Petition and an extension of time to do so by way of the Board either: (a) accepting, retroactively, the filing of the First Amended Petition, already filed on December 3, 2012 or, (b) granting leave to amend and an extension of time for Petitioners to re-file the First Amended Petition within five (5) business days of entry of the Board’s order granting this request.

Motions to amend should be freely granted by the Board when justice so requires. See *Miller Brewing Co. v. Anheuser-Busch Inc.*, 27 USPQ2d 1711, 1714 (TTAB 1993); *Hurley Int’l LLC v. Paul & JoAnne Volta*, 82 USPQ2d 1339, 1341 (TTAB 2007). Justice will be served by

allowing the requested leave to amend and enlargement of time because these proceedings were brought to correct a mistake of fact made by the USPTO (under TMEP §1609.10, 15 U.S.C. § 1057(a)) which has resulted in an erroneously-issued trademark registration and an inaccuracy on the Principal Register. There is no prejudice to the Registrant in the Board granting leave to file an amended Petition (if such leave is even needed), since Registrant has been aware of the Amended Petition since it was filed on December 3, 2012, and she is free to move to dismiss the First Amended Complaint. Petitioners respectfully request that the Board grant this motion for leave to amend and for an extension of time as set forth herein, and that Registrant be directed to respond to the First Amended Petition (or a to-be-filed amended Petition) accordingly.

Date: December 19, 2012

Respectfully Submitted,

LOEB & LOEB LLP

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*Attorneys for Petitioners*

**CERTIFICATE OF SERVICE**

I, Angela O. Provencio, hereby certify that a copy of the **MOTION FOR LEAVE TO AMEND PETITION FOR CANCELLATION** has been served upon:

Ms. Ivy Silberstein  
One Irving Place Apt. P201  
New York, NY 10003

via first class mail, postage prepaid on December 19, 2012.

/s/ Angela O. Provencio