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

Proceeding	91213487
Party	Plaintiff Blackbird Technologies, Inc.
Correspondence Address	JACK E KERRIGAN BLACKBIRD TECHNOLOGIES INC 13900 LINCOLN PARK DRIVE SUITE 400 HERNDON, VA 20171 UNITED STATES tjohnson@blackbirdtech.com, mrobinson@blackbirdtech.com
Submission	Motion for Default Judgment
Filer's Name	Taylor Johnson
Filer's e-mail	tjohnson@blackbirdtech.com
Signature	/Taylor Johnson/
Date	02/11/2014
Attachments	Blackbird Technologies, Inc. Motion for Entry of Default Judgment 2.11.2014.pdf(1723992 bytes)

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

Blackbird Technologies, Inc.
Opposer

v.

Allen-Vanguard Corporation
Applicant

Opposition No. 91213487
Serial No. 85/358,651
Trademark: BLACKBIRD

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Pursuant to Fed. R. Civ. P. 55(b)(2) and TBMP § 508 (3d ed. rev. 2013), Opposer hereby moves the Trademark Trial and Appeal Board (the “Board”) to enter a default judgment against the Applicant for failure to timely file its Answer to Opposer’s Notice of Opposition.

On December 23, 2013, one day prior to the deadline for Applicant to file its Answer to Opposer’s Notice of Opposition, Applicant filed a Motion for 30 Day Extension of Time to Answer and all Subsequent Dates Without Consent (“Applicant’s Motion to Extend”). In response, on January 10, 2014 Opposer filed its Motion to Oppose Applicant’s Motion to Extend on the grounds that Applicant had failed to show the requisite “good cause” necessary to afford it an extension of time to Answer (“Opposer’s Motion to Oppose”). Applicant’s Motion to Extend requested an additional thirty (30) days to provide an Answer to Opposer’s Notice of Opposition, requesting that the Board impose a new deadline of January 23, 2014. Even if the Board grants Applicant’s Motion to Extend and agrees to the January 23, 2014 deadline, however, Applicant has once again failed to provide a timely Answer in response to Opposer’s Notice of Opposition. Applicant failed to file its Answer by the extended deadline

(should the Board grant it) and, therefore, Applicant is in default pursuant to TBMP § 312.01 (3d ed. rev. 2013).

In *Luemme*, the Board ruled that a petitioner requesting an extension of time, and, therefore, an updated trial calendar, is required to comply with that updated calendar, even if the Board does not rule on the petitioner's motion before the arrival of deadlines included in that updated calendar. *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, (TTAB 1999). The Board stated that while it "attempts to notify parties of the grant or denial of a motion to extend prior to the expiration of the assigned time period, the Board is under no obligation to do so, and in many cases cannot." *Id.* The petitioner in *Luemme*, requesting a second extension of time in which to complete discovery, argued that such an extension was necessary because the Board's approval of its first request to extend was granted after the dates set therein had expired. Petitioner continued, stating that it was unable to take action with respect to discovery until it received the Board's ruling on its first motion to extend. The Board "strongly" rejected the basis of these arguments, noting that "to the extent petitioner was truly concerned about whether it could proceed," petitioner could have diligently proceeded as if the motion had been granted, regardless of whether or not the Board had issued a ruling on its motion. *Id.* Applying the Board's ruling in *Luemme* to the instant case, if Applicant was truly concerned about whether it could proceed, Applicant should have diligently proceeded to file its Answer as if its Motion to Extend had been granted. At a minimum, Applicant "could have contacted the Board and requested that the motion be resolved on an expedited basis," as the Board recommended to the petitioner in *Luemme*. *Id.* Applicant, however, neither filed its Answer in accordance with the schedule it had requested, nor made (to Opposer's knowledge) any request of the Board to resolve its motion on an expedited basis.

Applicant failed to comply with the original December 24, 2013 deadline to file its Answer to Opposer's Notice of Opposition. In its Motion to Extend, Applicant failed to demonstrate that it had good cause to be granted an extension of time to supply its Answer. Now, Applicant has failed to file its Answer by the extended deadline it requested the Board to schedule. Therefore, Applicant is in default.

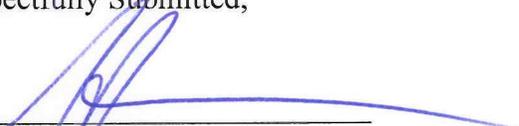
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WHEREFORE, Opposer respectfully requests the Board to enter a default judgment against Applicant for failure to timely file its Answer to Opposer's Notice of Opposition.

This Motion is being filed electronically pursuant to the Electronic System for Trial and Appeals (ESSTA).

Dated: February 11, 2014

Respectfully Submitted,



Taylor F. Johnson
Senior Corporate Counsel
Blackbird Technologies, Inc.
13900 Lincoln Park Drive
Suite 400
Herndon, VA 20171
Telephone: 703-480-1218
Facsimile: 703-464-9581
tjohnson@Blackbirdtech.com

Attorney for Opposer, Blackbird Technologies, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Entry of Default Judgment has been served on Applicant, Allen-Vanguard Corporation, by mailing said copy on February 11, 2014, via FedEx Express courier, to the following counsel of record for Applicant:

Jess M. Collen
Collen IP
The Holyoke Manhattan Building
80 South Highland Avenue
Ossining, New York 10562
Telephone: 914-941-5668
docket@collenip.com

Attorney for Applicants, Allen-Vanguard Corporation

Respectfully Submitted,



Taylor F. Johnson
Senior Corporate Counsel
Blackbird Technologies, Inc.
13900 Lincoln Park Drive
Suite 400
Herndon, VA 20171
Telephone: 703-480-1218
Fascimile: 703-464-9581
tjohnson@Blackbirdtech.com

Attorney for Opposer, Blackbird Technologies, Inc.