

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

em

Mailed: May 12, 2014

Opposition No. 91215038

Marshall Amplification plc

v.

Kiaico, Inc.

Eric McWilliams, Supervisory Paralegal:

On March 12, 2014, applicant's attorneys filed a request to withdraw as applicant's counsel of record in this proceeding which is noted.¹

The motion fails to comply with the requirements of Trademark Rules 2.19(b) and Patent and Trademark Rule 11.116. Specifically, the motion does not include a statement that all documents and property that relate to the proceeding and to which the client is entitled have been delivered to the client, and that any part of a fee paid in advance that has not been earned, a statement that the unearned part has been refunded. *See* Trademark Rule 2.19(b). *Cf. In re Legendary Inc.*, 26 USPQ2d 1478 (Comm'r 1992). However the Board views applicant's filings dated March 25, 2014, April 7, 2014, and April 29, 2014 as applicant's intent to represent itself.

¹ A copy of the request to withdraw is placed in the application involved in this proceeding.

Accordingly the request to withdraw is granted and the Law Firm of Sughrue Mion, PLLC no longer represents applicant in this proceeding.

Applicant's answer to the opposition dated March 25, 2014 and counterclaim to cancel opposer's pleaded Registration No. 3940239, with the required fee, dated April 7, 2014 are noted and made of record.

Opposer and counterclaim defendant, Marshall Amplification PLC, is allowed until **thirty days** from the mailing date of this order to file an answer to the counterclaim. See Trademark Rule 2.106(b)(2)(iii).

In accordance with the Trademark Rules of Practice, conferencing, disclosure, discovery and testimony periods are reset as indicated below.² See Trademark Rule 2.121(b)(2). In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. See Trademark Rule 2.125.

Answer to Counterclaim Due	June 9, 2014
Deadline for Discovery Conference	July 9, 2014
Discovery Opens	July 9, 2014
Initial Disclosures Due	August 8, 2014
Expert Disclosures Due	December 6, 2014
Discovery Closes	January 5, 2015
Plaintiff's Pretrial Disclosures	February 19, 2015
30-day testimony period for plaintiff's testimony to close	April 5, 2015
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	April 20, 2015

² The Board notes applicant's April 29, 2014, request for Board participation in the discovery conference. Appropriate action will be taken with respect to the request in due course.

30-day testimony period for defendant and plaintiff in the counterclaim to close	June 4, 2015
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	June 19, 2015
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	August 3, 2015
Counterclaim Plaintiff's Rebuttal Disclosures Due	August 18, 2015
15-day rebuttal period for plaintiff in the counterclaim to close	September 17, 2015
Brief for plaintiff due	November 16, 2015
Brief for defendant and plaintiff in the counterclaim due	December 16, 2015
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	January 15, 2016
Reply brief, if any, for plaintiff in the counterclaim due	January 30, 2016

If the parties file a motion to suspend or extend these dates, the motion should set forth the proposed dates in the format shown in this order. See Trademark Rule 2.121(d).

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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

cc:

John A. Clifford
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PO Box 2910
Minneapolis MN 55402-0910

Dan Healy, CEO
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Information regarding legal representation

Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also on the

Board's web page are links to ESTTA, the Board's electronic filing system³ at <http://estta.uspto.gov>, and TTABVUE, for case status and prosecution history at <http://ttabvue.uspto.gov/ttabvue>.

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a certificate of service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (name and address of opposing counsel or party).

Signature _____
Date _____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties

³ The Board strongly encourages parties to file all papers through ESTTA, which operates in real time and provides a tracking number that the filing has been received. For assistance in using ESTTA, call 571-272-8500.

before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.