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

Proceeding	91198127
Party	Defendant 11 Good Energy, Inc.
Correspondence Address	DAVID G BURLESON ZOLLINGER AND BURLESON LTD PO BOX 2368 NORTH CANTON, OH 44720-0368 UNITED STATES docket@patentlawyerz.com
Submission	Request to Withdraw as Attorney
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Date	05/18/2011
Attachments	Motion to Withdraw.pdf (7 pages)(316831 bytes)

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

COFRA HOLDING, AG	Opposer,	Opposition: 91198127
v.		Appl. no.: 77/916,177
11 GOOD ENERGY, INC.	Applicant.	Mark: 11 GOOD ENERGY & Design

**MOTION FOR PERMISSION TO WITHDRAW AS COUNSEL
RESUBMISSION**

The undersigned respectfully renews his previously submitted request that the U.S. Patent and Trademark Trial and Appeal Board permit him to withdraw as representative for Applicant. This request for permissive withdrawal is based on any one or combination of 37 C.F.R. §§ 10.40(c)(1)(iv), 10.40(c)(1)(vi), and 10.40(c)(3).

This Motion is being resubmitted in view of the denial without prejudice of the undersigned's original motion, submitted May 3, 2011. The reason for that denial appears to be a failure to serve notice on all parties, although this requirement appears neither in 37 C.F.R. § 10.40 or in the cited In re Legendary Inc., 26 U.S.P.Q.2d 1478 (Comm'r 1992).

The subject proceeding is being conducted in parallel with Opposition no. 91198128 (US appl. no. 77/916211, 11 GOOD ENERGY). In the '128 Opposition, Melvin K. Silverman submitted a document entitled "Request for Extension of Time to Respond to Notice of Opposition" on February 21, 2011. In support of that Request, Mr. Silverman alleged the following:

2. The undersigned, new trademark counsel for the Applicant, was just informed in the afternoon of Friday February 18, 2011, of the need for his services, this in view of the apparent inaction and lack of communication, which Applicant's general counsel Richard Rossi related to the undersigned as having occurred, by former trademark counsel, one David G. Burleson North Canton, Ohio 44720.

The undersigned wrote Mr. Rossi, a member of the Florida Bar, that same day (February 21st) and demanded explanation, correction or retraction. That communication included a reminder of the multitude of communications which the undersigned provided to him and Applicant's management, as well as a reminder that no answer had been filed in the subject opposition.

Having not received a response by 1 PM EST the following day, which was the absolute deadline for filing an answer in the subject opposition, the undersigned sent one last reminder to Applicant. That urgent reminder elicited an approval by Mr. Rossi to make a required submission in the subject opposition.

In a letter dated February 23, reporting the answer submitted the previous day, the undersigned informed both Mr. Rossi and Applicant's management of the upcoming discovery conference and initial discovery disclosure deadlines as well as a suggestion that, given Mr. Rossi's statement to Mr. Silverman and reticence to communicate with the undersigned, Applicant would be best served by finding other counsel in the subject opposition.

Despite multiple requests, Applicant's management failed to communicate with the undersigned prior to the discovery conference deadline.

On March 27th, the undersigned sent a letter to Applicant's Chief Executive Officer, copying Mr. Rossi. In that letter, the undersigned informed Applicant of the results of the abbreviated discovery conference that was held with Opposer's counsel and the opening of the 6-month discovery period. That letter included a copy of the February 21st demand to Mr. Rossi, a draft consent (settlement) agreement, and an indication of the undersigned's intent to request permission to withdraw as counsel of record. At the end of the day on April 19th, a reminder of this was sent to Applicant's management and Mr. Rossi along with a reminder regarding the need to submit an answer in the parallel '128 Opposition.

Having not received any substantive reply from Applicant's management or Mr. Rossi and having previously obtained consent from Opposer's counsel, the undersigned submitted to the Board (on the April 20th deadline) a stipulated motion to extend the time for Applicant to make its initial discovery disclosure.

Also on April 20th, the undersigned reported submission of that extension to Applicant's management, again copying Mr. Rossi. That report included the following statement, highlighted so that it would be apparent: "Absent instructions by Tuesday (4/26) regarding the settlement proposal that I provided previously ..., I will submit a motion to withdraw as counsel of record for this matter."

In a document dated April 28, 2011, the Board granted the stipulated motion to extend the time for Applicant to make its initial discovery disclosure.

As of the date of this Motion to Withdraw, the undersigned still has not received a reply to his April 20th final reminder to Applicant's management and Mr. Rossi.

The undersigned submits that the foregoing evidences that Applicant has rendered it unreasonably difficult for the undersigned to carry out representation in an effective manner (37 C.F.R. § 10.40(c)(1)(iv)), and the undersigned's inability to work effectively with Mr. Rossi (not to mention his (baseless) allegations in the '128 Opposition concerning the effectiveness of the undersigned's representation) evidences that the Applicant's best interests are served by this withdrawal (37 C.F.R. § 10.40(c)(3)).

In addition to the foregoing, Applicant has failed to pay any of the undersigned's fees and disbursements for work done in connection with the subject opposition and the events that led up to institution of the subject opposition and the parallel '128 Opposition (37 C.F.R. § 10.40(c)(1)(vi)).

Applicant will not be without advice of counsel. Mr. Rossi is a licensed attorney in the State of Florida. Additionally, many of the same issues, and much of the same evidence will be used, in the '128 Opposition as the subject opposition, so Mr. Silverman remains a viable option as counsel.

Further, Applicant has been provided copies of all relevant documents relating to this matter. The undersigned will provide additional copies, if desired, to Mr. Rossi, Mr. Silverman, or other identified counsel if and when requested by Applicant.

Applicant paid no advance fee to the undersigned relating to this matter.

The undersigned respectfully requests that the Board expedite review and approval of this motion so that Applicant may settle on counsel of its choice and meet the initial discovery disclosure deadline.

Applicant has been notified previously of this Motion, but is being served a copy. Similarly, Opposer's counsel is being served with a copy of this Motion. Both of these actions are being done despite the undersigned's inability to locate any formal requirement for doing so.

Respectfully submitted,

ZOLLINGER & BURLESON LTD.



by David G. Burleson

Submitted: May 18, 2011

ZOLLINGER & BURLESON LTD.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, which is a resubmitted version of a document entitled "MOTION FOR PERMISSION TO WITHDRAW AS COUNSEL," is being served on Opposer via first class mail on May 18, 2011, addressed to Opposer's counsel as follows:

Mr. Howard J. Shire
Kenyon & Kenyon LLP
One Broadway
New York, New York 10004


DAVID G. BURLESON

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, which is a resubmitted version of a document entitled "MOTION FOR PERMISSION TO WITHDRAW AS COUNSEL," is being served on the Applicant via first class mail on May 18, 2011, addressed to Applicant's CEO as follows:

Mr. Frederick C. Berndt
11 Good Energy, Inc.
4450 Belden Village St. NW
Suite 800
Canton, Ohio 44718


DAVID G. BURLESON