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

Proceeding	91162871
Party	Defendant Hydentra, L.P. Hydentra, L.P. c/o Blank Rome LLP One Logan Square Philadelphia, PA 19103
Correspondence Address	Anna M. Vradenburgh Koppel, Jacobs, Patick & Heybl 555 St. Charles Drive, Suite 107 Thousand Oaks, CA 91360 UNITED STATES generalmail@koppelpatent.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Anna M. Vradenburgh
Filer's e-mail	generalmail@koppelpatent.com
Signature	/anna m vradenburgh/
Date	06/16/2005
Attachments	answeramended1.pdf (2 pages) decl-amv.pdf (2 pages) leavetoamend.pdf (5 pages) proofservice.pdf (1 page)

CERTIFICATE OF MAILING: I hereby certify that this Answer and Proof of Service is being deposited electronically with the Trademark Trial and Appeal Board at uspto.gov on:
Date: June 16, 2005 By: /anna m vradenburgh/
Anna M. Vradenburgh

Attorney Docket No: 392-74-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Metropolitan Life Insurance Company,	)	
	)	
Opposer	)	**Opposition No. 91,162,871**
v.	)	
	)	**[Serial Nos. 78/313,440; 78/312,615]**
Hydentra, L.P.	)	
	)	
Applicant	)	

AMENDED ANSWER TO OPPOSITION

Hydentra, L.P. ("Applicant") hereby pleads as follows in answer to the Notice of Opposition filed herein by Metropolitan Life Insurance Company ("Opposer") :

1. Applicant is without information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition, and therefore, denies the same.
2. Applicant is without information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice of Opposition, and therefore, denies the same.
3. Applicant is without information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice of Opposition, and therefore, denies the same.
4. Applicant admits the allegations that it has filed applications for registration for METGIRLS and METART. Applicant denies the remainder of the allegations of Paragraph 4 of the Notice of Opposition.

5. Applicant denies the allegations of Paragraph 5 of the Notice of Opposition.

6. Applicant denies the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations of Paragraph 7 of the Notice of Opposition.

Affirmative Defenses

8. Upon information and belief, Opposer does not have standing to oppose these registrations.

9. Opposer will not suffer any damage from the registration of these marks.

Respectfully submitted,

Date: June 16, 2005

Anna M. Vradenburgh
Koppel, Jacobs, Patrick & Heybl
Suite 107
555 St. Charles Drive
Thousand Oaks, California 91360
Telephone: (805) 373-0060
Facsimile: (805) 373-0051

Sean E. Macias
Leader Kozmor Macias
1990 S. Bundy Drive Suite 390
Los Angeles, California 90025
Telephone: (310) 820-4810
Facsimile: (310) 820-4280

Attorneys for Applicant

AMV/em

DECLARATION OF ANNA M. VRADENBURGH

The undersigned, Anna M. Vradenburgh, declares the following:

1. I am an attorney licensed to practice law in the State of California and licensed before the United States Patent and Trademark Office. I am an attorney with the firm of Koppel, Jacobs, Patrick & Heybl, the current attorneys of record for the Applicant, Hydentra, L.P. in Opposition No. 91,162,871.

2. An Answer to this Opposition was filed on April 4, 2005. On or around, June 3, 2005, approximately two months after serving the Answer, I discovered an error in the Answer. This discovery is prior to any discovery requests being propounded and prior to any communication initiated by Opposer to Applicant.

3. I immediately telephoned Dante Naccarato on June 3rd and requested a stipulation to amend the Answer. Mr. Naccarato is the Intellectual Property Specialist designated for contact in the Opposition. An electronic mail message was transmitted to Mr. Naccarato the same day setting forth the error and the proposed correction. Mr. Naccarato indicated in an electronic mail message that someone from Opposer's office would contact the undersigned early the next week. No contact from Opposer was received.

4. On June 8, 2005, I telephoned Ms. Susan Ross, General Counsel for Opposer (as listed in the Opposition), who stated that Ms. Heidi Constantine, a new trademark attorney in the office, was handling the matter. A call was then placed to Ms. Constantine, coupled with an electronic mail message again setting forth the error and proposed correction. Ms. Constantine indicated that she would respond by the end of the day. The undersigned telephoned Ms. Constantine again at the end of the day and left a voice mail message requesting a response.

5. As of June 10, 2005, neither myself, nor anyone in my office, had received any response from Opposer and I again left two voice messages on Ms. Constantine's voice mail. In a further attempt to ascertain a response regarding whether Opposer would stipulate to an amendment, the undersigned again telephoned Ms. Ross who stated Ms. Constantine should be able to respond at some point that day, and further instructed the undersigned to again send an electronic mail message to Ms. Constantine. A second electronic mail message was transmitted to Ms. Constantine. To date, no response, or comments of any kind, has ever been received from Ms. Constantine or anyone else in Opposer's office.

6. The only contact between the Opposer and the Applicant has been initiated by me.

The undersigned, Anna M. Vradenburgh, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, that all statements made of my own knowledge are true and all statements made on information and belief are believed to be true.

Dated: June 16, 2005 By: _____
Anna M. Vradenburgh

CERTIFICATE OF MAILING: I hereby certify that this Answer and Proof of Service is being deposited electronically with the Trademark Trial and Appeal Board at uspto.gov on:
Date: June 16, 2005 By: Anna M. Vradenburgh

Attorney Docket No: 392-74-002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Metropolitan Life Insurance Company,	)	
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Opposer	)	**Opposition No. 91,162,871**
v.	)	
	)	**[Serial Nos. 78/313,440; 78/312,615]**
Hydentra, L.P.	)	
	)	
Applicant	)	

MOTION FOR LEAVE TO AMEND ANSWER

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") states that a party may amend its pleadings by leave of court or by written consent of the adverse party in the same manner and to the same extent as in a civil action in a United States district court. TBMP §507.01. The TBMP further states that "leave shall be freely given when justice so requires". *Id.* In the instant matter, an error was discovered in the Applicant's Answer approximately two month after the Answer was served, prior to any discovery requests being propounded, and prior to any communication initiated by the Opposer to the Applicant. See Declaration of Anna M. Vradenburgh, at 2. By this Motion the Applicant seeks to amend its Answer and correct the error.

As stated above, an extremely liberal standard favoring amendment governs the present motion, namely that "leave shall be freely given when justice so requires." Fed. R. Civ. Proc. 15(a). The liberal policy espoused in Rule 15(a) should be followed, absent undue prejudice to the non-moving party, undue delay, bad faith or dilatory motive or futility of amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962). This policy favoring amendment should be applied with "extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990).

In the instant situation, none of the *Foman* factors are present. Regarding prejudice to the Opposer, "it is the consideration of prejudice to the opposing party that carries the greatest weight . . . Prejudice is the touchstone of the inquiry under rule 15(a)." *Eminence Capital v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003)(citations omitted). In the instant situation, the Applicant contends that the Opposer will not suffer any prejudice.

Applicant's contention that Opposer will suffer no prejudice is supported, in part, by Opposer's seeming lack of attention and failure to provide any response to Applicant's request for a stipulation to amend. The undersigned discovered the error in the Answer on or around June 3, 2005, approximately two (2) months after serving the Answer on Opposer. *Id.* para. 2. The undersigned immediately telephoned Dante Naccarato on June 3rd and requested a stipulation to amend. *Id.* para. 3. (Mr. Naccarato is the Intellectual Property Specialist designated for contact in the Opposition.) An electronic mail message was transmitted to Mr. Naccarato the same day setting forth the error and the proposed correction. *Id.* para. 3. Mr. Naccarato indicated in an electronic mail message that someone from Opposer's office would contact the undersigned early the next week. *Id.* para. 3. No contact from Opposer was received. *Id.* para. 3.

On June 8, 2005, the undersigned telephoned Ms. Susan Ross (General Counsel as listed in the Opposition), who stated that Ms. Heidi Constantine, a trademark attorney in the office, was handling the matter. *Id.* para. 4. A call was then placed to Ms. Constantine, coupled with an electronic mail message again setting forth the error and proposed correction. *Id.* para. 4. Ms. Constantine indicated that she would respond by the end of the day. *Id.* para. 4. The undersigned telephoned Ms. Constantine again at the end of the day and left a voice mail message requesting a response. *Id.* para. 4.

As of June 10, 2005, the undersigned had not received any response from Opposer and again left two voice messages on Ms. Constantine's voice mail. *Id.* para. 5. In a further attempt to ascertain a response regarding whether Opposer would stipulate to an amendment, the undersigned again telephoned Ms. Ross who stated Ms. Constantine should be able to respond at some point that day, and further instructed the undersigned to again send an electronic mail message to Ms. Constantine. *Id.* para. 5. A second electronic mail message was transmitted to Ms. Constantine. *Id.* para. 5. To

date, no response, or comments of any kind, has ever been received from Ms. Constantine or anyone else in Opposer's office. *Id.* para. 5. Indeed, the only contact between Opposer and Applicant has been initiated by the undersigned. *Id.* para. 6.

In light of the above, the Applicant contends that the Opposer will suffer no prejudice from this amendment. Applicant is not seeking to add any new claims, and Opposer has been aware of this error at least as early as June 3, 2005. Opposer's failure to even return a telephone call or transmit an electronic mail message suggests that this issue does not rise to the level of concern for Opposer.

Regarding undue delay, the undersigned discovered the error on June 3, 2005, and immediately telephoned Opposer. From June 3, 2005, the undersigned made numerous attempts to seek a stipulation from Opposer, and waited for Opposer's response in accordance with the time frame indicated by Opposer. Thus, the Applicant contends that there is no undue delay in bringing this motion. See, *Hurn v. Retirement Fund Trust of Plumbing, Heating and Piping Indus. of So. Calif.*, 648 F.2d 1252 (9th Cir. 1981) (motion for leave made two years after the original complaint was filed); *Howey v. United States*, 481 F.2d 1187 (9th Cir. 1973) (motion for leave made five years after the original complaint). Here, Applicant is moving to amend approximately two months after serving the Answer on Opposer. As such, the Applicant contends that this Motion is timely.

Regarding bad faith and dilatory motive, the undersigned contends that the amendment sought is merely to correct an editing error. As such, no bad faith is present.

Finally, this amendment is not futile. The amendment seeks to amend the Answer to paragraph 6 and replace "admit" with "deny". This amendment is not futile and seeks to correct an obvious error. Indeed, a review of the Answer clearly evinces that this is an error as it is inconsistent with the remaining Answer.

The law places a very heavy burden on Opposer to resist amendment. Since the amendment here will not prejudice Opposer and will not cause any delay in the current case, the amendment should be allowed. In particular, this motion is timely as it is being brought less than 15 days from the discovery of the error, which includes time spent waiting for Opposer to respond, wherein the error was discovered approximately two (2) months after the Answer was served, prior to any

date, no response, or comments of any kind, has ever been received from Ms. Constantine or anyone else in Opposer's office. *Id.* para. 5. Indeed, the only contact between Opposer and Applicant has been initiated by the undersigned. *Id.* para. 6.

In light of the above, the Applicant contends that the Opposer will suffer no prejudice from this amendment. Applicant is not seeking to add any new claims, and Opposer has been aware of this error at least as early as June 3, 2005. Opposer's failure to even return a telephone call or transmit an electronic mail message suggests that this issue does not rise to the level of concern for Opposer.

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The law places a very heavy burden on Opposer to resist amendment. Since the amendment here will not prejudice Opposer and will not cause any delay in the current case, the amendment should be allowed. In particular, this motion is timely as it is being brought less than 15 days from the discovery of the error, which includes time spent waiting for Opposer to respond, wherein the error was discovered approximately two (2) months after the Answer was served, prior to any

discovery requests being propounded, and prior to any substantive communication from the Opposer to the Applicant.

A presumption exists under Rule 15(a) in favor of granting leave to amend where, as here, there is no undue prejudice or strong showing of any of the *Foman* factors. *Id.* In light of this presumption and the facts set forth above, Applicant respectfully requests leave to amend its Answer, and respectfully requests entry of the amended Answer attached herewith.

Respectfully submitted,

Date: June 16, 2005

Anna M. Vradenburgh
Koppel, Jacobs, Patrick & Heybl
Suite 107
555 St. Charles Drive
Thousand Oaks, California 91360
Telephone: (805) 373-0060
Facsimile: (805) 373-0051

Sean E. Macias
Leader Kozmor Macias
1990 S. Bundy Drive Suite 390
Los Angeles, California 90025
Telephone: (310) 820-4810
Facsimile: (310) 820-4280

Attorneys for Applicant

AMV/em

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 555 St. Charles Drive, Suite 107, Thousand Oaks, California 91360.

On June 16, 2005, I served the following documents described as Motion for Leave to Amend, Amended Answer to Opposition, and Declaration of Anna M. Vradenburgh on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Dante Naccarato
Intellectual Property Specialist
MetLife Law Department
1 MetLife Plaza
27-01 Queens Plaza North
Long Island City, NY 11101

☒ BY MAIL: I caused such envelope to be deposited in the mail at Ventura, California. I am "readily familiar" with the office's practice of collection and processing correspondence for mailing. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

☐ BY PERSONAL SERVICE: I delivered such envelope by hand to the offices of the addressee(s) listed above.

☐ BY FACSIMILE: I caused the above document(s) to be transmitted to the office of the addressee(s) listed above.

☐ BY EXPRESS MAIL: I caused the document(s) to be delivered by overnight Express Mail via the United States Postal Service "Express Mail Post Office to Addressee" to the addressee(s) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 16, 2005, at Ventura, California.

Esther Miller

Esther Miller