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

RARITAN COMPUTER, INC.,

Opposer,

v.

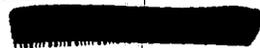
AVOCENT CORPORATION,

Applicant.

Attorney Refs.: 2540-370, -548

Opposition Nos. 91-153554

91-153614



06-09-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #99

**APPLICANT AVOCENT'S MOTION FOR AN ENLARGEMENT OF
TIME FOR DISCOVERY AND TESTIMONY**

Applicant Avocent Corporation ("Avocent") requests the Board grant this motion for an enlargement of time. Applicant believes that the facts relating to these Oppositions merit the granting of this Motion. The history and facts of these Oppositions are as follows:

On October 4, 2002, Opposer Raritan ("Raritan") filed Notices of Opposition to oppose Avocent's applications for its KVM OVER IP trademark. On November 22 and 27, 2002, the PTO issued its Orders relating to the opening and closing dates of the Discovery and Testimony periods. Pursuant to the Board's Orders, the closing dates are set as follows:

Opposition No. 91153554:	
Discovery Period to Open:	December 12, 2002
Discovery Period to Close:	June 10, 2003
30-day testimony period for party in position of plaintiff to close:	September 8, 2003
30-day testimony period for party in position of	November 7, 2003

defendant to close:	
15-day rebuttal testimony period for plaintiff to close:	December 22, 2003

Opposition No. 91153614	
Discovery Period to Open:	December 17, 2002
Discovery Period to Close:	June 15, 2003
30-day testimony period for party in position of plaintiff to close:	September 13, 2003
30-day testimony period for party in position of defendant to close:	November 12, 2003
15-day rebuttal testimony period for plaintiff to close:	December 27, 2003

Neither party pursued Discovery with dispatch. On April 18, 2003, about two months before the close of Discovery, Raritan filed its First Set of Request for Admissions, First Set of Interrogatories, and First Set of Requests for the Production of Documents and Things on Avocent's former counsel at the law firm of Nixon & Vanderhye, P.C. Avocent, however, was in the process of changing its legal representation to the new law firm of Davidson Berquist Klima & Jackson LLP.

On May 16, 2003, Mary Frances Love, new trademark counsel for Avocent, spoke by telephone with Michael Zinna, trademark counsel for Raritan. During that conversation, Mr. Zinna agreed to recommend extending all due dates and time periods and stipulating to the consolidation of the two, nearly identical matters to his client. On Monday, May 19, 2003, Mr. Zinna informed Ms. Love, via voice mail, his client would not agree to any of the Avocent requests. On May 20, 2003, Ms. Love wrote to Mr. Zinna to again request Raritan's cooperation. (Exhibit A) That request was likewise refused. (Exhibit B)

Avocent, therefore, responded timely to Raritan's outstanding Discovery requests on May 23, 2003. ¹ Given the absence of a Protective Order, Avocent objected to Raritan's Document requests on confidentially grounds. The parties have now worked out an agreement on a Protective Order for this case and expect to file it with the Board within the next several days. No documents have been produced by either party.

Unfettered by the lack of documents, Raritan served deposition Notices on Avocent by facsimile on the evening of May 30, 2003, seeking the depositions of Avocent employees, Gary R. Johnson and Doyle C. Weeks. Raritan's Notices specified June 9 and June 10 as the dates for those depositions. Given the lack of coordination on scheduling and the short response period set, Raritan agreed to re-set these deposition dates.

On May 30, 2003, counsel for Avocent served its own written Discovery requests on Raritan. On June 4, 2003, Avocent served Deposition Notices on Raritan's witnesses. Avocent's Deposition Notices set June 9 and June 10 as dates for depositions. Like Raritan, Avocent would prefer to obtain written Discovery responses and Raritan's document production prior to taking depositions. For this reason, Avocent agreed to postpone the depositions until after Raritan's document production is completed.

¹ Raritan's Interrogatories exceeded the 75 separate limit imposed under this Board's Discovery Rules. *See Rule 405.3*. Thus, Avocent Served a general objection to Raritan's Interrogatories and the parties are working to resolve this dispute.

To ensure the time necessary to complete these activities, Avocent suggested a stipulated enlargement of 90 days. Raritan rejected Avocent's suggestion, stating that it would not agree to any stipulation, but would not oppose a request for an enlargement of time of 45 days. A 45 day enlargement, however, will not provide enough time to complete the noticed Discovery, even if the Stipulated Protective Order were entered this week.

Therefore, Avocent requests that the Board grant this Motion to assist Avocent and Raritan in responding to its outstanding Discovery Requests as well as to avoid the necessity of filing Motions to Compel by either party. In particular, Avocent requests that the Board approve the following new schedule, which reflects an approximate 90-day enlargement for the two pending Oppositions:

Revised Schedule for Opposition Nos. 91153614 and 91153554	
Discovery Period to Open:	December 17, 2002
Discovery Period to Close:	September 15, 2003
30-day testimony period for party in position of plaintiff to close:	December 13, 2003
30-day testimony period for party in position of defendant to close:	February 12, 2004
15-day rebuttal testimony period for plaintiff to close:	March 27, 2004

Conclusion

Avocent files the present Motion for Enlargement of Time so that the parties may more thoroughly respond to outstanding Discovery requests and have more flexibility in the scheduling of depositions. For these reasons, Avocent requests that the Board grant this reasonable motion for an Enlargement of Time.

Respectfully submitted,

AVOCENT CORPORATION
by its Attorneys

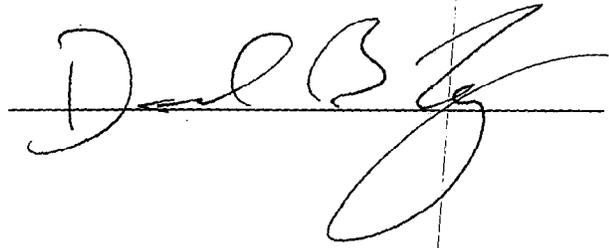
Dated: June 10, 2003



Mary Fran Love
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CERTIFICATE OF SERVICE

The undersigned certifies that, on June 9, 2003, the foregoing "Applicant Avocent Motion for an Enlargement of Time for Discovery and Testimony" was served on counsel of record Michael J. Zinna, Ward & Olivo, 382 Springfield Avenue, Summit, NJ 07901, by first-class mail.

A handwritten signature in black ink, appearing to read "D. J. Zinna", is written over a horizontal line. The signature is stylized and cursive.



May 20, 2003

Michael J. Zinna, Esq.
Ward & Olivo
382 Springfield Avenue
Summit, New Jersey 08901

RE: KVM OVER IP Oppositions
Our Reference No. 2540 -370 and 548

Dear Mr. Zinna:

As we discussed on May 16, I am new counsel on this matter. Please direct all future communications and filings to me at this firm. This letter also confirms our telephone conversation and messages of May 16, 2003 and May 19, 2003, regarding the above-referenced oppositions.

As you know, your Discovery Requests were sent to the former counsel for Avocent. We did not receive those papers until several days later. Accordingly, I called you on May 16 to request an extension in which to respond. We also discussed consolidating the two, nearly identical, matters for the convenience to the parties and the Board. You indicated that you would check with your client and get back to me, but you indicated your agreement to both requests.

Having received nothing further from you on the matter, I left a message at your office on May 19 requesting confirmation of our agreements. I was surprised and disappointed to receive your responsive phone message later that day stating that your client refused to consent to *any* of the formalities we had discussed. Under Board practice, it is highly unusual to refuse the Applicant's first request for an extension of time. See TBMP Section 412.01. Nevertheless, given Raritan's refusal to cooperate, we will serve our responses to your duplicative requests on the due date.

Sincerely,

Davidson, Berquist, Klima & Jackson, LLP

Mary Fran Love

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May 22, 2003

Via Telefacsimile: 703-248-9558

Ms. Mary Fran Love
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Re: KVM OVER IP Oppositions

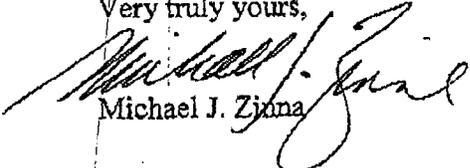
Dear Ms. Love:

In response to your letter of May 21, I thought I should clear up a few misrepresentations.

During our telephone conversation on May 16, I did not indicate my agreement with either your extension or consolidation requests. To the contrary, I explicitly stated that I would need to contact Raritan before I could agree to either of these formalities. As you obviously know, the client is the only one who can make these decisions. Given that Avocent/Apex has been harassing Raritan for years, it should come as no surprise that Raritan would refuse to consent to these formalities, which are the second and third requests Avocent has made, not the first. Raritan previously agreed to extend Avocent's time to file its Answer.

I look forward to receiving your responses to our discovery requests shortly.

Very truly yours,


Michael J. Zinna