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

Proceeding	91212024
Party	Plaintiff Republic Technologies (NA), LLC
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Date	12/01/2014
Attachments	Opposer_s Response to Motion for ACR - SOB_.pdf(12828 bytes)

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

In the Matter of Application Serial
No. 85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

OPPOSER’S RESPONSE TO MOTION FOR ACCELERATED CASE RESOLUTION

In response to Opposer’s motion to take Applicant’s testimony pursuant to Rule 56(d), Applicant moves to bifurcate the proceedings and requests that the Board order Accelerated Case Resolution (“ACR”) as to likelihood of confusion. However, ACR can be ordered only by consent of the parties and agreement by a Board attorney or judge, and will not be approved by unilateral motion of one party. TBMP § 702.04(a). Opposer has not consented and does not consent to accelerated resolution of any of the issues in these proceedings. In addition, “[i]n order to take advantage of ACR, the parties must stipulate that, in lieu of trial, the Board can resolve any issues of material fact.” *See* TTAB Guidance on ACR.¹ Opposer has not so stipulated and does not agree to do so.

¹ Available at http://www.uspto.gov/trademarks/process/appeal/Accelerated_Case_Resolution__ACR__notice_from_TTAB_webpage_12_22_11.pdf (retrieved November 25, 2014)

Franpovi SA v. Wessin, 89 USPQ2d 1637, 1638 (TTAB 2009), cited by Applicant, does not support Applicant's position that the Board may order parties to ACR without their consent. Indeed, that case was bifurcated *by agreement of the parties and approval by the Board* for initial limited discovery on the issue of rights asserted by the opposer under the Santiago Convention. *Id.* The parties then filed cross-motions for summary judgment on that issue. *Id.* The Board did not order the parties to settle the issue by ACR. *Id.* Accordingly, Applicant's cited authority is inapposite.

Rather, previous Board orders confirm that the Board will not impose ACR via a party's unilateral motion:

In the absence of an agreement, a party to a Board inter parties proceeding is entitled to the benefits of a full trial under the Board's rules. [A party's] argument that the issues are limited, the number of witnesses few and documentation not voluminous, even if undisputed, would not be sufficient for the Board to impose ACR procedures against [the adverse party's] objection. In general, the Board will not interpose its judgment on the best way to litigate the case but allow parties and their counsel the discretion to decide how to best defend their interest.

D-Col, Inc. v. Young, Opp. No. 91188416, Dkt. No. 9 (TTAB June 2, 2009) (denying motion for the Board to impose ACR); *See also Globo Comunicacao E Participacoes S.A. v. Media Globo Corp.*, Opp. No. 91184401, Dkt. No. 9 (TTAB Oct. 14, 2008) (denying motion to impose ACR where applicant's submission of unauthenticated documents could not "replace the necessity of properly presenting evidence at trial"); *Roll-a-Cover, LLC v. Cohen*, Opp. No. 91182364, Dkt. No. 21 (TTAB May 5, 2009) ("[T]he ACR process is only available to parties who actually agree to pursue resolution of their dispute under that process in lieu of trial").

Opposer has not given and does not give its consent for resolution of any issues in these proceedings by ACR. Applicant's request must therefore be denied.

Respectfully submitted,

Date: December 1, 2014

/Antony J. McShane/
One of the Attorneys for Opposer,
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CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that, pursuant to 37 CFR §§ 2.101, 2.111, and 2.119, I caused a true and correct copy of the foregoing **Opposer's Response to Motion for Accelerated Case Resolution** to be served upon:

Richard B. Jefferson
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via U.S. Mail, with a courtesy copy sent via email, on December 1, 2014.

/Andrew S. Fraker/
Andrew S. Fraker