

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

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

OPTIMIZE TECHNOLOGIES, INC.,
Opposer,
v.
WICOM GMBH,
Applicant.

No. ~~91158331~~ 91156666
OPPOSER'S MEMORANDUM IN
REPLY TO APPLICANT'S
OPPOSITION TO MOTION TO
CONSOLIDATE



05-03-2004

U.S. Patent & TMO/TM Mail Rept Dt. #22

I. INTRODUCTION

Optimize Technologies, Inc. ("Opposer") respectfully files this Reply to Wicom GmbH's ("Applicant") Opposition to Consolidate. As will be discussed below, Applicant failed to properly respond to Opposer's motion within the requisite time period and therefore, the Board should treat the motion as conceded and consolidated Opposition Proceeding Numbers 91158331 and 91156666.

II. RELEVANT BACKGROUND FACTS AND ARGUMENT

On March 16, 2004, Opposer filed and served its Motion to Consolidate Opposition Proceeding and supporting papers by depositing the pleadings in the United States mail. According to Trademark Rules 2.127(a) and 2.119(c), any responsive brief must be filed within twenty days from the date of service. As a result, Applicant had until April 5, 2004 to file its opposition.

Instead of following proper Board procedures, Applicant waited until April 23, 2004 to file its opposition. Applicant presents no reason for its untimely delay and therefore, the Applicant's brief should not be considered by the Board. In accordance with Trademark Rule 2.127(a), "the Board may treat the motion as conceded."

If, however, the Board does consider arguments stated in Applicant's Opposition, the Board should still consolidate Opposition Proceeding Numbers 91158331 and 91156666 for all purposes because these opposition proceedings are between the same parties, involve

OPPOSER'S MEMORANDUM IN REPLY TO
APPLICANT'S OPPOSITION TO MOTION TO
CONSOLIDATE - 1
OPTI2494PLJ.DOC

CHRISTENSEN
O'CONNOR
JOHNSON
KINDNESS^{LLC}

LAW OFFICES
1420 Fifth Avenue, Suite 2800
Seattle, WA 98101-2347
TELEPHONE: 206.682.8100

ORIGINAL

1 trademarks with common elements, and no party will be prejudiced by consolidation. With
2 consolidation, valuable resources will be conserved because duplication of effort concerning
3 the common factual and legal issues will be avoided.¹

4 In the alternative, if the Board merely consolidates Opposition Proceeding Numbers
5 91158331 and 91156666 for trial and post trial matters, as requested by the Applicant, the
6 Board should allow all properly gathered evidence/testimony be utilized in either or both
7 proceedings.

8 III. CONCLUSION

9 Because Applicant failed to follow proper Board procedures, Applicant's Opposition
10 should not be considered by the Board and the Board should consider the motion as conceded.
11 Moreover, given the highly similar nature of both Opposition Proceeding Number 91158331
12 and Opposition Proceeding Number 91156666, it is clear that these two proceedings may be
13 presented on the same record and briefs without appreciable inconvenience or confusion, and
14 that consolidation would be advantageous in the avoidance of the duplication of effort, loss of

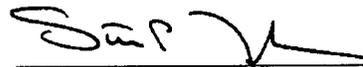
15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///

25
26 ¹ See TBMP § 511; *G-Mar Development Corp. v. Tully's Coffee Corp.*, 46 USPQ2d 1797 (TTAB
27 1998); *S. Industries, Inc. v. Lamb-Weston, Inc.*, 45 USPQ2d 1293 (TTAB 1997); FRCP 42(a); TBMP § 511;
Regatta Sport Ltd. v. Telux-Pioneer Inc., 20 USPQ2d 1154 (TTAB 1991).

1 time, and the extra expense involved in conducting the proceedings. At a minimum, the
2 Board should order that all properly gathered evidence/testimony may be utilized in either or
3 both proceedings

4 Dated this 30th day of April, 2004.

5 CHRISTENSEN O'CONNOR
6 JOHNSON KINDNESS^{PLLC}

7 

8 James W. Anable, Registration No. 26,827
9 Steven P. Fricke, Registration No. 47,579
10 Everett E. Fruehling
11 Attorneys for Opposer Optimize
12 Technologies, Inc

13 CERTIFICATE OF MAILING

14 I hereby certify that Opposer's Memorandum In Reply To Applicant's Opposition To Motion To
15 Consolidate is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage
16 thereon fully prepaid and addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board,
17 2900 Crystal Drive, Arlington, VA 22202-3513, on the below date.

18 Date: April 30, 2004

19 

20 CERTIFICATE OF SERVICE

21 I hereby certify that on the 30th day of April, 2004, a true copy of the foregoing Opposer's
22 Memorandum In Reply To Applicant's Opposition To Motion To Consolidate was served on counsel for
23 Applicant via first-class mail to:

24 Stanley C. Macel, III, Esq.
25 Connolly Bove Lodge & Hutz LLP
26 1007 North Orange Street
27 Wilmington, DE 19899

Executed on: April 30, 2004

