

DUNN

Mailed: September 30, 2013

Opposition No. 91210390

Feel the World, Inc.

v.

Heapsylon LLC

Elizabeth A. Dunn, Attorney:

The Board's order issued September 20, 2013 is VACATED.¹

On June 13, 2013, opposer filed an amended notice of opposition.

Inasmuch as it was filed within 21 days after service of applicant's Fed. R. Civ. P.12(b)(6) motion, the amended notice of opposition is accepted, and is now the operative pleading.²

The Board notes that on July 4, 2013, applicant filed a Fed. R. Civ. P.12 (b)(6) motion to dismiss the amended notice of opposition. On July 11, 2013, possibly before the service copy of the motion was received, counsel for

¹ The Board notes a data entry error in the country code for counsel for opposer, now corrected, may have resulted in the Board's order not being received.

² Because the amended notice of opposition is operative, the Board will give no consideration to applicant's motion filed May 31, 2013 to dismiss the original notice of opposition.

opposer filed a motion to withdraw as counsel.³ In view of this, once the issue of opposer's representation has been decided, opposer's time to respond to the motion to dismiss the amended notice of opposition will be reset.

The motion to withdraw as counsel of record in this case is hereby denied without prejudice because it fails to comply with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 11.116. Specifically, the motion does not include one or more of the following requirements: (1) a specification of the basis for the request; (2) a statement that the practitioner has notified the client of his or her desire to withdraw from employment, and has allowed time for employment of another practitioner; (3) a statement that all papers and property that relate to the proceeding and to which the client is entitled have been delivered to the client; (4) if any part of a fee paid in advance has not been earned, a statement that the unearned part has been refunded; and (5) proof of service of the request upon the client and upon every other party to the proceeding. See Patent and Trademark Rule 11.116, 37 CFR § 11.116. Cf. *In re Legendary Inc.*, 26 USPQ2d 1478 (Comm'r 1992).

In view thereof, counsel is allowed THIRTY DAYS from the mailing date of this order to submit a motion which complies with Trademark Rule 2.19(b) and Patent and Trademark Rule 11.116.

³ To the extent the withdrawal also seeks to "file the appearance" of another attorney, this is not permitted. See Trademark Trial and Appeal Board Manual of Procedure (TBMP) §114 (3rd ed. 2013). New counsel may file an appearance on behalf of opposer, or opposer may file a power of attorney. As noted at the end of this order, a courtesy copy of this order is sent to the new attorney address indicated in the withdrawal.

Opposition No. 91210390

Except to the extent indicated above, proceedings are suspended. The parties will be notified by the Board when proceedings are resumed, and appropriate dates will be rescheduled in due course.

A copy of this order has been sent to all persons listed below.

cc:

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