

ESTTA Tracking number: **ESTTA426661**

Filing date: **08/23/2011**

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

Proceeding	91196482
Party	Defendant Alibaba Group Holding Limited
Correspondence Address	CONNIE L ELLERBACH FENWICK & WEST LLP SILICON VALLEY CENTER , 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041 UNITED STATES trademark@fenwick.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Connie L. Ellerbach
Filer's e-mail	trademarks@fenwick.com
Signature	/cle1087/
Date	08/23/2011
Attachments	Motion to Dismiss.pdf ( 4 pages )(141435 bytes )

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

	)	
DHK Enterprises, Inc.	)	
Opposer,	)	
	)	
vs.	)	Opposition No. 91196482
	)	
Alibaba Group Holding Limited	)	
	)	
Applicant.	)	
	)	

Box TTAB NO FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

**MOTION FOR INVOLUNTARY DISMISSAL**  
**FOR FAILURE TO TAKE TESTIMONY**

Applicant, Alibaba Group Holding Limited., by and through its attorneys, hereby moves for an involuntary dismissal with prejudice of this opposition for failure by Opposer, DHK Enterprises, Inc. to take testimony pursuant to 37 CFR §2.132 and TMBP §534.01, as set forth below.

Pursuant to the order issued by Trademark Trial and Appeal Board (the “Board”) on September 16, 2010, Opposer’s testimony period expired on August 22, 2011. Opposer did not take any testimony, did not file any notice of reliance, and did not file any other evidence with the Board. Attached hereto as Exhibit A is a printout from the TTABVUE Trademark Trial and Appeal Board Inquiry System for this opposition, which shows no testimony filing. In addition, Applicant has not been served with any transcripts of any testimony that might have been taken, or any notice of reliance.

In summary, Opposer has failed to prosecute this opposition. Opposer did not take any discovery, did not take any testimony, did not file any notice of reliance, and did not file any other evidence with the Board. Further, Applicant is not aware of any good and sufficient cause as to why judgment should not be entered against Opposer.

37 CFR §2.132 provides, “If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute.” Accordingly, Applicant respectfully requests that the Board enter an order to show cause why judgment should not issue due to Opposer’s failure to prosecute.

Respectfully submitted,



Connie L. Ellerbach, Esq.  
Attorneys for Applicant  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, California 94041  
(650) 988-8500

Date: August 23, 2011

**United States Patent and Trademark Office**

[Home](#) | [Site Index](#) | [Search](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

**TTABVUE. Trademark Trial and Appeal Board Inquiry System****v1.5****Opposition****Number:** 91196482**Filing Date:** 09/15/2010**Status:** Pending**Status Date:** 09/16/2010**Interlocutory Attorney:** CHERYL A BUTLER**Defendant****Name:** Alibaba Group Holding Limited**Correspondence:** CONNIE L ELLERBACH

FENWICK &amp; WEST LLP

SILICON VALLEY CENTER , 801 CALIFORNIA STREET

MOUNTAIN VIEW, CA 94041

UNITED STATES

trademark@fenwick.com

**Serial #:** 78855845Application File**Application Status:** Opposition Pending**Mark:** HK**Plaintiff****Name:** DHK Enterprises, Inc**Correspondence:** DAVID KLEIN

DHK ENTERPRISES INC

46675 ASHMERE SQUARE

STERLING, VA 20165

UNITED STATES

davidklein@dhk.com

**Granted To Date:** 09/15/2010**Prosecution History**

#	Date	History Text	Due Date
5	11/16/2010	<u>D'S NOTICE OF INEFFECTIVE SERVICE</u>	
4	10/26/2010	<u>ANSWER</u>	
3	09/16/2010	PENDING, INSTITUTED	
2	09/16/2010	<u>NOTICE AND TRIAL DATES SENT; ANSWER DUE:</u>	10/26/2010
1	09/15/2010	<u>FILED AND FEE</u>	

Results as of 08/23/2011 05:43 PM

**Search:**

| [.HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY POLICY](#)

PROOF OF SERVICE BY MAIL

I declare that:

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date set forth below, I served the within **MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO TAKE TESTIMONY**, on the interested parties in this action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, and causing it to be placed for U.S. First Class Mail delivery by the U.S. Postal Service, which envelope was addressed as follows:

David Klein, President  
DHK Enterprises, Inc.  
46675 Ashmere Square  
Sterling, VA 20165

I declare under the penalties of perjury that the above is true and correct, and that this declaration was executed at Mountain View, California this 23<sup>rd</sup> day of August, 2011.

  
\_\_\_\_\_  
Nanette Barranti

22002/00071/DOCS/2421270.1

Opposition No. 91196482  
MOTION FOR INVOLUNTARY DISMISSAL  
FOR FAILURE TO TAKE TESTIMONY