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

Proceeding	92064261
Party	Plaintiff Michael Spitzbarth
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Date	07/12/2017
Attachments	Opposition to Motion for Reconsideration.pdf(16454 bytes)

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

In the matter of Trademark Registration No.: 4099565
For the Mark: "IBLEED"
Date of Registration: February 14, 2012
Cancellation No.: 92064261

Michael Spitzbarth,
Petitioner,

v.

John Groat,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**PETITIONER'S BRIEF IN OPPOSITION TO REGISTRANT'S MOTION FOR
RECONSIDERATION OF THE BOARD'S DECISION DATED JUNE 20, 2017**

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

This brief is filed on behalf of Petitioner Spitzbarth in opposition to Respondent's Motion for Reconsideration. The principal grounds for opposing Respondent's motion is that Respondent seeks reconsideration but, has failed even to cite the rule or the governing legal standard under the rule upon which a motion for reconsideration could be granted. Although not mentioned in Respondent's motion, the governing rule of civil procedure determining the availability or inapplicability of such a request is Civil Rule 59(e).

A Rule 59(e) motion is disfavored, and relief from judgment is granted only when the

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moving party establishes extraordinary circumstances. *Niedermayer v. Office of Baucus*, 153 F. Supp. 2d 23, 28 (D.D.C. 2001) Moreover, the rule is entirely discretionary and need not be granted unless the Board finds that there is an intervening change of controlling law, newly discovered evidence not available at the date of judgment has become available, or the need to correct a clear error or prevent manifest injustice. *Firestone v. Firestone*, 76 F. 3d 1205, 1208 (D.C. Cir. 1996). Registrant has cited to none of those explicitly, suggesting instead legal error on a particular point of law, but even if true, that still fails to meet the requisite standard under Rule 59(e).

The courts have held repeatedly that Rule 59(e) motions “may not be used to relitigate old matters” (*Jung v. Ass’n of Am. Med. Coll.*, 226 F.R.D. 7, 9, (D.D.C 2005)). Moreover, where the mistake of law or fact does not affect the result ultimately reached in the judgment, under settled principles of law relief from judgment under Rule 59(e) is precluded. *Semi Conductor Energy Lab v Samsung Electronics*, 24 F2d 537 (E. D. VA. 1998).

In the case at bar, what happened is Petitioner filed a cross motion for summary judgment which Respondent elected to leave unopposed. After the Board reached its decision, Respondent has had a change of heart and now wishes to brief the issue of standing for the first time via a Motion for Reconsideration. That is not the purpose of the motion for reconsideration, as the Board has previously and repeatedly held.

Respondent’s motion is also futile, because on the merits the Board’s Order denying Respondent’s Motion for Summary Judgment is legally correct. Those issues have been fully briefed previously, and will not be repeated here, because a Rule 59(e) motion is not the proper vehicle for re-argument. *Super Bakery, Inc. v. Benedict*, Canc. No. 92047859 (TTAB Sept. 16, 2010).

Respectfully submitted,

/s/ Stephen B. Mosier

Stephen B. Mosier
Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Stephen B. Mosier, counsel for Petitioner, hereby certify that a copy of the foregoing Petitioner's Brief in Opposition to Registrant's Motion for Reconsideration of the Board's Decision Dated June 20, 2017 was served upon counsel of record for the Registrant, via first class mail, postage prepaid, and email on July 12, 2017, at the following address:

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