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

Proceeding	91210559
Party	Defendant East Coast Network Services, LLC
Correspondence Address	RUSSELL LOGAN 2735 WESTMINSTER RD ELLICOTT CITY, MD 21043-3599 UNITED STATES russell.logan@gmail.com
Submission	Opposition/Response to Motion
Filer's Name	Russell Logan
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Date	04/09/2014
Attachments	ECNetServ Response to Motion to Extend.pdf(88447 bytes)

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

NetCloud, LLC
Opposer

v.

East Coast Network Services, LLC
Applicant

Opposition No. 91210559

**APPLICANT’S RESPONSE TO OPPOSER’S MOTION TO EXTEND TESTIMONY PERIOD
AND MOTION FOR PERMISSION TO PROCEED WITH TESTIMONY DEPOSITIONS VIA
TELEPHONE**

Applicant East Coast Network Services, LLC responds to Opposer’s motion as follows.

I. Response to Opposer’s Motion to Extend Testimony Period

“A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension.” TBMP § 509.01(a). “Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor.” *Id.*

Opposer has not set forth any facts that purportedly constitute good cause for an extension of its trial period other than the need to schedule depositions for two different witnesses located in two different states. The need to schedule depositions of witnesses located in two different states is not an extraordinary circumstance that constitutes good cause to extend, especially where Opposer and its attorney reside in different states and therefore the need for interstate travel was reasonably foreseeable at the initiation of the proceeding.

The trial dates for this opposition were set on May 12, 2013 and remain unaltered by either stipulation of the parties or order of the Board. Thus, Opposer had more than 10 months advance notice that it may need to schedule trial depositions during its designated trial period. The need to actually do so could not possibly be such an unwarranted surprise as to constitute good cause to extend Opposer’s trial period.

Additionally, Opposer's attorney did not contact Applicant's attorney to schedule depositions of Opposer's witnesses until the first day of Opposer's trial period. Applicant's attorney expressed a preference for a 17 day range within Opposer's 30 day trial period but did not express any unavailability or unwillingness to agree to depositions on any alternate dates within the period, or in any other way fail to reasonably cooperate with Opposer to schedule depositions within Opposer's designated trial period.

Opposer's inability to schedule depositions within its designated trial period is due to no other reason than Opposer's own lack of diligence and therefore Applicant requests that Opposer's Motion to Extend be denied.

II. Response to Opposer's Motion for Permission to Proceed with Depositions via Telephone

Applicant must be afforded a full opportunity to cross examine Opposer's witnesses. 37 CFR § 2.123(e)(3); TBMP § 703.01(h). Due to the multiple factual disputes at the core of this Opposition, Applicant anticipates the need to fully and rigorously cross examine Opposer's witnesses, particularly regarding the numerous exhibits that Opposer intends to introduce,¹ and believes it will be hindered in doing so if forced to participate in Opposer's proposed telephonic deposition procedure.

A telephonic deposition is not an ordinary method of taking testimony in a Board proceeding, but rather is an exceptional procedure which requires the prior stipulation of the parties or approval of the Board upon motion. TBMP § 703.01(h).

Despite this, Opposer's attorney waited until the first day of Opposer's trial period to inform Applicant that he intended to depose all of Opposer's witnesses by telephone and concurrently offered to "conference in" Applicant's attorney. Opposer's Exhibit B. Due to Applicant's ability and desire to cross examine Opposer's witnesses in person and the disadvantages imposed by the technologically inferior nature of a telephonic deposition, Applicant's attorney needed further time to research and confer with his client regarding Opposer's proposal. Ultimately, Applicant declined to agree to telephonic depositions.

The Board itself has recognized the procedural disadvantage and possible technical problems attendant to telephone depositions, but has nonetheless ordered that parties be accommodated by

¹ See Exhibit A to Opposer's Motion.

telephone where the party participating by telephone willingly accepts such disability. See *Hewlett-Packard Co. v. Healthcare Personnel Inc.*, 21 USPQ2d 1552, 1552-53 (TTAB 1991). In contrast, here Applicant specifically does not accept such disability and indeed wishes to cross examine Opposer's witnesses personally.

Opposer has not cited any authority which provides that a party may unilaterally inflict the disadvantages of a telephonic deposition upon its adversary, and therefore Applicant requests that Opposer's request to conduct telephonic depositions in this proceeding be denied.

III. Opposer's Motion is Moot

On April 9, 2014, Opposer served notices of deposition on Applicant providing notice that Opposer will take oral depositions on April 16, 2014 of Mehul Satasia (attached as Exhibit 1) and Raj Viradia (attached as Exhibit 2) in Chesterfield, Missouri.

Since April 16, 2014 is within Opposer's original trial period, Applicant requests that Opposer's Motion be denied as moot.

IV. Conclusion

For the foregoing reasons Applicant requests that Opposer's Motion be denied in full.

Dated this 9th day of April, 2014.

/Russell Logan/
Russell Logan, Esquire
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO EXTEND TESTIMONY PERIOD AND MOTION FOR PERMISSION TO PROCEED WITH TESTIMONY DEPOSITIONS VIA TELEPHONE** has been served on NetCloud, LLC by emailing said copy on 4/9/2014, to Morris E. Turek, counsel for Opposer, at morris@yourtrademarkattorney.com.

/Russell Logan/
Russell Logan, Esquire
Attorney for Applicant

Exhibit 1

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

NetCloud, LLC)
Opposer,)
v.) Opposition No. 91210559
East Coast Network Services, LLC)
Applicant.)
_____)

NOTICE OF TESTIMONY DEPOSITION OF MEHUL SATASIA

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.123, Opposer NetCloud, LLC will take the testimony deposition upon oral examination of Mehul Satasia. Mehul Satasia is the Managing Member of Opposer. His business address is 8813 Glen Canyon Dr., Round Rock, TX 78681.

Pursuant to Rule 30 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.123(c), the deposition will take place on Wednesday, April 16, 2014 at 8:30am Central Time. It will be held at 400 Chesterfield Center, Suite 400, Chesterfield, MO 63017, and will continue thereafter until it is completed.

The deposition will be taken before an officer duly authorized to administer oaths in the state of Missouri and will be stenographically recorded.

Respectfully submitted,

NETCLOUD, LLC

By: _____/met20/

Dated: _____ 4/9/2014

Morris E. Turek
YourTrademarkAttorney.com
167 Lamp and Lantern Village, #220
Chesterfield, MO 63017-8208
Tel: (314) 749-4059
Fax: (800) 961-0363
morris@yourtrademarkattorney.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by emailing said copy on _____ 4/9/2014 _____ to:

Russell Logan
Attorney for Applicant
russell.logan@gmail.com

and via First-Class Mail, postage prepaid, to:

Russell Logan
2735 Westminster Rd.
Ellicott City, MD 21043-3599

_____/met20/
Morris E. Turek, Attorney for Opposer

Exhibit 2

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

NetCloud, LLC)
Opposer,)
v.) Opposition No. 91210559
East Coast Network Services, LLC)
Applicant.)
_____)

NOTICE OF TESTIMONY DEPOSITION OF RAJ VIRADIA

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.123, Opposer NetCloud, LLC will take the testimony deposition upon oral examination of Raj Viradia. Raj Viradia is the former owner of the NETCLOUD trademark. His address is 3462 Lockmed Dr., Norcross, GA 30092.

Pursuant to Rule 30 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.123(c), the deposition will take place on Wednesday, April 16, 2014 at 12:30pm Central Time. It will be held at 400 Chesterfield Center, Suite 400, Chesterfield, MO 63017, and will continue thereafter until it is completed.

The deposition will be taken before an officer duly authorized to administer oaths in the state of Missouri and will be stenographically recorded.

Respectfully submitted,

NETCLOUD, LLC

By: _____/met20/

Dated: _____ 4/9/2014

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Attorney for Applicant
russell.logan@gmail.com

and via First-Class Mail, postage prepaid, to:

Russell Logan
2735 Westminster Rd.
Ellicott City, MD 21043-3599

_____/met20/
Morris E. Turek, Attorney for Opposer