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

Proceeding	91193335
Party	Defendant RStudio, Inc.
Correspondence Address	CHARLES E. WEINSTEIN FOLEY HOAG LLP 155 SEAPORT BLVD. STE. 1600 BOSTON, MA 02210-2600 UNITED STATES ARufo@foleyhoag.com, JHuston@foleyhoag.com, USTRademark@foleyhoag.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Anthony E. Rufo
Filer's e-mail	arufo@foleyhoag.com
Signature	/Anthony E. Rufo/
Date	09/22/2010
Attachments	Motion_to_Amend_Answer.pdf (7 pages)(38287 bytes)

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

EMBARCADERO TECHNOLOGIES, INC.,

Opposer,

v.

RSTUDIO, INC.

Applicant.

Opposition No. 91193335

Applications S.N.

77/691980

77/691984

77/697987

APPLICANT'S ASSENTED TO MOTION TO AMEND ITS ANSWER

Applicant RStudio, Inc. hereby moves for leave to amend its Answer to Opposer's Notice of Opposition (the "Answer") in order that it may correct an error in a single response to one of the allegations made by Opposer, Embarcadero Technologies, Inc. in its Notice of Opposition (the "Opposition"), specifically the response to the allegation set forth in paragraph six therein. Opposer's counsel has indicated its assent to this Motion.

Upon recent review of the Answer, in preparation for depositions, Applicant became aware of this single, erroneous response and now wishes to correct the record accordingly. A proposed Amended Answer is submitted herewith.

In its Opposition at paragraph six, Opposer alleged the following:

On information and belief, Applicant RStudio did not make any actual commercial or bona fide trademark use of the mark **RSTUDIO** in commerce or otherwise prior to the March 16, 2009 filing dates of Applns. No. 77/691,980 (Class 9), No. 77/691,984 (Class 41) and No. 77/691,987 (Class 42), on the goods or services set forth herein.

Opposition at ¶ 6.

In its Answer, Applicant replied, "[a]pplicant denies the allegations of Paragraph 6 of the Notice of Opposition." Answer at ¶6. On September 20, 2010, Applicant reviewed its Answer

in connection with preparing for depositions and realized that this response was inadvertently made in error. RStudio intended to admit the allegation as set forth by Opposer.

Fed. R. Civ. P. 15(a) states that leave to amend pleadings should be freely given when justice so requires. Consistent therewith, “the Board liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party.” *Zanella Ltd. v. Nordstrom, Inc.*, 90 USPQ2d 1758 (TTAB 2008). *See also* TBMP §507.02.

Opposer will not be prejudiced by the requested amendment. The instant proceedings are still in the pretrial phase, with discovery to remain open until November 15, 2010, and Applicant has not delayed in bringing its motion to amend. *See Commodore electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993). No extension of discovery is needed or requested on account of this amendment and Opposer’s counsel has assented to this amendment. Moreover, a record of these proceedings free from error serves the interests of justice and both parties.

Accordingly, Applicant should be granted leave to file its proposed Amended Answer.

RSTUDIO, INC.

Dated: September 22, 2010

/Anthony E. Rufo/
Julia Huston
Charles E. Weinstein
Joshua S. Jarvis
Anthony E. Rufo
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
Tel. 617/832-1000
jhuston@foleyhoag.com
cweinstein@foleyhoag.com
jjarvis@foleyhoag.com
arufo@foleyhoag.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the above-identified MOTION TO AMEND ITS ANSWER upon Opposer's attorneys of record:

Martin R. Greenstein
Mariela P. Vidolova
TechMark A Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

via First-Class Mail and e-mail MRG@TechMark.com and MPV@TechMark.com.

/Anthony E. Rufo/
Anthony E. Rufo

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APPLICANT'S AMENDED ANSWER TO NOTICE OF OPPOSITION

Applicant RStudio, Inc., by its counsel, hereby submits its Amended Answer to Notice of Opposition filed by Embarcadero Technologies, Inc.

Applicant hereby answers the allegations in the Notice of Opposition as follows:

1. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Notice of Opposition, and therefore denies same.
2. Applicant lacks knowledge and information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the Notice of Opposition, and therefore denies same.
3. Applicant admits that Embarcadero Technologies, Inc. is the owner of record of Registration No. 2203227 for the mark ER/STUDIO.
4. Applicant admits that a Declaration under Section 15 was filed and acknowledged for Registration No. 2203227. Otherwise, Applicant denies the allegations of Paragraph 4 of the Notice of Opposition.
5. Applicant admits the allegations of Paragraph 5 of the Notice of Opposition.
6. Applicant admits the allegations of Paragraph 6 of the Notice of Opposition.

7. Applicant denies the allegations of Paragraph 7 of the Notice of Opposition.
8. Applicant denies the allegations of Paragraph 8 of the Notice of Opposition.
9. Applicant denies the allegations of Paragraph 9 of the Notice of Opposition.
10. Applicant denies the allegations of Paragraph 10 of the Notice of Opposition.
11. Applicant denies the allegations of Paragraph 11 of the Notice of Opposition.

WHEREFORE, Applicant prays that this opposition proceeding be dismissed and that judgment in favor of Applicant and against Opposer be entered.

RSTUDIO, INC.

Dated: September 22, 2010

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Julia Huston
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Joshua S. Jarvis
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
Tel. 617/832-1000
jhuston@foleyhoag.com
cweinstein@foleyhoag.com
jjarvis@foleyhoag.com
arufo@foleyhoag.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the above-identified AMENDED ANSWER TO NOTICE OF OPPOSITION upon Opposer's attorneys of record:

Martin R. Greenstein
Mariela P. Vidolova
TechMark A Law Corporation
4820 Harwood Road, 2nd Floor
San Jose, CA 95124-5273

via First-Class Mail and e-mail MRG@TechMark.com and MPV@TechMark.com.

/Anthony E. Rufo/
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DATED: September 22, 2010