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

Proceeding	91223510
Party	Defendant Acelero Learning Data and Technical Assistance, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

**APPLICANT’S MOTION FOR AN ORDER TO COMPEL DISCOVERY AND
MOTION TO TEST SUFFICIENCY OF OPPOSER’S RESPONSES
TO REQUESTS FOR ADMISSION**

Applicant, pursuant to 37 C.F.R. § 2.120, Fed. R. Civ. P. 26 and 37, and TBMP §§ 411.02 and 523, moves the Board for an order compelling Opposer to fully comply with its discovery obligations in this opposition. Opposer has failed to provide adequate responses to Applicant’s Interrogatory Nos. 1, 2, 4, 5, 7, 12 and 15 under Fed. R. Civ. P. 33 and has provided inadequate responses and objections to Applicant’s Document Requests, under Fed. R. Civ. P. 34. Applicant also moves the Board to test the sufficiency of Opposer’s responses to Applicant’s Request for Admission Nos. 6-9 and 34-41. *See* 37 C.F.R. § 2.120(h); Fed. R. Civ. P. 26 and 36(a)(6); *see also* TMBP § 411.03 and 524.

Opposer has failed to fulfill its obligations, pursuant to 37 C.F.R. § 2.120 and Fed. R. Civ. P. 26(g)(1) and 36, to fully respond in good faith to Applicant’s discovery requests. *See*,

e.g., Panda Travel Inc. v Resort Option Enterps., Inc., 94 USPQ2d 1789, 1791 (TTAB 2009) (“Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary.”). Applicant’s counsel conferred with Opposer’s counsel on April 25 and 29, 2016 [**Exh. A**], and again on May 19, 2016 [**Exh. B**], but was unable to obtain full discovery without court action. *See* 37 C.F.R. § 2.120(e); 37 C.F.R. § 2.120(h); Fed. R. Civ. P. 37(a)(1). Applicant therefore respectfully seeks an order compelling discovery under Fed. R. Civ. P. 37(a).

In view of the instant motion to compel and motion to test the sufficiency of response to requests for admission, Applicant also moves the Board for an order suspending the opposition proceedings until the motions are decided and to reset trial dates accordingly. *See* 37 C.F.R. § 2.120(e)(2) (“When a party files a motion for an order to compel . . . discovery, the case will be suspended by the Board with respect to all matters not germane to the motion.”); 37 C.F.R. § 2.120(h)(2) (“When a party files a motion to determine the sufficiency of an answer or objection to a request for an admission, the case will be suspended by the Board with respect to all matters not germane to the motion.”); Fed. R. Civ. P. 6(b)(1); *see also Jain v. Ramparts Inc.*, 49 USPQ2d 1429, 1430 (TTAB 1998) (proceedings deemed suspended as of the filing of the motion to compel).

FACTUAL BACKGROUND

Opposer’s application for INSIGHT (U.S. Serial No. 86/533,567, hereafter the “INSIGHT Application”) was refused registration on May 21, 2015 under Section 2(d) because of a likelihood of confusion with YOUTH INSIGHT (U.S. Reg. No. 4,134,520) and CONNECT INSIGHT (U.S. Reg. No. 4,676,307). Opposer’s application was also provisionally refused

under Section 2(d) based on the prior-filed application for SHINE INSIGHT (U.S. Serial No. 86/257,568, hereafter the “SHINE INSIGHT Application”).

Opposer filed a request for and received a 90-day extension of time to file an opposition against registration of SHINE INSIGHT on May 27, 2015. Opposer then filed a notice of opposition on August 26, 2015. Applicant answered on December 30, 2015. Applicant’s initial disclosures were served on February 4, 2016.

Applicant also served its First Set of Interrogatories (No. 1-16) (the “Interrogatories”) on February 4, 2016. [Exh. C]. Opposer served its Responses to Applicant’s First Set of Interrogatories (No. 1-16) on March 28, 2016. [Exh. D]. The response did not include a certification statement, as required by Fed. R. Civ. P. 33(b)(5) and TBMP § 405.04(c). Opposer then filed Amended Responses to Applicant’s First Set of Interrogatories (No. 1-16), having a certification statement, on March 31, 2016. [Exh. E].

Applicant served its First Set of Requests for Production of Documents and Things (Nos. 1-38) (the “Document Requests”) on February 4, 2016. [Exh. F]. Opposer served its Responses to Applicant’s First Set of Requests for Production of Documents and Things (No. 1-38) on March 28, 2016. [Exh. G].¹

¹ On May 2, 2016, Opposer served 213 pages, consisting of 13 documents, comprising: (i) the USPTO’s public file for the INSIGHT Application; (ii) an un-dated advertisement for INSIGHT by Symplicity; (iii) an internal INSIGHT kiosk user manual; (iv) seven (7) un-dated presentations relating to INSIGHT Advising, INSIGHT Athletics, and INSIGHT Early Alert; (v) an uptime report for Symplicity.com; (vi) an INSIGHT Early Alert software as a service draft bid proposal; and (vii) an undated listing of “schools”. Document production was supplemented on May 6, 2016, with an additional four (4) documents across eight (8) pages, comprising: (i) INSIGHT Advising and INSIGHT Early Alert fee schedules; and (ii) listings of licensees and users. Opposer produced an additional 157 pages of “Symplicity Receipts” on May 19, 2016. And today, Opposer produced 192 pages, comprising: (i) additional “Symplicity Receipts”; and (ii) software license and service agreements.

Finally, Applicant served its First Set of Requests for Admissions (Nos. 1-46) (the “Requests for Admission”) [Exh. H] on February 4, 2016. Opposer served its Responses to Applicant’s First Set of Requests for Admissions (No. 1-46) on March 28, 2016. [Exh. I].

On April 14, 2016, Applicant served a letter on Opposer’s counsel detailing the deficiencies in Opposer’s discovery responses and production of documents. [Exh. J].² Applicant conferred with Opposer’s counsel regarding Opposer’s response to the letter on April 25 and 29, 2016. [Exh. A]. On April 29, 2016, Opposer’s counsel stated that they “expect to have a response to your letter early next week.” [Id.]. Applicant again conferred with Opposer’s counsel on May 19, 2016. [Exh. B]. Later on May 19, 2016, Opposer served a responsive letter on Applicant’s counsel—partially addressing the merits of Applicant’s April 14 letter. [Exh. K].

The discovery period in this opposition is scheduled to close July 27, 2016.

ARGUMENT

Each party in an opposition has the duty to make a good faith effort to satisfy the discovery needs of its adversary. Fed. R. Civ. P. 26(g); *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 (TTAB 1987). “By requiring comprehensive disclosure of relevant information, the Federal Rules of Civil Procedure seek to avoid the surprise and secrecy that are antithetical to the informed determination of cases of their merits.” *Hodgdon v. Northwestern Univ.*, 245 F.R.D. 337, 341 (N.D. Ill. 2007); *see also Barnes v. District of Columbia*, 283 F.R.D. 8, 10 (D.D.C. 2012) (“The primary purpose of discovery is to ‘make a trial less a game of blind

² To the extent that any arguments presented in the April 14, 2016 letter are not addressed by this Motion, Applicant holds them in abeyance and does not waive any rights relating to the same. In view of 37 C.F.R. §§ 120(e) and (h) and TBMP §§ 523 and 524, Applicant will attempt to resolve all outstanding issues prior to seeking the Board’s intervention.

man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.'") (*quoting U.S. v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958)).

A. Opposer Failed to Adequately Respond to Interrogatory Nos. 1, 2, 4, 5, 7, 12 and 15.

Applicant served Interrogatories on Opposer and, subject to any objections, Opposer was obligated to answer each interrogatory separately and fully in writing under oath. Fed. R. Civ. P. 33(b)(3).

1. Opposer Should be Compelled to Fully Response to Interrogatory Nos. 1, 2, 4, 5 and 7.

Opposer's responses to Interrogatories 1, 2, 4, 5, and 7 are facially deficient because they do not answer the interrogatories as posed. The law is clear, subject to any objections, Opposer must answer each interrogatory separately and fully in writing under oath. Fed. R. Civ. P. 33(b)(3); TBMP § 405.04(b) ("Ordinarily, a party on which interrogatories have been served should respond to them by stating, with respect to each interrogatory, either an answer or an objection. If an interrogatory is answered, *the answer must be made separately and fully*, in writing under oath.") (emphasis added). Absent a clearly stated objection in lieu of an answer or invocation of Fed. R. Civ. P. 33(d), Opposer does not have discretion to avoid answering a properly posited interrogatory. *See, e.g., Barnes v. District of Columbia*, 283 F.R.D. 8, 10 (D.D.C. 2012) ("Evasive or incomplete answers to interrogatories are to be treated as a failure to respond."); *Nat'l Fire Ins. Co. of Hartford v. Jose Trucking Corp.*, 264 F.R.D. 233, 240 (W.D.N.C. 2010) ("The responses are evasive and incomplete and are considered to be no answers at all to the interrogatories.").

For example, Interrogatory no. 1 requires Opposer to "[i]dentify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to

be used, or is associated with. Identify by control number all documents responsive to this interrogatory.” Instead of propounding a full answer, Symplicity merely cites to the USPTO’s TSDR database for application 86/533,567 and the website <https://www.symplicity.com/products/insight.html>. [Exh. E at 5]. No listing of products or services was provided, and no documents relating to this answer were identified. Further, Opposer did not invoke Fed. R. Civ. P. 33(d), to the extent it would have been appropriate to do so. Opposer is similarly deficient in its responses to Interrogatory nos. 2, 4, 5, and 7. [Exh. E at 5-7], as follows:

Interrogatory 2: For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.

Response to Interrogatory 2: Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at: <https://www.symplicity.com/products/insight.html>

Interrogatory 4: For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.

Response to Interrogatory 4: Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or

commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

Interrogatory 5: For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.

Response to Interrogatory 5: Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:
<https://www.symplicity.com/products/insight.html>.

Interrogatory 7: For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website's user base. Identify by control number all documents responsive to this interrogatory.

Response to Interrogatory 7: Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:
<https://www.symplicity.com/products/insight.html>.

To be sure, such information concerning a party's first use of its involved mark is discoverable. *See, e.g., Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976) (dates petitioner's plants first began production of goods bearing mark are pertinent to claim of priority); *Miller & Fink Corp. v. Servicemaster Hospital Corp.*, 184 USPQ 495, 496 (TTAB 1975) (must provide name, address and affiliation of persons to whom service

was first rendered); *see also Double J of Broward Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1613 (TTAB 1991) (use or intended use of applicant’s mark in commerce with U.S. is relevant). And the recently revised Federal Rules of Civil Procedure make clear that “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1).

To date, Opposer has not responded to this argument as presented in Applicant’s April 14 letter and should be compelled to fully answer Interrogatories 1, 2, 4, 5, and 7.

2. Opposer Has Not Properly Invoked Rule 33(d) in Response to Interrogatories 4, 7, 12, and 15.

Opposer should not be excused from fully answering Applicant’s interrogatories by hiding behind the promise of producing documents or by pointing to a mere website without more. *See, e.g., No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1555 (TTAB 2000) (responding party may not merely agree to provide access to voluminous records which may contain responsive information); *Jain v. Ramparts, Inc.*, 49 USPQ2d 1429, 1435 (TTAB 1998) (identifying prerequisites for exercising the option to produce business records in lieu of answering interrogatories); *see also* Fed. R. Civ. P. 33(d); TBMP § 405.04(b) (“the responding party may answer the interrogatory by specifying the records from which the information may be derived or ascertained, ... If the responding party elects to answer an interrogatory by specifying and producing business records, the specification must be in sufficient detail to permit the propounding party to locate and identify, as readily as can the responding party, the records from which the answer may be ascertained.”).

Applicants propounded Interrogatory no. 7, “[f]or each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of

accessibility by the public of the website, and the geographic scope of the website's user base. Identify by control number all documents responsive to this interrogatory." [Exh. E at 7].

Opposer responded, "Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>." [Id.]. It is improper under Fed. R. Civ. P. 33(d) to attempt to make a party "derive" a response to an interrogatory by mere citation to a website, without more. Opposer has not fully responded to the Interrogatory, requesting for each Opposer product or service, "the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website's user base." [Exh. E at 7]. Opposer's response is facially deficient and should be remedied.

Opposer's responses to Interrogatory nos. 4 (described above), 12, and 15, are similarly deficient.

Interrogatory 12: "Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory."

Response to Interrogatory 12: "Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "all oral or written communications." Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding, and Symplicity will produce representative, non-privileged documents sufficient to identify communications relating to SHINE INSIGHT to the extent such documents are

determined to exist after a reasonable search.”

Interrogatory 15: “Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.”

Response to Interrogatory 15: “Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search.”

The mere fact that “Symplicity will produce representative documents sufficient to” answer the interrogatory is not a valid response, under Fed. R. Civ. P. 33(d) or otherwise. A promise to produce documents is akin to providing no response whatsoever. *See Martin v. Brown*, 151 F.R.D. 580, 593-94 (W.D. Pa. 1993) (party answering must promptly furnish responsive information available through reasonable efforts); *see also Bryant v. Armstrong*, 285 F.R.D. 596, 612 (S.D. Cal. 2012) (citing *Frontier–Kemper Constructors, Inc. v. Elk Run Coal Co.*, 246 F.R.D. 522, 529 (S.D. W.Va. 2007)) (a responding party has a “severe duty” to make every effort to obtain the requested information and, if unsuccessful, must provide an answer detailing the attempts made to ascertain the information).

To date, Opposer has not responded to this argument as presented in Applicant’s April 14

letter and should be compelled to fully response to Interrogatories 4, 7, 12, and 15 as required by the Federal Rules and TBMP.

3. Opposer Has Forfeited the Right to Object to Applicant's First Set of Interrogatories on Their Merits.

Opposer failed to meet its obligation under Fed. R. Civ. P. 33(b)(5) and 37 C.F.R. § 1.120(a)(3), to timely provide written responses to Applicant's Interrogatories, *under oath*. Where a party fails to respond to interrogatories during the time allowed therefor, and which is unable to show that its failure was the result of *excusable neglect*, may be found, on motion to compel filed by the propounding party, to have forfeited its right to object to the interrogatories on their merits. TBMP § 405.04(a) (citing *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000) (stating that the Board has great discretion in determining whether such forfeiture should be found); *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 449 (TTAB 1979) (excusable neglect not shown where opposer was out of the country and, upon return, failed to ascertain that responses were due)). "Objections going to the merits of an interrogatory ... include claims that the information sought by the request is irrelevant, overly broad, unduly vague and ambiguous, burdensome and oppressive, or not likely to lead to the discovery of admissible evidence." TBMP § 405.04(a).

Applicant served its Interrogatories on February 4, 2016. [Exh. C]. Through a series of communications, the parties agreed to extend the deadline for Opposer's response a number of times, ultimately to March 28, 2016. [Exh. L]. Opposer served its original response to the Interrogatories on March 28, 2016 without a certification statement, in violation of Fed. R. Civ. P. 33(b)(5). [Exh. D]. Opposer attempted to remedy the defective response by serving an amended response on March 31, 2016, including an oath. [Exh. E].

Opposer has not claimed any "excusable neglect" for its failure to timely respond to

Applicant's Interrogatories. Instead, Opposer attempts to brush its error aside as immaterial. [Exh. K at 2, "...Acelero's contention is belied by the fact that Symplicity's amended interrogatory responses, which contain identical substantive responses to those served on March 28 (except for a correction to an individual's title), were served a mere three (3) days after Symplicity's initial responses were served."]. Opposer's argument misses the mark and disregards the plain language of the Fed. R. Civ. P. 33(b)(5) and TBMP § 405.04(a). Opposer cannot prove that its failure to properly respond to the Interrogatories by March 28, 2016 was caused by excusable neglect, and thus it has forfeited its right to object to the Interrogatories on their merits.

B. Opposer's Boiler-Plate Objections to Applicant's Document Requests are Improper.

Opposer's responses and objections [Exh. G] to the Document Requests [Exh. F] are fashioned in the traditional "boiler-plate" manner, in direct violation of the Federal Rules of Civil Procedure. The December 2015 amendments to the Federal Rules make clear that general, boiler-plate responses to document requests are no longer appropriate. Opposer has the obligation to respond to each "item or category" in a document request by "either stat[ing] that inspection and related activities will be permitted as requested or stat[ing] with specificity the grounds for objecting to the request, including the reasons." Fed. R. Civ. P. 34(b)(2)(B) (2015). Further, "production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response." *Id.* The Advisory Note to revised Rule 34(b) states, "[w]hen it is necessary to make the production in stages the response should specify the beginning and end dates of production."

When objecting to a document request, a party "must state whether any responsive

materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest.” Fed. R. Civ. P. 34(b)(2)(C). Parties are no longer allowed to make boiler-plate objections or merely promise future production of documents and things in response to document requests. *See New Belgium Brewing Co. v. Travis County Brewing Co.*, No. A-15-cv-452 LY, 2015 U.S. Dist. LEXIS 169803 (W.D. Tex. Dec. 18, 2015) (Responses: “[S]ubject to and without waiving its remaining general and specific objections [the party] will produce relevant, non-privileged documents responsive to this request in its possession, custody or control to the extent that they exist.”; Holding: “The objections are the very sort of ‘boilerplate’ objections that the newly revised Rule 34 intends to eliminate.”).³

Opposer’s objections to each of the Document Requests merely provide boiler-plate responses with no indication of which specific documents or things will be produced and when such production will begin and end. Opposer’s response to Document Request No. 1, is instructive. Applicant requested, “[a]ll documents identified in any response to Interrogatories 1-15.” Opposer responded with the boiler-plate text, “[s]ubject to and without waiving the

³ *See also Gowan v. Mid Century Ins. Co.*, 309 F.R.D. 503 (D.S.D. 2015) (party prefaced responses to each document request with “general” objections “to the extent that [they are] unreasonably cumulative or duplicative, or the information sought by the interrogatory is obtainable from some other source” and “to the extent that the [document requests] . . . seek attorney-work product; or seek information which is privileged and therefore not subject to discovery.” The court overruled these objections entirely “as to each and every discovery response.”); *Lozada v. Hobby Lobby Stores, Inc.*, No. 6:15-cv-711-Orl-4ITBS, 2016 U.S. Dist. LEXIS 25081 (M.D. Fla. Mar. 1, 2016) (Document Request: “Michael Licari’s entire employee file, including both positive and negative comments concerning Michal Licari from any co-workers, supervisors, or staff of Defendant.”; Response: “Objection. This request is overbroad and unduly burdensome, harassing and calls for confidential information. Further, this request seeks documents that are confidential, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.”; Holding: Overruled. “Defendant’s original objections are of the improper boilerplate variety.”).

foregoing General Objections, relevant, nonprivileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.” With the exception of Opposer’s responses to Request nos. 26-29, 32, and 38 (discussed below), all of Opposer’s responses ultimately followed the template of its response to Document Request no. 1—while a number of Opposer’s responses contained additional “specific” boiler-plate objections to Applicant’s document requests⁴.

Opposer further objected to Document Request nos. 26-29, by refusing to produce any legal opinions regarding INSIGHT, SHINE INSIGHT, CONNECT INSIGHT, or YOUTH INSIGHT. [Exh. G at 15-16]. It also objected to Document Request nos. 32 and 38, and refused to produce any documents reflecting analysis of likelihood of confusion and common law trademark rights relating to INSIGHT. [Id. at 17, 19]. Opposer’s letter of May 19 [Exh. K] invoked “attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity” as the reason for refusing production. Opposer then noted that “a privilege log will be produced identifying any such documents,” without an indication as to when such production will occur.

As the parties are in the midst of the discovery period and Opposer’s responses and objections to the Document Requests fail to comply with the Federal Rules, Applicants move the

⁴ For example, a number of Opposer’s objections to Applicant’s document requests contained “specific” boiler-plate language, as follows, “Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks ‘all documents relating to any response’ Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.” [Exh. G at 5, Response to Request No. 2]; *see also* Responses to Request Nos. 6-12, 16-23, and 31.

Board to compel Opposer to serve revised responses and objections to all outstanding Document Requests, in conformance with the Federal Rules. Applicant also moves the Board to compel production of Opposer's privilege log within 7 days of the Board's decision on this Motion.

C. Opposer's Responses and Objections to Request for Admission Nos. 6-9 and 34-41 Are Deficient.

Opposer relied upon improper recategorization of Applicant's requests for admission and improper privilege objections to avoid properly answering Request for Admission nos. 6-9 and 34-41. Applicant requests a ruling by the Board as to the sufficiency of Opposer's responses in view of the same. *See* Fed. R. Civ. P. 36(a)(6); 37 C.F.R. § 1.120(h).

Regarding Request for Admission nos. 6-9, Applicant challenges Opposer's objection to the term "early education and child development curriculum and assessment" and recategorization to "as referring to pre-kindergarten curriculum and assessment" in its objection to the Request. [**Exh. I at 4-5**]. By doing so, Opposer failed to answer the actual Requests.

For example, Applicant's **Request for Admission no. 6** reads: "[a]dmit that INSIGHT is not used in commerce for early education and child development curriculum and assessment computer software for administrators." However, **Opposer's Response** of: "Syplicity objects to the Request as vague and ambiguous because it is unclear what is meant by 'early education and child development curriculum and assessment'. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, admitted" is clearly deficient. [**Id. at 4**].

Opposer's position is interesting as, on the one hand, in the Notice of Opposition, Syplicity claims that registration of SHINE INSIGHT, having the same language in the goods and services statement, would likely cause confusion with INSIGHT. This claim is at least

partly based on the goods and services statement ascribed to the SHINE INSIGHT application. On the other hand, Symplicity objects to the Requests because it allegedly cannot determine the meaning of the same phrase. Symplicity cannot have it both ways and its response is deficient.

Opposer's response to Applicant's April 14 letter on this point attempts to draw a distinction between interpretation of the phrase in the context of its Notice of Opposition and the response to the Requests for Admission. [Exh. K at 2]. The parties appear to be at an impasse regarding this point and Applicant requests the Board's determination on the sufficiency of Opposer's responses and objections.

Regarding Request for Admission nos. 34-41, Opposer objected to the requests subject to a privilege objection. [Exh. I at 11-13, e.g., "Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.']. However, the identification of discovery documents (as opposed to their substance) is not privileged or confidential. *See Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that client received legal opinions and identity of documents related thereto, not privileged). Therefore, to the extent that Symplicity's denial is based on the alleged privileged nature of the information sought, appropriate supplementation to Symplicity's responses is warranted.

Opposer clarified in its May 19 letter that "Symplicity's denials are not based on an asserted privilege, but rather are based on the facts set forth in Acelero's requests and the information presently available to Symplicity Based on its continuing investigation in connection with this matter." [Exh. K at 2]. However, Opposer's letter does not substitute for a proper response to Applicant's Requests. At minimum, Opposer should be made to amend its responses,

removing the improper privilege objection, and then either admitting or denying the content of each Request.

* * * * *

WHEREFORE, Applicant respectfully requests an order under 37 C.F.R. § 2.120(e) and Fed. R. Civ. P. 37(a):

- (1) Compelling Opposer to fully respond to Interrogatories 1, 2, 4, 5, 7, 12, and 15;
- (2) Compelling Opposer to produce documents within 14 days of issuance of the order supporting any properly invoked Interrogatory response under Rule 33(d);
- (3) Finding that Opposer forfeited its right to object to the Interrogatories on the merits, or in the alternative, compelling Opposer to show cause why it should not be deemed to have forfeited such rights;
- (4) Overruling Opposer's general objections to Document Requests 1-38, or in the alternative, compelling Opposer to serve a revised response in accordance with the Federal Rules; and
- (5) Compelling Opposer to serve a privilege log within seven (7) days of issuance of the order.

WHEREFORE, Applicant respectfully requests an order under 37 C.F.R. § 2.120(h) and Fed. R. Civ. P. 36(a), compelling Opposer to provide supplementary responses to Request for Admission nos. 6-9 and 34-41, or in the alternative, deeming Request for Admission nos. 6-9 and 34-41 "admitted."

WHEREFORE, Applicant respectfully requests an order suspending the opposition proceedings until this Motion is decided and to reset trial dates accordingly.

Respectfully submitted,

Date: May 20, 2016

By: /Javier J. Ramos/

Robert J. Koch
Stephanie R. Amoroso
Javier J. Ramos
MILBANK, TWEED, HADLEY &
 McCLOY, LLP
1850 K St. NW, Suite 1100
Washington, DC 20006
(202) 835-7500
rkoch@milbank.com
samoroso@milbank.com
jramos@milbank.com

CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on May 20, 2016, I caused to be served a true and correct copy of ACELERO'S MOTION FOR AN ORDER TO DISCOVERY AND MOTION TO TEST SUFFICIENCY OF RESPONSE TO REQUESTS FOR ADMISSION:

By E-Mail:

Lora A. Moffat, Esq.
Sean E. Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
20th Floor
New York, NY 10022-2544
lmoffatt@crowell.com
sjackson@crowell.com
Attorneys for Opposer

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on May 20, 2016.

/Javier J. Ramos/
Javier J. Ramos

Exhibit A

Ramos, Javier

From: Jackson, Sean <SJackson@crowell.com>
Sent: Friday, April 29, 2016 11:24 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert; Amoroso, Stephanie
Subject: Re: AW: Opposition No. 91223510 - SHINE INSIGHT

Javier,

I was hoping to start production this week. I expect to have documents to produce beginning Monday. I also expect to have a response to your letter early next week.

Regards,
Sean

Sent from my iPhone

> On Apr 29, 2016, at 5:02 PM, Ramos, Javier <JRamos@milbank.com> wrote:

>

> Dear Sean,

>

> During our call Monday, you noted that Symplicity was planning on producing documents this week. Is that still the case? Also, when can we expect a response to our letter of April 14, 2016?

>

> Regards,

> Javier

>

> _____

> Javier J. Ramos | Milbank

> Admitted in Virginia and Washington, D.C. only

> Maximilianstr. 15 | D - 80539 München

> T: +49 89 25559 3633 | F: +49 89 25559 3700

> M: +49 173 3463765

>

> 1850 K Street NW, Suite 1100 | Washington, D.C. 20006

> T: +1 202.835.7507 | F: +1 202.263.7507

> jramos@milbank.com | www.milbank.com

>

>

> -----Original Message-----

> From: Jackson, Sean [mailto:SJackson@crowell.com]

> Sent: Monday, April 25, 2016 8:01 PM

> To: Ramos, Javier

> Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert; Amoroso, Stephanie

> Subject: RE: AW: Opposition No. 91223510 - SHINE INSIGHT

>

> Javier,

>

> I'm calling you now.

>
> Thanks,
> Sean
>
> -----Original Message-----
> From: Ramos, Javier [mailto:JRamos@milbank.com]
> Sent: Monday, April 25, 2016 1:31 PM
> To: Jackson, Sean
> Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert; Amoroso, Stephanie
> Subject: RE: AW: Opposition No. 91223510 - SHINE INSIGHT

>
> Sean,
>
> I can speak in 20 minutes.

>
> Best regards,
> Javier

>
> _____
> Javier J. Ramos | Milbank
> Admitted in Virginia and Washington, D.C. only Maximilianstr. 15 | D - 80539 München
> T: +49 89 25559 3633 | F: +49 89 25559 3700
> M: +49 173 3463765
>
> 1850 K Street NW, Suite 1100 | Washington, D.C. 20006
> T: +1 202.835.7507 | F: +1 202.263.7507
> jramos@milbank.com | www.milbank.com

>
>
> -----Original Message-----
> From: Ramos, Javier
> Sent: Monday, April 25, 2016 2:27 PM
> To: 'Jackson, Sean'
> Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert; Amoroso, Stephanie
> Subject: RE: AW: Opposition No. 91223510 - SHINE INSIGHT

>
> Sean,
>
> That should work for me.

>
> Regards,
> Javier

>
> _____
> Javier J. Ramos | Milbank
> Admitted in Virginia and Washington, D.C. only Maximilianstr. 15 | D - 80539 München
> T: +49 89 25559 3633 | F: +49 89 25559 3700
> M: +49 173 3463765
>
> 1850 K Street NW, Suite 1100 | Washington, D.C. 20006
> T: +1 202.835.7507 | F: +1 202.263.7507
> jramos@milbank.com | www.milbank.com

>
> -----Original Message-----
> From: Jackson, Sean [mailto:SJackson@crowell.com]
> Sent: Monday, April 25, 2016 2:26 PM
> To: Ramos, Javier
> Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert; Amoroso, Stephanie
> Subject: Re: AW: Opposition No. 91223510 - SHINE INSIGHT
>
> Javier,
>
> I'm tied up this morning, can I call you around 1:00 PM NY time this afternoon?
>
> Thanks,
> Sean
>
> Sent from my iPhone
>
> On Apr 22, 2016, at 5:35 PM, Ramos, Javier <JRamos@milbank.com<mailto:JRamos@milbank.com>> wrote:
>
> Dear Sean,
>
> I tried your office again, but apparently I just missed you. Thanks for returning my call from earlier today and hopefully we can speak first thing Monday morning. I will give you a call then.
>
> Regards,
> Javier
>
> _____
> Javier J. Ramos | Milbank
> 1850 K Street NW, Suite 1100 | Washington, DC 20006
> T: +1 202.835.7507 | F: +1 202.263.7507
> jramos@milbank.com<mailto:jramos@milbank.com> | www.milbank.com<http://www.milbank.com>
> Von: Ramos, Javier
> Gesendet: Donnerstag, 14. April 2016 23:21
> An: Sean E. Jackson - Crowell & Moring (sjackson@crowell.com<mailto:sjackson@crowell.com>)
> Cc: Moffatt, Lora (LMoffatt@crowell.com<mailto:LMoffatt@crowell.com>);
> pchakrabarti@crowell.com<mailto:pchakrabarti@crowell.com>; afield@crowell.com<mailto:afield@crowell.com>;
> Koch, Robert; Amoroso, Stephanie
> Betreff: Opposition No. 91223510 - SHINE INSIGHT
>
>
> Sean,
>
> Please see the attached letter.
>
> Best regards,
> Javier
>
> _____
> Javier J. Ramos | Milbank
> Admitted in Virginia and Washington, D.C. only Maximilianstr. 15 | D - 80539 München
> T: +49 89 25559 3633 | F: +49 89 25559 3700

> M: +49 173 3463765

>

> 1850 K Street NW, Suite 1100 | Washington, D.C. 20006

> T: +1 202.835.7507 | F: +1 202.263.7507

> jramos@milbank.com<mailto:jramos@milbank.com> | www.milbank.com<http://www.milbank.com/>

>

>

>

> =====

>

> This e-mail message may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

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> This e-mail message may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

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>

Exhibit B

Ramos, Javier

From: Jackson, Sean <SJackson@crowell.com>
Sent: Thursday, May 19, 2016 8:59 PM
To: Ramos, Javier
Cc: Koch, Robert; Amoroso, Stephanie; Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT - Telephone Call
Attachments: 36364160_2016.05.19 Ltr. to J. Ramos re Discovery.PDF

Javier,

Please see attached letter correspondence.

I am awaiting direction on whether and on what terms Symplicity would be amenable to settling the Opposition. [REDACTED]

[REDACTED] Although I hope to have some response today, I can't guarantee it.

I'm presently advised that a remote video deposition held at your offices in Washington, DC on May 26, 2016 is acceptable. I assume the deposition will begin at 9:30 am Eastern, per the initial deposition notice?

Best regards,
Sean

Sean E. Jackson

sjackson@crowell.com

Direct 1.212.803.4038 | Fax: 1.212.223.4134

Crowell & Moring LLP | www.crowell.com

590 Madison Avenue
New York, NY 10022

This message may contain privileged and confidential information. IF IT WAS SENT TO YOU BY MISTAKE, DO NOT READ IT. Instead, please notify the sender (or postmaster@crowell.com) by reply e-mail, and delete this e-mail. Unauthorized dissemination, forwarding or copying of this e-mail is strictly prohibited.

From: Ramos, Javier [<mailto:JRamos@milbank.com>]
Sent: Thursday, May 19, 2016 1:36 PM
To: Jackson, Sean
Cc: Koch, Robert; Amoroso, Stephanie; Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: Opposition No. 91223510 - SHINE INSIGHT - Telephone Call

Dear Sean,

This email follows up our telephone conversation at 10:30 am EST. During the telephone call, we indicated that our client would [REDACTED], subject to some ministerial changes. You noted that you would have to seek acceptance of the same from your client. We asked for an answer over the course of today.

We also asked if Symplicity planned on curing its discovery deficiencies or responding to our discovery deficiency letter of April 14, 2016. You said that Symplicity planned on responding, though you could not say whether a response would be served today. We indicated that we were prepared to file a motion to compel, in view of our April 14 letter and our prior discussions of the same in late April, today or tomorrow at the latest.

We also agreed to conduct the deposition of William Gerety on Thursday, May 26, 2016. We proposed a remote deposition conducted by video in our Washington, DC office. You indicated that you would confer with your client whether this was acceptable.

After our call, you called me at 10:41 am EST, to discuss [REDACTED]
[REDACTED] You indicated that you had not discussed this amendment with your client and would need to seek approval. We await further word from you whether your client is indeed making such a proposal.

We look forward to hearing back from you regarding our offer to settle based on the terms of the [REDACTED]
[REDACTED] and the scheduling of Mr. Gerety's deposition.

Best regards,
Javier

Javier J. Ramos | Milbank
Admitted in Virginia and Washington, D.C. only
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=====
This e-mail message may contain legally privileged and/or confidential information. If you are not the intended recipient(s), or the employee or agent responsible for delivery of this message to the intended recipient(s), you are hereby notified that any dissemination, distribution or copying of this e-mail message is strictly prohibited. If you have received this message in error, please immediately notify the sender and delete this e-mail message from your computer.

Exhibit C

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

ACELERO’S FIRST SET OF INTERROGATORIES (NO. 1-16)

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120(d), applicant Acelero Learning Data and Technical Assistance, Inc. (“Acelero”) hereby requests that oppose Symplicity Corp. (“Symplicity”) answer the following interrogatories fully and under oath and serve the responses on undersigned counsel for Acelero within thirty (30) days of the service hereof, or at such other time and place as counsel for the parties may agree in writing.

DEFINITIONS

For the purposes of these interrogatories, the following definitions apply:

1. Unless otherwise specified, all terms shall be interpreted as they are used in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the

Federal Rules of Civil Procedure. The requests and terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

2. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in the Federal Rules of Civil Procedure, and includes, without limitation, any book, bill, calendar, chart, check, compilation, computation, computer or network activity log, correspondence, data, data compilation, database, diagram, diary, document, draft, drawing, e-mail, electronic message, file, folder, film, graph, graphic presentation, image, index, inventory, invoice, jotting, journal, ledger, machine readable material, map, memoranda, metadata, minutes, note, order, paper, photograph, printout, recording, report, software, spreadsheet, statement, sound recording, summary, telephone message record or log, transcript, video, voicemail, voucher, work paper, writing, worksheet, or any other item or group of documentary material or information, regardless of physical or electronic format or characteristic, and any information therein, and copies, notes, and recordings thereof. Information that serves to identify, locate or link such material, such as file inventories, file folders, indices and metadata, is also included in this definition. A draft or non-identical copy is a separate item within the meaning of these terms. For the avoidance of doubt, the term “document” should be construed to include “electronically stored information” as such term is used in FED. R. CIV. P. 26(b)(2)(B) and 34(b)(2)(E). **This definition expressly requires you to search for electronic documents or correspondences, including without limitation e-mail correspondence (including all attachments to e-mails).**

3. The terms “communication” and “correspondence” mean any transmission of information by one or more persons and/or between two or more persons by any means, including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, e-mail, computer linkups, written memoranda, notes and face-to-face conversations.
4. The term “person” means any natural person or legal entity, including individuals, corporations, businesses, firms, joint ventures, partnerships, limited liability companies, sole proprietorships, governments, agencies or instrumentalities of governments, unincorporated associations, and cooperatives.
5. The term “day” and “date” mean the exact day, month and year if ascertainable or, if not, the best available approximation (including relationship to other events).
6. The terms “relate to,” “relating to,” and “regarding” include, without limitation, constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to, including items which contradict or are inconsistent with the answer provided.
7. The terms “identify,” “identification,” “identity,” or any variant thereof, shall have the following meaning:
 - a. When used in reference to a document, it shall mean to state the type or common description of the document, the date of the document, the name of the author or originator of the document, the name and address of the custodian of the document, and a brief summary of the document's contents. If any such document was, but presently no longer is, in the respondent's possession, state what disposition was made of such document, the reason for such disposition, and the last known person in possession of such information.
 - b. When used in reference to a natural person, it shall mean to state the person's full name, title, employer (if applicable), and last known residential and

business addresses and telephone numbers. When a person previously has been identified fully in response to an interrogatory, it is sufficient thereafter to state merely his or her name.

- c. When used in reference to a partnership, it shall mean to state the full name of the partnership, the names of the general and limited partners, the residential and business addresses and telephone numbers of the general and limited partners, and the address and telephone number of the partnership's principal office.
 - d. When used in reference to a corporation, it shall mean to state its full corporate name, its state of incorporation, and the address and telephone number of its principal place of business.
 - e. When used in reference to an unincorporated association or any other business entity, it shall mean to state the full name of the entity and the address and telephone number of its principal place of business.
 - f. When used in reference to communication, it shall mean to state the date on which the communication was made, the time and place when and where the communication occurred, a summary of the contents of the communication, the identity of each person to whom the communication was made, the identity of each person by whom such communication was made, and the identity of each person who was present when such communication occurred.
 - g. When used in reference to an act, action, incident, event, or accident, it shall mean to state the date and place of its occurrence, the nature and circumstances of its occurrence, and the identity of all persons involved with its occurrence, including the nature of their involvement with the occurrence.
8. "Describe," when used with respect to a communication, a meeting, an act or conduct, means to give, state, or identify the following:
- a. The date of the communication, meeting, act or conduct, where it took place, the identity of each participant and the identity of each person who was present;
 - b. If a communication or meeting, the identity of the person making the particular statement so listed, the mode of communication (for example, in writing, telephone, or in person), and the location of each of the participants; or
 - c. If an act or conduct, the details of the act or conduct being described and what each person participating in such act or conduct did.

9. Where the context makes it appropriate, each singular word shall include its plural and each plural shall include its singular. “Any” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: “each,” “every,” “all,” and “any.” The terms “and,” “or” and “and/or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The masculine shall be construed in the generic sense. “Including” shall be construed broadly, as “including but not limited to” or “including without limitation.”
10. “Applicant” and “Acelero” refers to applicant Acelero Learning Data and Technical Assistance, Inc., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
11. “You,” “your”, “Opposer” and “Syplicity” refers to Syplicity Corp., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners,

representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.

12. “INSIGHT” refers to the word mark that is pending before the United States Patent and Trademark Office (“USPTO”) as U.S. application no. 86/533,567.
13. “SHINE INSIGHT” refers to the word mark that is pending before the USPTO as U.S. application no. 86/257,568.
14. “Opposition” refers to USPTO opposition no. 91223510.
15. “Notice” and “Notice of Opposition” refer to the notice of opposition filed herein on August 26, 2015, as the same may have been and may be amended from time to time.
16. “Answer” refers to the answer filed by Acelero in the Opposition on December 30, 2015.
17. “Educational Institutions” has the same meaning as in paragraph 2 of the Notice.
18. “CONNECT INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,676,307.
19. “YOUTH INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,134,520.
20. “Use in commerce” has the meaning given to it in 15 U.S.C. 1127.
21. “Trademark” has the meaning given to it in 15 U.S.C. 1127.

INSTRUCTIONS

1. These interrogatories shall be deemed to include any and all relevant information within your possession, custody or control, including information within the

possession, custody or control of and any and all of your past and present agents, representatives, employees, servants, attorneys, and accountants.

2. Pursuant to TBMP 408.03 and FED. R. CIV. P. 26(e), these requests are continuing in nature, and to the extent that at any time after the production of answers called for by these interrogatories you learn of and/or acquire additional information responsive to these interrogatories, you must provide such information in a timely manner.
3. If you find the meaning of any term in these interrogatories to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and answer the interrogatories on the basis of that assumed meaning. Acelero reserves the right to contest such assumed meaning.
4. If, in answering these interrogatories, you object to any part of an interrogatory, each part of said interrogatory shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be answered. If an objection is made on the basis that the request or subpart thereof calls for information that is beyond the scope of discovery, the request or subpart thereof shall be answered to the extent that it is not objectionable.
5. Where identification of each fact relied upon by you with regard to a specified allegation or contention is requested, the response shall state separately with specificity each fact in your knowledge, whether obtained through documents, oral communications (whether or not reduced to writing), personal or professional experience or through any other means, which you believe supports the truth of such allegation.

6. If the response to any interrogatory is that you lack knowledge of the requested information, describe all efforts that you have made to obtain the information necessary to respond.
7. With respect to any information responsive to these interrogatories you withhold or refuse to divulge on a claim of privilege, identify in detail the legal basis for such claim. Acelero reserves the right to contest such a claim of privilege.

INTERROGATORIES

1. Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.
2. For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.
3. For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.
4. For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.
5. For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.
6. For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.
7. For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website's user base. Identify by control number all documents responsive to this interrogatory.

8. Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.
9. Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.
10. Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Symplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.
11. Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.
12. Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.
13. Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.
14. Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.
15. Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.
16. Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

Respectfully submitted,

Date: February 4, 2016

By: _____/Javier J. Ramos/

Robert J. Koch
Javier J. Ramos
MILBANK, TWEED, HADLEY &
McCLOY, LLP
1850 K St. NW, Suite 1100
Washington, DC 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on February 4, 2016, I caused to be served a true and correct copy of ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16):

By E-Mail:

Lora A. Moffat, Esq.
Sean E. Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
20th Floor
New York, NY 10022-2544
lmoffatt@crowell.com
sjackson@crowell.com
Attorneys for Opposer

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on February 4, 2016.

/Javier J. Ramos/
Javier J. Ramos

Exhibit D

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY’S RESPONSES TO ACELERO’S
FIRST SET OF INTERROGATORIES (NO. 1-16)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office (“USPTO”), Opposer Symplicity Corporation (“Symplicity”), by and through its undersigned attorneys, hereby responds to Applicant Acelero Learning Data and Technical Assistance, Inc.’s (“Acelero”) First Set of Interrogatories (No. 1-16) (“Interrogatories”).

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this case and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity’s reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Interrogatories, and Symplicity hereby specifically incorporates all of

these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these general objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the appropriate Rules of Civil Procedure, including Rule 26 and 33, and the rules of the Trademark Trial and Appeal Board ("TTAB"). Symplicity will rely upon the Federal Rules of Civil Procedure, the TTAB Rules and governing case law with respect to the subject definitions, instructions and responses.

2. Symplicity objects to the Interrogatories to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

3. Symplicity objects to the Interrogatories to the extent they contain misstatements of fact or inaccurate assumptions. Nothing in these responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in any interrogatory.

4. Symplicity objects to the Interrogatories to the extent they use language calling for a legal conclusion. Symplicity's responses shall incorporate matters of fact only. None of Symplicity's responses shall be construed as stating or implying a conclusion of law concerning the matters referenced in any interrogatory.

5. Symplicity objects to the Interrogatories to the extent that Acelero seeks information protected by the attorney-client privilege, the attorney work-product doctrine, joint-defense and/or common interest privilege or any other applicable privilege or immunity.

6. Symplicity objects to the Interrogatories to the extent they call for confidential, trade secret or commercially sensitive information to be produced.

7. Symplicity objects to the Interrogatories to the extent they are overbroad, unduly burdensome, premature and/or seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

8. Symplicity objects to the Interrogatories to the extent that Acelero seeks information covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

9. Symplicity objects to the Interrogatories to the extent that Acelero seeks information that is not available to Symplicity after a reasonable search of its files and a reasonable inquiry of its current employees.

10. Symplicity objects to the Interrogatories to the extent Acelero seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

11. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

12. In those instances where the response to an Interrogatory can be derived from the business records, and the burden of deriving or ascertaining the answer is substantially the same for each of the parties, Symplicity will specify the records from which a complete answer may be

ascertained and afford Acelero's counsel a reasonable opportunity to audit, inspect, and copy such records or provide categorized copies of such records in accordance with Federal Rule of Civil Procedure 33(d).

13. Symplicity objects to the Interrogatories to the extent they are repetitive, overlapping, or duplicative.

14. Discovery in this matter is ongoing. Symplicity's responses to the following Interrogatories, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by the Interrogatories. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to the Interrogatories as additional information is made available during discovery in this Proceeding.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from U.S. Trademark Application Serial No. 86/533,567 (“the INSIGHT application”), documents relating to which are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

Additional information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 2:

For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at:

<https://www.symplicity.com/products/insight.html>

INTERROGATORY NO. 3:

For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiver of the foregoing General Objections, geographic scope is throughout the United States, as well as internationally.

INTERROGATORY NO. 4:

For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 4:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

INTERROGATORY NO. 5:

For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 6:

For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 6:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity is not aware of any analyses “performed of market penetration and market awareness.”

INTERROGATORY NO. 7:

For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website’s user base. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 8:

Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

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Craig Czubati
Head of Sales
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INTERROGATORY NO. 9:

Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 9:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing

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INTERROGATORY NO. 10:

Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Symplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

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INTERROGATORY NO. 11:

Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of "any individual." Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

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INTERROGATORY NO. 12:

Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 12:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly

burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding, and Symplicity will produce representative, non-privileged documents sufficient to identify communications relating to SHINE INSIGHT to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 13:

Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 13:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to CONNECT INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 14:

Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 14:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to YOUTH INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 15:

Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 15:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 16:

Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the foregoing General Objections, “colleges” typically encompass institutions of higher learning, especially those providing a general or liberal arts education rather than technical or professional training, and which may be a constituent unit of a university, as well as community colleges. “Universities” typically encompass institutions of learning of the highest level, often having a college of liberal arts and a program of graduate studies, along with professional schools, such as law, medicine, and engineering. “Educational institutions” encompass both colleges and universities, as well as other educational institutions.

Dated: New York, New York
March 28, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
Sean E. Jackson
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*Attorneys for Opposer
Symplicity Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

Exhibit E

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S AMENDED RESPONSES TO ACELERO'S
FIRST SET OF INTERROGATORIES (NO. 1-16)**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned attorneys, hereby makes these amended responses to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Interrogatories (No. 1-16) ("Interrogatories").

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this case and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Interrogatories, and Symplicity hereby specifically incorporates all of

these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these general objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the appropriate Rules of Civil Procedure, including Rule 26 and 33, and the rules of the Trademark Trial and Appeal Board ("TTAB"). Symplicity will rely upon the Federal Rules of Civil Procedure, the TTAB Rules and governing case law with respect to the subject definitions, instructions and responses.

2. Symplicity objects to the Interrogatories to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

3. Symplicity objects to the Interrogatories to the extent they contain misstatements of fact or inaccurate assumptions. Nothing in these responses shall be construed as constituting or implying an admission of any allegation or agreement with any assertion or characterization in any interrogatory.

4. Symplicity objects to the Interrogatories to the extent they use language calling for a legal conclusion. Symplicity's responses shall incorporate matters of fact only. None of Symplicity's responses shall be construed as stating or implying a conclusion of law concerning the matters referenced in any interrogatory.

5. Symplicity objects to the Interrogatories to the extent that Acelero seeks information protected by the attorney-client privilege, the attorney work-product doctrine, joint-defense and/or common interest privilege or any other applicable privilege or immunity.

6. Symplicity objects to the Interrogatories to the extent they call for confidential, trade secret or commercially sensitive information to be produced.

7. Symplicity objects to the Interrogatories to the extent they are overbroad, unduly burdensome, premature and/or seek information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

8. Symplicity objects to the Interrogatories to the extent that Acelero seeks information covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

9. Symplicity objects to the Interrogatories to the extent that Acelero seeks information that is not available to Symplicity after a reasonable search of its files and a reasonable inquiry of its current employees.

10. Symplicity objects to the Interrogatories to the extent Acelero seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

11. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

12. In those instances where the response to an Interrogatory can be derived from the business records, and the burden of deriving or ascertaining the answer is substantially the same for each of the parties, Symplicity will specify the records from which a complete answer may be

ascertained and afford Acelero's counsel a reasonable opportunity to audit, inspect, and copy such records or provide categorized copies of such records in accordance with Federal Rule of Civil Procedure 33(d).

13. Symplicity objects to the Interrogatories to the extent they are repetitive, overlapping, or duplicative.

14. Discovery in this matter is ongoing. Symplicity's responses to the following Interrogatories, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by the Interrogatories. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to the Interrogatories as additional information is made available during discovery in this Proceeding.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 1:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from U.S. Trademark Application Serial No. 86/533,567 (“the INSIGHT application”), documents relating to which are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

Additional information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 2:

For each product or service identified in response to Interrogatory No. 1, describe the channels of distribution and/or intended channels of distribution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiver of the foregoing General Objections, Symplicity utilizes salespeople to contact potential purchasers of its products, as well as its website, available at:

<https://www.symplicity.com/products/insight.html>

INTERROGATORY NO. 3:

For each product or service identified in response to Interrogatory No. 1, describe the geographic scope of all former, current, and contemplated use in commerce. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiver of the foregoing General Objections, geographic scope is throughout the United States, as well as internationally.

INTERROGATORY NO. 4:

For each product or service identified in response to Interrogatory No. 1, identify by name and address all Educational Institutions using each product or service, the date of first use of each product or service by the institution, and the current status of the use of each product or service by the institution. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 4:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Symplicity also objects to this Interrogatory to the extent it seeks private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity will produce representative documents sufficient to identify the Educational Institutions using Symplicity's INSIGHT products and services.

INTERROGATORY NO. 5:

For each product or service identified in response to Interrogatory No. 1, identify the media or medium used to communicate INSIGHT to the public in relation to each product or service. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 5:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 6:

For each product or service identified in response to Interrogatory No. 1, describe all analyses performed of market penetration and market awareness of the same. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 6:

Symplicity objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and/or seeks information that is neither irrelevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiver of the foregoing Specific and General Objections, Symplicity is not aware of any analyses “performed of market penetration and market awareness.”

INTERROGATORY NO. 7:

For each product or service identified in response to Interrogatory No. 1, identify all websites (by hyperlink) advertising or marketing each product or service, the date the website was first accessible to the public, the duration of accessibility by the public of the website, and the geographic scope of the website’s user base. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 7:

Subject to and without waiver of the foregoing General Objections, information responsive to this Interrogatory can be derived from:

<https://www.symplicity.com/products/insight.html>.

INTERROGATORY NO. 8:

Identify by name, title, role, and address any individual who may have knowledge of creation of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 8:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing

Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity's undersigned counsel.

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AMENDED RESPONSE TO INTERROGATORY NO. 8:

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INTERROGATORY NO. 9:

Identify by name, title, role, and address any individual who may have knowledge of the use in commerce of INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 9:

Syplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Syplicity identifies the following individuals, who shall be contacted only through Syplicity’s undersigned counsel.

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INTERROGATORY NO. 10:

Identify by name, title, role, and address any individual who may have knowledge of any license or use agreements entered into by Simplicity relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 10:

Simplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Simplicity identifies the following individuals, who shall be contacted only through Simplicity’s undersigned counsel.

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1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 10:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation

1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 11:

Identify by name, title, role, and address any individual who may have knowledge of any common law trademark rights relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Victoria Chapa
Marketing Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Janet Sun
Product Manager
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Head of Sales
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

AMENDED RESPONSE TO INTERROGATORY NO. 11:

Symplicity objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “any individual.” Subject to and without waiver of the foregoing Specific and General Objections, Symplicity identifies the following individuals, who shall be contacted only through Symplicity’s undersigned counsel.

William Gerety
CEO
Symplicity Corporation
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Arlington, VA 2209

Janet Sun
Head of Product
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

Craig Czubati
Director of Customer Support
Symplicity Corporation
1560 Wilson Boulevard, Suite 550
Arlington, VA 2209

INTERROGATORY NO. 12:

Identify, by date, parties involved, and description, all oral or written communications relating to SHINE INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 12:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to SHINE INSIGHT outside of this proceeding, and Symplicity will produce representative, non-privileged documents sufficient to identify communications relating to SHINE INSIGHT to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 13:

Identify, by date, parties involved, and description, all oral or written communications relating to CONNECT INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 13:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to CONNECT INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 14:

Identify, by date, parties involved, and description, all oral or written communications relating to YOUTH INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 14:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications.” Subject to the foregoing Specific and General Objections, Symplicity is not aware of any communications relating to YOUTH INSIGHT other than communications with the USPTO in connection with the INSIGHT application. Such communications are available at:

http://tsdr.uspto.gov/#caseNumber=86533567&caseType=SERIAL_NO&searchType=statusSearch.

INTERROGATORY NO. 15:

Identify, by date, parties involved, and description, all oral or written communications relating to any threatened or actual disputes relating to INSIGHT. Identify by control number all documents responsive to this interrogatory.

RESPONSE TO INTERROGATORY NO. 15:

Symplicity objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. Symplicity also objects to this Interrogatory as overly broad and unduly burdensome because it seeks the identification of “all oral or written communications” as well as information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing Specific and General Objections, Symplicity will

produce representative, non-privileged documents sufficient to identify such communications to the extent such documents are determined to exist after a reasonable search.

INTERROGATORY NO. 16:

Explain the difference between educational institutions, colleges, and universities as enumerated in paragraph 2 of the Notice.

RESPONSE TO INTERROGATORY NO. 16:

Subject to the foregoing General Objections, “colleges” typically encompass institutions of higher learning, especially those providing a general or liberal arts education rather than technical or professional training, and which may be a constituent unit of a university, as well as community colleges. “Universities” typically encompass institutions of learning of the highest level, often having a college of liberal arts and a program of graduate studies, along with professional schools, such as law, medicine, and engineering. “Educational institutions” encompass both colleges and universities, as well as other educational institutions.

Dated: New York, New York
March 31, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
Sean E. Jackson
Preetha Chakrabarti
590 Madison Avenue
New York, NY 10022
(212) 223-4000
lmoffatt@crowell.com
sjackson@crowell.com
pchakrabarti@crowell.com

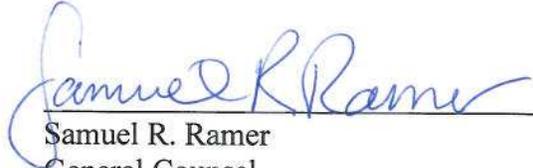
*Attorneys for Opposer
Simplicity Corporation*

VERIFICATION

I, Samuel R. Ramer, hereby certify that the facts set forth in the foregoing Symplicity's Amended Responses to Acelero's First Set of Interrogatories (No. 1-16) are true to the best of my knowledge, based in part on information provided to me by others and on documents being produced by Opposer, Symplicity Corporation ("Symplicity"). I further certify that I am authorized to sign this Verification on behalf of Symplicity. I understand that if the foregoing statements made by me are willfully false, I am subject to punishment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 31, 2016



Samuel R. Ramer
General Counsel
Vice President of Government Relations
Symplicity Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S AMENDED RESPONSES TO ACELERO'S FIRST SET OF INTERROGATORIES (NO. 1-16)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

Exhibit F

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

**ACELERO’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38)**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120(d), applicant Acelero Learning Data and Technical Assistance, Inc. (“Acelero”) hereby requests that oppose Symplicity Corp. (“Symplicity”) answer the following interrogatories fully and under oath and serve the responses on undersigned counsel for Acelero within thirty (30) days of the service hereof, or at such other time and place as counsel for the parties may agree in writing.

DEFINITIONS

For the purposes of these requests, the following definitions apply:

1. Unless otherwise specified, all terms shall be interpreted as they are used in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the

Federal Rules of Civil Procedure. The requests and terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

2. The term “document” is defined to be synonymous in meaning and equal in scope to the usage of this term in the Federal Rules of Civil Procedure, and includes, without limitation, any book, bill, calendar, chart, check, compilation, computation, computer or network activity log, correspondence, data, data compilation, database, diagram, diary, document, draft, drawing, e-mail, electronic message, file, folder, film, graph, graphic presentation, image, index, inventory, invoice, jotting, journal, ledger, machine readable material, map, memoranda, metadata, minutes, note, order, paper, photograph, printout, recording, report, software, spreadsheet, statement, sound recording, summary, telephone message record or log, transcript, video, voicemail, voucher, work paper, writing, worksheet, or any other item or group of documentary material or information, regardless of physical or electronic format or characteristic, and any information therein, and copies, notes, and recordings thereof. Information that serves to identify, locate or link such material, such as file inventories, file folders, indices and metadata, is also included in this definition. A draft or non-identical copy is a separate item within the meaning of these terms. For the avoidance of doubt, the term “document” should be construed to include “electronically stored information” as such term is used in FED. R. CIV. P. 26(b)(2)(B) and 34(b)(2)(E). **This definition expressly requires you to search for electronic documents or correspondences, including without limitation e-mail correspondence (including all attachments to e-mails).**

3. The terms “communication” and “correspondence” mean any transmission of information by one or more persons and/or between two or more persons by any means, including but not limited to telephone conversations, letters, telegrams, teletypes, telexes, telecopies, e-mail, computer linkups, written memoranda, notes and face-to-face conversations.
4. The term “person” means any natural person or legal entity, including individuals, corporations, businesses, firms, joint ventures, partnerships, limited liability companies, sole proprietorships, governments, agencies or instrumentalities of governments, unincorporated associations, and cooperatives.
5. The term “day” and “date” mean the exact day, month and year if ascertainable or, if not, the best available approximation (including relationship to other events).
6. The terms “relate to,” “relating to,” and “regarding” include, without limitation, constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to, including items which contradict or are inconsistent with the answer provided.
7. The terms “identify,” “identification,” “identity,” or any variant thereof, shall have the following meaning:
 - a. When used in reference to a document, it shall mean to state the type or common description of the document, the date of the document, the name of the author or originator of the document, the name and address of the custodian of the document, and a brief summary of the document's contents. If any such document was, but presently no longer is, in the respondent’s possession, state what disposition was made of such document, the reason for such disposition, and the last known person in possession of such information.
 - b. When used in reference to a natural person, it shall mean to state the person’s full name, title, employer (if applicable), and last known residential and

business addresses and telephone numbers. When a person previously has been identified fully in response to an interrogatory, it is sufficient thereafter to state merely his or her name.

- c. When used in reference to a partnership, it shall mean to state the full name of the partnership, the names of the general and limited partners, the residential and business addresses and telephone numbers of the general and limited partners, and the address and telephone number of the partnership's principal office.
 - d. When used in reference to a corporation, it shall mean to state its full corporate name, its state of incorporation, and the address and telephone number of its principal place of business.
 - e. When used in reference to an unincorporated association or any other business entity, it shall mean to state the full name of the entity and the address and telephone number of its principal place of business.
 - f. When used in reference to communication, it shall mean to state the date on which the communication was made, the time and place when and where the communication occurred, a summary of the contents of the communication, the identity of each person to whom the communication was made, the identity of each person by whom such communication was made, and the identity of each person who was present when such communication occurred.
 - g. When used in reference to an act, action, incident, event, or accident, it shall mean to state the date and place of its occurrence, the nature and circumstances of its occurrence, and the identity of all persons involved with its occurrence, including the nature of their involvement with the occurrence.
8. "Describe," when used with respect to a communication, a meeting, an act or conduct, means to give, state, or identify the following:
- a. The date of the communication, meeting, act or conduct, where it took place, the identity of each participant and the identity of each person who was present;
 - b. If a communication or meeting, the identity of the person making the particular statement so listed, the mode of communication (for example, in writing, telephone, or in person), and the location of each of the participants; or
 - c. If an act or conduct, the details of the act or conduct being described and what each person participating in such act or conduct did.

9. Where the context makes it appropriate, each singular word shall include its plural and each plural shall include its singular. “Any” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: “each,” “every,” “all,” and “any.” The terms “and,” “or” and “and/or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading. The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The masculine shall be construed in the generic sense. “Including” shall be construed broadly, as “including but not limited to” or “including without limitation.”
10. “Applicant” and “Acelero” refers to applicant Acelero Learning Data and Technical Assistance, Inc., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
11. “You,” “your”, “Opposer” and “Syplicity” refers to Syplicity Corp., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners,

representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.

12. “INSIGHT” refers to the word mark that is pending before the United States Patent and Trademark Office (“USPTO”) as U.S. application no. 86/533,567.
13. “INSIGHT products or services” refers to any goods or services identified in whole or in-part by INSIGHT and marketed, offered for sale, and/or sold in commerce.
14. “SHINE INSIGHT” refers to the word mark that is pending before the USPTO as U.S. application no. 86/257,568.
15. “Opposition” refers to USPTO opposition no. 91223510.
16. “Notice” and “Notice of Opposition” refer to the notice of opposition filed herein on August 26, 2015, as the same may have been and may be amended from time to time.
17. “Answer” refers to the answer filed by Acelero in the Opposition on December 30, 2015.
18. “CONNECT INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,676,307.
19. “YOUTH INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,134,520.
20. “Use in commerce” has the meaning given to it in 15 U.S.C. 1127.
21. “Trademark” has the meaning given to it in 15 U.S.C. 1127.

INSTRUCTIONS

1. These requests shall be deemed to include any and all relevant information within your possession, custody or control, including information within the possession, custody or control of and any and all of your past and present agents, representatives, employees, servants, attorneys, and accountants.
2. Pursuant to TBMP 408.03 and FED. R. CIV. P. 26(e), these requests are continuing in nature, and to the extent that at any time after the production of documents and things called for by these requests you learn of and/or acquire additional information responsive to these requests, you must provide such information in a timely manner.
3. If you find the meaning of any term in these requests to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and answer the requests on the basis of that assumed meaning. Acelero reserves the right to contest such assumed meaning.
4. If, in answering these requests, you object to any part of an request, each part of said request shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be answered. If an objection is made on the basis that the request or subpart thereof calls for information that is beyond the scope of discovery, the request or subpart thereof shall be answered to the extent that it is not objectionable.
5. If the response to any request is that you lack knowledge of the requested information, describe all efforts that you have made to obtain the information necessary to respond.

6. With respect to any information responsive to these requests you withhold or refuse to divulge on a claim of privilege, identify in detail the legal basis for such claim. Acelero reserves the right to contest such a claim of privilege.

DOCUMENT REQUESTS

1. All documents identified in any response to Interrogatories 1-15.
2. All documents relating to any response to Interrogatories 1-15.
3. All documents evidencing Symplicity's use in commerce of INSIGHT.
4. All documents supporting Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).
5. All documents relating to Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).
6. All documents evidencing sales of INSIGHT products or services.
7. All invoices evidencing sales of INSIGHT products or services prior to April 24, 2014.
8. All documents reflecting the identity of end-users of INSIGHT products or services.
9. All listings of persons who use INSIGHT products or services.
10. All agreements for use of INSIGHT products or services.
11. All drafts agreements containing the word INSIGHT.
12. All documents relating to third-party use in commerce of INSIGHT.
13. All documents evidencing the date of first use in commerce of INSIGHT.

14. All documents supporting Symplicity's alleged date of first use in commerce of INSIGHT.
15. All documents relating to the use in commerce of INSIGHT since December 2010.
16. All documents reflecting the use in commerce of INSIGHT on any website since 2010.
17. All documents evidencing the up-time since 2010 of any website identified in response to Interrogatory 7.
18. All documents reflecting the website traffic of any website identified in response to Interrogatory 7.
19. All documents evidencing the physical location of users since 2010 of any website identified in response to Interrogatory 7.
20. All documents regarding U.S. trademark application no. 86/533,567.
21. All documents relating to any threatened or actual disputes with any third parties regarding INSIGHT.
22. All documents relating to SHINE INSIGHT.
23. All documents relating to any trademarks owned by Acelero.
24. All documents regarding YOUTH INSIGHT.
25. All documents regarding CONNECT INSIGHT.
26. All legal opinions regarding INSIGHT.
27. All legal opinions regarding SHINE INSIGHT.
28. All legal opinions regarding YOUTH INSIGHT.
29. All legal opinions regarding CONNECT INSIGHT.

30. All documents reflecting advertisement of INSIGHT products or services by Symplicity since December 2010.
31. All documents reflecting sales of INSIGHT products or services since December 2010.
32. All documents reflecting analysis of likelihood of confusion between INSIGHT and any other trademarks.
33. All documents reflecting analysis of market penetration of INSIGHT products or services.
34. All documents reflecting analysis of market awareness of INSIGHT.
35. All documents reflecting analysis of market awareness of INSIGHT products or services.
36. All documents reflecting channels of trade for INSIGHT.
37. All documents reflecting channels of trade for INSIGHT products or services.
38. All documents reflecting analysis of common law trademark rights relating to INSIGHT.

Respectfully submitted,

Date: February 4, 2016

By: _____/Javier J. Ramos/

Robert J. Koch
Javier J. Ramos
MILBANK, TWEED, HADLEY &
McCLOY, LLP
1850 K St. NW, Suite 1100
Washington, DC 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

CERTIFICATE OF SERVICE

I, Javier Ramos, do hereby certify that on February 4, 2016, I caused to be served a true and correct copy of ACELERO'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38):

By E-Mail:

Lora A. Moffat, Esq.
Sean E. Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
20th Floor
New York, NY 10022-2544
lmoffatt@crowell.com
sjackson@crowell.com
Attorneys for Opposer

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct. Executed on February 4, 2016.

_____/Javier J. Ramos/
Javier J. Ramos

Exhibit G

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition No. 91223510

U.S. Application No. 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38)**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned counsel, hereby responds to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Requests for Production of Documents and Things (No. 1-38).

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this proceeding and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL OBJECTIONS

Unless otherwise stated, these General Objections apply to each and every definition and instruction set forth in the Document Requests, and Symplicity hereby specifically incorporates

all of these General Objections into each specific response, whether or not they are specifically referred to in the response. By setting forth specific objections, Symplicity does not intend to waive, limit, or supersede any of these General Objections. Where a partial response can be made to a request that is otherwise objectionable, such response will be made without waiving any stated objection.

1. Symplicity objects to Acelero's definitions and instructions to the extent they are inconsistent with the Federal Rules of Civil Procedure, including Rule 26, 33 and 34, and the Trademark Rules of Practice. Symplicity will rely upon the Federal Rules of Civil Procedure, the Trademark Rules of Practice and governing case law with respect to the subject definitions and instructions and responses.

2. Symplicity objects to Acelero's document requests to the extent that Acelero seeks documents or things protected by the attorney-client privilege, the attorney work-product doctrine, the common interest privilege, and/or any other applicable privilege or immunity.

3. Symplicity objects to Acelero's document requests to the extent they are not sufficiently limited or reasonably calculated to lead to discovery of admissible evidence or are overly broad, unduly burdensome, and/or premature.

4. Symplicity objects to Acelero's document requests to the extent they seek production of "all documents," "each document" and the like, relating to the subject matter of a particular request as unduly broad and burdensome. In accordance with the Federal Rules of Civil Procedure, Symplicity will make a diligent, good faith search of files identified as most likely to contain documents responsive to Acelero's requests and will produce representative

relevant, non-privileged documents responsive to the requests that are located in connection with such a search that are sufficient to respond to the requests at issue.

5. Symplicity objects to Acelero's document requests to the extent they seek documents that are not in the possession, custody and/or control of Symplicity.

6. Symplicity objects to Acelero's document requests to the extent that Acelero seeks documents or things that are covered by a protective order or court order in another proceeding and/or is designated confidential by a third party.

7. Symplicity objects to Acelero's document requests to the extent they are repetitive, overlapping, or duplicative.

8. Symplicity objects to Acelero's document requests to the extent they seek private, confidential, secret, proprietary and/or commercially-sensitive information of any third-party to whom Symplicity owes a duty of confidentiality.

9. Symplicity objects to Acelero's document requests to the extent they request documents and/or information already in Acelero's possession or which are equally available to the parties from other sources.

10. Symplicity objects to Acelero's document requests to the extent they are directed to activities outside of the United States or foreign commerce with the United States as being beyond the scope of the instant Proceeding.

11. Where a document request includes words and concepts indicative of a legal conclusion by stating that it will produce documents in its possession or identify documents, Symplicity does not represent that such legal conclusions apply.

12. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

13. Discovery in this matter is ongoing. Symplicity's responses to the following document requests, therefore, are necessarily the subject of further and on-going investigation, and are based on the information presently known to Symplicity after a reasonable effort to locate information and documents called for by these document requests. Accordingly, Symplicity's responses are without prejudice to its right to amend or supplement its responses as its investigation and discovery in this matter proceeds. Moreover, Symplicity's objections as set forth herein are made without prejudice to its right to assert any additional or supplemental objections should Symplicity discover additional grounds for such objections.

These General Objections apply to each of Symplicity's responses. To the extent that specific General Objections are cited in a specific response, those specific citations are provided because they are believed to be partially applicable to the specific requests and are not to be construed as a waiver of any other General Objections applicable to information falling within the scope of the request.

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to these document requests as additional information is made available during discovery in this proceeding.

RESPONSES TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

All documents identified in any response to Interrogatories 1-15.

RESPONSE TO REQUEST NO. 1

Subject to and without waiving the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 2:

All documents relating to any response to Interrogatories 1-15.

RESPONSE TO REQUEST NO. 2:

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents relating to any response” Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 3:

All documents evidencing Symplicity’s use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 3:

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 4:

All documents supporting Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).

RESPONSE TO REQUEST NO. 4

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 5:

All documents relating to Symplicity's claims that it has used INSIGHT in commerce (*see, e.g.*, Notice at ¶ 4).

RESPONSE TO REQUEST NO. 5

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 6:

All documents evidencing sales of INSIGHT products or services.

RESPONSE TO REQUEST NO. 6

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 7:

All invoices evidencing sales of INSIGHT products or services prior to April 24, 2014.

RESPONSE TO REQUEST NO. 7

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll invoices....” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 8:

All documents reflecting the identity of end-users of INSIGHT products or services.

RESPONSE TO REQUEST NO. 8

Symplicity objects to this request on the grounds that the phrase “identity of end-users” is vague and ambiguous. Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 9:

All listings of persons who use INSIGHT products or services.

RESPONSE TO REQUEST NO. 9

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll listings of persons” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 10:

All agreements for use of INSIGHT products or services.

RESPONSE TO REQUEST NO. 10

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll agreements” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 11:

All drafts agreements containing the word INSIGHT.

RESPONSE TO REQUEST NO. 11

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the

extent it seeks “[a]ll drafts agreements” Symplicity also objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements. Symplicity further objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 12:

All documents relating to third-party use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 12

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements. Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 13:

All documents evidencing the date of first use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 13

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 14:

All documents supporting Symplicity's alleged date of first use in commerce of INSIGHT.

RESPONSE TO REQUEST NO. 14

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 15:

All documents relating to the use in commerce of INSIGHT since December 2010.

RESPONSE TO REQUEST NO. 15

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 16:

All documents reflecting the use in commerce of INSIGHT on any website since 2010.

RESPONSE TO REQUEST NO. 16

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks "[a]ll documents reflecting the use ... on any website since 2010."

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 17:

All documents evidencing the up-time since 2010 of any website identified in response to Interrogatory 7.

RESPONSE TO REQUEST NO. 17

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents evidencing the up-time since 2010 of any website” Symplicity also objects to this request because the term “up-time” is vague and ambiguous.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 18:

All documents reflecting the website traffic of any website identified in response to Interrogatory 7.

RESPONSE TO REQUEST NO. 18

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents reflecting the website traffic of any website”

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 19:

All documents evidencing the physical location of users since 2010 of any website identified in response to Interrogatory 7.

RESPONSE TO REQUEST NO. 19

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents evidencing the physical location of users since 2010 of any website”

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 20:

All documents regarding U.S. trademark application no. 86/533,567.

RESPONSE TO REQUEST NO. 20

Symplicity objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 21:

All documents relating to any threatened or actual disputes with any third parties regarding INSIGHT.

RESPONSE TO REQUEST NO. 21

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements. Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 22:

All documents relating to SHINE INSIGHT.

RESPONSE TO REQUEST NO. 22

Symplicity objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 23:

All documents relating to any trademarks owned by Acelero.

RESPONSE TO REQUEST NO. 23

Symplicity objects to this request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant information to the extent it seeks “[a]ll documents relating to any trademarks owned by Acelero.” Symplicity also objects to this request to the extent it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 24:

All documents regarding YOUTH INSIGHT.

RESPONSE TO REQUEST NO. 24

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 25:

All documents regarding CONNECT INSIGHT.

RESPONSE TO REQUEST NO. 25

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 26:

All legal opinions regarding INSIGHT.

RESPONSE TO REQUEST NO. 26

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 27:

All legal opinions regarding SHINE INSIGHT.

RESPONSE TO REQUEST NO. 27

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 28:

All legal opinions regarding YOUTH INSIGHT.

RESPONSE TO REQUEST NO. 28

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 29:

All legal opinions regarding CONNECT INSIGHT.

RESPONSE TO REQUEST NO. 29

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 30:

All documents reflecting advertisement of INSIGHT products or services by Symplicity since December 2010.

RESPONSE TO REQUEST NO. 30

Subject to and without waiver of the foregoing General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 31:

All documents reflecting sales of INSIGHT products or services since December 2010.

RESPONSE TO REQUEST NO. 31

Symplicity objects to this request to the extent it seeks documents subject to any confidentiality and/or non-disclosure agreements.

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 32:

All documents reflecting analysis of likelihood of confusion between INSIGHT and any other trademarks.

RESPONSE TO REQUEST NO. 32

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

DOCUMENT REQUEST NO. 33:

All documents reflecting analysis of market penetration of INSIGHT products or services.

RESPONSE TO REQUEST NO. 33

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 34:

All documents reflecting analysis of market awareness of INSIGHT.

RESPONSE TO REQUEST NO. 34

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 35:

All documents reflecting analysis of market awareness of INSIGHT products or services.

RESPONSE TO REQUEST NO. 35

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 36:

All documents reflecting channels of trade for INSIGHT.

RESPONSE TO REQUEST NO. 36

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 37:

All documents reflecting channels of trade for INSIGHT products or services.

RESPONSE TO REQUEST NO. 37

Subject to and without waiver of the foregoing Specific and General Objections, relevant, non-privileged documents responsive to this request within the possession, custody, or control of Symplicity that can be determined to exist based upon a reasonable search will be produced.

DOCUMENT REQUEST NO. 38:

All documents reflecting analysis of common law trademark rights relating to INSIGHT.

RESPONSE TO REQUEST NO. 38

Symplicity objects to this request because it seeks documents that are protected from discovery by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Dated: New York, New York
March 28, 2016

Respectfully submitted,

CROWELL & MORING LLP

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*Attorneys for Opposer
Symplicity Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS (NO. 1-38)** was caused to be served on counsel for Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
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/Sean E. Jackson/
Sean E. Jackson

Exhibit H

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

In the Matter of:
Application Serial No. 86/257,568
For the Mark: SHINE INSIGHT
Published in the *Official Gazette (Trademarks)* on April 28, 2015
Opposition filed on August 26, 2015

SYMPPLICITY CORP.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91223510
)	
ACELERO LEARNING DATA AND)	
TECHNICAL ASSISTANCE, INC.,)	
)	
Applicant.)	

ACELERO’S FIRST SET OF REQUESTS FOR ADMISSION (NO. 1-46)

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120, applicant Acelero Learning Data and Technical Assistance, Inc. (“Acelero”) hereby requests that opposer Symplicity Corp. (“Symplicity”) answer the following requests for admission fully and under oath and serve the responses on undersigned counsel for Acelero within thirty (30) days of the service hereof, or at such other time and place as counsel for the parties may agree in writing.

DEFINITIONS

For the purposes of these requests, the following definitions apply:

1. Unless otherwise specified, all terms shall be interpreted as they are used in the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) and the

Federal Rules of Civil Procedure. The requests and terms used herein shall be construed to require the fullest and most complete disclosure permitted by law.

2. The term “person” means any natural person or legal entity, including individuals, corporations, businesses, firms, joint ventures, partnerships, limited liability companies, sole proprietorships, governments, agencies or instrumentalities of governments, unincorporated associations, and cooperatives.
3. The term “day” and “date” mean the exact day, month and year if ascertainable or, if not, the best available approximation (including relationship to other events).
4. The terms “relate to,” “relating to,” and “regarding” include, without limitation, constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to, including items which contradict or are inconsistent with the answer provided.
5. Where the context makes it appropriate, each singular word shall include its plural and each plural shall include its singular. “Any” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: “each,” “every,” “all,” and “any.” The terms “and,” “or” and “and/or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading. The present tense shall be construed to include the past tense, and the

past tense shall be construed to include the present tense. The masculine shall be construed in the generic sense. “Including” shall be construed broadly, as “including but not limited to” or “including without limitation.”

6. “Applicant” and “Acelero” refers to applicant Acelero Learning Data and Technical Assistance, Inc., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
7. “You,” “your”, “Opposer” and “Syplicity” refers to Syplicity Corp., together with its predecessors, successors, parents, subsidiaries, affiliates, related companies, and any person or entity acting for or on their respective behalf, including without limitation their past, present, and future principals, partners, representatives, directors, officers, agents, shareholders, members, managers, employees, and attorneys.
8. “INSIGHT” refers to the word mark that is pending before the United States Patent and Trademark Office (“USPTO”) as U.S. application no. 86/533,567.
9. “SHINE INSIGHT” refers to the word mark that is pending before the USPTO as U.S. application no. 86/257,568.
10. “Opposition” refers to USPTO opposition no. 91223510.
11. “Notice” and “Notice of Opposition” refer to the notice of opposition filed herein on August 26, 2015, as the same may have been and may be amended from time to time.

12. “Answer” refers to the answer filed by Acelero in the Opposition on December 30, 2015.
13. “CONNECT INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,676,307.
14. “YOUTH INSIGHT” refers to the word mark registered as U.S. trademark registration no. 4,134,520.
15. “Use in commerce” has the meaning given to it in 15 U.S.C. 1127.
16. “Trademark” has the meaning given to it in 15 U.S.C. 1127.

INSTRUCTIONS

1. These requests shall be deemed to include any and all relevant information within your possession, custody or control, including information within the possession, custody or control of and any and all of your past and present agents, representatives, employees, servants, attorneys, and accountants.
2. If you find the meaning of any term in these requests for admission to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and answer the requests on the basis of that assumed meaning. Acelero reserves the right to contest such assumed meaning.
3. If, in answering these requests for admission, you object to any part of a request, each part of said request shall be treated separately. If an objection is made to one subpart, the remaining subpart(s) shall be answered.

4. If the response to any request for admission is that you lack knowledge to answer the request, describe all efforts that you have made to obtain the information necessary to respond.
5. With respect to any information responsive to these requests for admission you withhold or refuse to divulge on a claim of privilege, identify in detail the legal basis for such claim. Acelero reserves the right to contest such a claim of privilege.

REQUESTS FOR ADMISSION

1. Admit that Symplicity did not use INSIGHT in commerce before December 2010.
2. Admit that Symplicity used INSIGHT in commerce after December 2010.
3. Admit that Symplicity did not use INSIGHT in commerce before April 24, 2014.
4. Admit that Symplicity did not continually use INSIGHT in commerce between December 2010 and April 24, 2014.
5. Admit that Symplicity ceased using INSIGHT in commerce for any period of time between December 2010 and April 24, 2014.
6. Admit that INSIGHT is not used in commerce for early education and child development curriculum and assessment computer software for administrators.
7. Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.
8. Admit that INSIGHT is used in commerce for early education and child development curriculum and assessment computer software for administrators.
9. Admit that INSIGHT has been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.
10. Admit that INSIGHT is not used in commerce for student information archiving and analysis computer software for administrators.
11. Admit that INSIGHT has not been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.
12. Admit that INSIGHT is used in commerce for student information archiving and analysis computer software for administrators.

13. Admit that INSIGHT has been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.
14. Admit that INSIGHT is not used in commerce for early education and child development program compliance monitoring computer software for administrators.
15. Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.
16. Admit that INSIGHT is used in commerce for early education and child development program compliance monitoring computer software for administrators.
17. Admit that INSIGHT has been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.
18. Admit that INSIGHT is not used in commerce for software as a service (“SAAS”) services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
19. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
20. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
21. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.
22. Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
23. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
24. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management,

- namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
25. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
 26. Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
 27. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
 28. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
 29. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.
 30. Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.
 31. Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.
 32. Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely,

student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

33. Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.
34. Admit that Symplicity has received a legal opinion regarding common law trademark rights relating to INSIGHT.
35. Admit that Symplicity has not received a legal opinion regarding common law trademark rights relating to INSIGHT.
36. Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.
37. Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.
38. Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.
39. Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.
40. Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.
41. Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.
42. Admit that Symplicity possessed knowledge of SHINE INSIGHT prior to filing U.S. trademark application no. 86/533,567.
43. Admit that Symplicity possessed knowledge of CONNECT INSIGHT prior to filing U.S. trademark application no. 86/533,567.
44. Admit that Symplicity possessed knowledge of YOUTH INSIGHT prior to filing U.S. trademark application no. 86/533,567.
45. Admit that Symplicity has performed analysis of market penetration of INSIGHT.
46. Admit that Symplicity has performed analysis of market recognition of INSIGHT.

Exhibit I

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

SYMPPLICITY CORPORATION,

Opposer,

v.

ACELERO LEARNING DATA AND
TECHNICAL ASSISTANCE, INC.,

Applicant.

Opposition. No. 91223510

U.S. Application. No.: 86/257,568

Mark: SHINE INSIGHT

**SYMPPLICITY'S RESPONSES TO ACELERO'S
FIRST SET OF REQUESTS FOR ADMISSION (NO. 1-46)**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office ("USPTO"), Opposer Symplicity Corporation ("Symplicity"), by and through its undersigned counsel, hereby responds to Applicant Acelero Learning Data and Technical Assistance, Inc.'s ("Acelero") First Set of Requests for Admission (No. 1-46) ("Requests").

The following responses are based upon information presently available to Symplicity and its attorneys. Symplicity has not completed its investigation of the facts relating to this proceeding and has not completed discovery in this proceeding. The responses given herein are without prejudice to Symplicity's reserved right to supplement or to revise these responses if further investigation or discovery so requires.

GENERAL RESERVATIONS AND OBJECTIONS

Symplicity expressly reserves the right to modify, supplement, and/or amend its responses to these Requests as additional information may become available during discovery in this proceeding.

The following objections apply to each of the Requests. To the extent any specific objection is also made to a particular request, Symplicity does not waive or otherwise limit any general objection.

1. Symplicity objects to Acelero's definition of "You," "your," "Opposer," and "Symplicity" to the extent that the terms may include entities that are not parties to this Opposition or that Symplicity does not control.

2. Symplicity objects to the Requests to the extent that Acelero purports to impose requirements which exceed or conflict with those set forth in the Federal Rules of Civil Procedure or the Rules of Practice in Trademark Cases (37 C.F.R. Part 2).

3. Symplicity objects to each Request to the extent it requires Symplicity to make a legal conclusion, as opposed to seeking an admission "concerning facts, the application of law to fact, or opinions about either," and therefore is outside the scope of Federal Rule of Civil Procedure 36.

GENERAL DENIAL

Symplicity has attempted, in good faith, to respond to all existing Requests for Admission submitted by Acelero. Symplicity is not aware of any Request to which it has not responded.

To the extent that Symplicity may have inadvertently failed to respond to one or more such Requests for Admission in this proceeding, those Requests should be considered to be "Denied."

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Admit that Symplicity did not use INSIGHT in commerce before December 2010.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 2:

Admit that Symplicity used INSIGHT in commerce after December 2010.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 3:

Admit that Symplicity did not use INSIGHT in commerce before April 24, 2014.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 4:

Admit that Symplicity did not continually use INSIGHT in commerce between December 2010 and April 24, 2014.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 5:

Admit that Symplicity ceased using INSIGHT in commerce for any period of time between December 2010 and April 24, 2014.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 6:

Admit that INSIGHT is not used in commerce for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, admitted.

REQUEST FOR ADMISSION NO. 7:

Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, admitted.

REQUEST FOR ADMISSION NO. 8:

Admit that INSIGHT is used in commerce for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, denied.

REQUEST FOR ADMISSION NO. 9:

Admit that INSIGHT has been used in commerce since December 2010 for early education and child development curriculum and assessment computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development curriculum and assessment”. Interpreting the Request as referring to pre-kindergarten curriculum and assessment, denied.

REQUEST FOR ADMISSION NO. 10:

Admit that INSIGHT is not used in commerce for student information archiving and analysis computer software for administrators.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 11:

Admit that INSIGHT has not been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 12:

Admit that INSIGHT is used in commerce for student information archiving and analysis computer software for administrators.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 13:

Admit that INSIGHT has been used in commerce since December 2010 for student information archiving and analysis computer software for administrators.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 14:

Admit that INSIGHT is not used in commerce for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symlicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, admitted.

REQUEST FOR ADMISSION NO. 15:

Admit that INSIGHT has not been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symlicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, admitted.

REQUEST FOR ADMISSION NO. 16:

Admit that INSIGHT is used in commerce for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symlicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, denied.

REQUEST FOR ADMISSION NO. 17:

Admit that INSIGHT has been used in commerce since December 2010 for early education and child development program compliance monitoring computer software for administrators.

RESPONSE:

Symplicity objects to the Request as vague and ambiguous because it is unclear what is meant by “early education and child development program compliance monitoring”. Interpreting the Request as referring to pre-kindergarten program compliance monitoring, denied.

REQUEST FOR ADMISSION NO. 18:

Admit that INSIGHT is not used in commerce for software as a service (“SAAS”) services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 19:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 20:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 21:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for identifying and tracking at-risk students, case management, and creating a directory of tutors, counselors, assigned advisors, mentors, and campus offices.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 22:

Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 23:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 24:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 25:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for academic advising center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 26:

Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 27:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 28:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 29:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for athletic advising office management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, tracking and monitoring at-risk students, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 30:

Admit that INSIGHT is not used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 31:

Admit that INSIGHT has not been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 32:

Admit that INSIGHT is used in commerce for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 33:

Admit that INSIGHT has been used in commerce since December 2010 for SAAS services featuring software for use by educational institutions, colleges, and universities for counseling center management, namely, student relationship management, appointment scheduling, creating and maintaining a database of student information, creating a network of tutors, creating and maintaining a database of peer mentors, and centralized document management.

RESPONSE:

Admitted.

REQUEST FOR ADMISSION NO. 34:

Admit that Symplicity has received a legal opinion regarding common law trademark rights relating to INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 35:

Admit that Symplicity has not received a legal opinion regarding common law trademark rights relating to INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 36:

Admit that Symplicity has received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 37:

Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and SHINE INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 38:

Admit that Symlicity has received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 39:

Admit that Symlicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and YOUTH INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 40:

Admit that Symlicity has received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.

RESPONSE:

Symlicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 41:

Admit that Symplicity has not received a legal opinion regarding likelihood of confusion between INSIGHT and CONNECT INSIGHT.

RESPONSE:

Symplicity objects to this Request to the extent Acelero seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege or immunity. Subject to the foregoing objections, denied.

REQUEST FOR ADMISSION NO. 42:

Admit that Symplicity possessed knowledge of SHINE INSIGHT prior to filing U.S. trademark application no. 86/533,567.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 43:

Admit that Symplicity possessed knowledge of CONNECT INSIGHT prior to filing U.S. trademark application no. 86/533,567.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 44:

Admit that Symplicity possessed knowledge of YOUTH INSIGHT prior to filing U.S. trademark application no. 86/533,567.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 45:

Admit that Symplicity has performed analysis of market penetration of INSIGHT.

RESPONSE:

Denied.

REQUEST FOR ADMISSION NO. 46:

Admit that Symplicity has performed analysis of market recognition of INSIGHT.

RESPONSE:

Denied.

Dated: New York, New York
March 28, 2016

Respectfully submitted,

CROWELL & MORING LLP

By: /Sean E. Jackson/
Lora A. Moffatt
Sean E. Jackson
Preetha Chakrabarti
590 Madison Avenue
New York, NY 10022
(212) 223-4000
lmoffat@crowell.com
sjackson@crowell.com
pchakrabarti@crowell.com

*Attorneys for Opposer
Symplicity Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March 2016, a true and correct copy of the foregoing **SYMPPLICITY'S RESPONSES TO ACELERO'S FIRST SET OF REQUESTS FOR ADMISSION (NO. 1-46)** was caused to be served on counsel for the Applicant by electronic mail to:

Robert J. Koch, Esq.
Javier J. Ramos, Esq.
MILBANK, TWEED, HADLEY & McCLOY, LLP
1850 K Street N.W., Suite 1100
Washington, D.C. 20006
(202) 835-7500
rkoch@milbank.com
jramos@milbank.com

/Sean E. Jackson/
Sean E. Jackson

Exhibit J

MILBANK, TWEED, HADLEY & MCCLOY LLP

1850 K STREET, NW, SUITE 1100

WASHINGTON, DC 20006

202-835-7500

FAX: 202-835-7586

Javier J. Ramos

DIRECT DIAL NUMBER

202-835-7507

E-MAIL: JRamos@milbank.com

April 14, 2016

BEIJING

8610-5969-2700

FAX: 8610-5969-2707

HONG KONG

852-2971-4888

FAX: 852-2840-0792

SEOUL

822-6137-2600

FAX: 822-6137-2626

SINGAPORE

65-6428-2400

FAX: 65-6428-2500

TOKYO

813-5410-2801

FAX: 813-5410-2891

SÃO PAULO

55-11-3927-7700

FAX: 55-11-3927-7777

NEW YORK

212-530-5000

FAX: 212-530-5219

LOS ANGELES

213-892-4000

FAX: 213-629-5063

LONDON

44-20-7615-3000

FAX: 44-20-7615-3100

FRANKFURT

49-69-71914-3400

FAX: 49-69-71914-3500

MUNICH

49-89-25559-3600

FAX: 49-89-25559-3700

BY E-MAIL

Sean Jackson, Esq.
Crowell & Moring LLP
590 Madison Avenue
20th Floor
New York, NY 10022-2544

Re: USPTO Opposition No. 91223510 – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.

Dear Sean,

We write to address deficiencies in Symplicity's first set of responses to Acelero's First Set of Requests for Production of Documents and Things (No. 1-38) ("Document Requests"), First Set of Interrogatories (No. 1-16) ("Interrogatories"), and First Set of Requests for Admission (No 1-46) ("Requests for Admission"). Symplicity has failed to fulfill its obligations, pursuant to 37 C.F.R. 2.120 and Fed. R. Civ. P. 26(g)(1) and 36, to fully respond in good faith to Acelero's discovery requests. *See, e.g., Panda Travel Inc. v Resort Option Enterps., Inc.*, 94 USPQ2d 1789, 1791 (TTAB 2009) ("Each party has a duty to make a good faith effort to satisfy the reasonable and appropriate discovery needs of its adversary.")

Document Requests

To date, Symplicity has produced no documents in response to the Document Requests. Please let us know when we can expect production of documents. Also, please inform as to when you

Sean E. Jackson, Esq.
April 14, 2016
Page 2

expect to produce a privilege log regarding any documents being withheld for attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity.

Regarding Document Request nos. 7-12, 21, and 31, Symplicity objects to producing documents “subject to any confidentiality and/or non-disclosure agreements.” This is not a valid ground for withholding documents from production as such documents can be produced pursuant to a Protective Order and/or third parties to any such confidentiality or non-disclosure agreements can consent to production of such documents, or portions thereof. *See, e.g.*, TBMP § 412 et seq. Please let us know if you have begun or will request such permissions from third parties to produce any relevant documents subject to confidentiality obligations.

Regarding Document Request nos. 16-18, Symplicity is obligated to produce documents evidencing the actual use of INSIGHT and the geographic scope thereof. As Symplicity’s responses to Interrogatory nos. 1, 2, 5, and 7 seem to suggest, use of INSIGHT has primarily been through Symplicity’s website (<https://www.symplicity.com/products/insight.html>). Thus, such information concerning Symplicity’s use of INSIGHT via its website is discoverable. *See, e.g., Double J of Broward Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1613 (TTAB 1991) (use or intended use of applicant’s mark in commerce with U.S. is relevant).

Regarding Document Request nos. 26-29, you refused to produce any legal opinions regarding INSIGHT, SHINE INSIGHT, CONNECT INSIGHT, or YOUTH INSIGHT. Please confirm that you will not be producing any documents subject to these requests.

Regarding Document Request nos. 32 and 38, you refused to produce any documents reflecting analysis of likelihood of confusion and common law trademark rights relating to INSIGHT. Please confirm that you will not be producing any documents subject to these requests.

Interrogatories:

Symplicity served its original response to the Interrogatories on March 28, 2016 without a certification statement, in violation of Fed. R. Civ. P. 33(b)(5). Thus, Symplicity failed to serve its response within 30 days of the date of service of the Interrogatories. Fed. R. Civ. P. 33(b)(2); 37 CFR § 2.120(a)(3). Symplicity attempted to remedy this deficiency by serving an amended response on March 31, 2016 including the proper statement. This is not enough. Unless Symplicity can prove that its failure to properly respond to the Interrogatories by March 28, 2016 was caused by excusable neglect, it has forfeited its right to object to the interrogatories on their merits. *See, e.g.*, TBMP § 405.04(a) (“Objections going to the merits of an interrogatory ... include claims that the information sought by the request is irrelevant, overly broad, unduly vague and ambiguous, burdensome and oppressive, or not likely to lead to the discovery of admissible evidence.”).

Sean E. Jackson, Esq.
April 14, 2016
Page 3

Symplicity's responses are facially deficient because they do not answer the interrogatories as posed. For example, Interrogatory no. 1 requires Symplicity to "Identify by name and date of first use in commerce, each product or service which INSIGHT is used, has been used, is intended to be used, or is associated with. Identify by control number all documents responsive to this interrogatory." Instead of providing an answer as required, Symplicity has merely cited the USPTO's TSDR database for application 86/533,567 and the website <https://www.symplicity.com/products/insight.html>. No listing of products or services was provided, and no documents relating to this answer were identified.

To be sure, such information concerning a party's first use of its involved mark is discoverable. *See, e.g., Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 195-96 (TTAB 1976) (dates petitioner's plants first began production of goods bearing mark are pertinent to claim of priority); *Miller & Fink Corp. v. Servicemaster Hospital Corp.*, 184 USPQ 495, 496 (TTAB 1975) (must provide name, address and affiliation of persons to whom service was first rendered); *see also Double J of Broward Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1613 (TTAB 1991) (use or intended use of applicant's mark in commerce with U.S. is relevant).

Symplicity is similarly deficient in its responses to Interrogatory nos. 2-5 and 7. Specifically regarding the response to Interrogatory no. 7, it is improper under Fed. R. Civ. P. 33(d) to attempt to make a party "derive" a response to an interrogatory by citation to a website. We expect that Symplicity will remedy the aforementioned deficiencies as soon as possible.

Regarding Interrogatory nos. 4, 12, and 15, the mere fact that "Symplicity will produce representative documents sufficient to" answer the interrogatory is not a valid response, under Fed. R. Civ. P. 33(d) or otherwise. A promise to produce documents is akin to providing no response whatsoever.

Requests for Admissions:

Regarding Request for Admission nos. 6-9, Acelero challenges Symplicity's recategorization of the term "early education and child development curriculum and assessment" to "as referring to pre-kindergarten curriculum and assessment." On the one hand, in the Notice of Opposition, Symplicity claims that registration of SHINE INSIGHT, having this very phrase in the goods and services statement, would likely cause confusion with INSIGHT. But on the other hand, Symplicity now argues that it cannot determine the meaning of the same phrase for purposes of answering the request for admission. Symplicity cannot have it both ways and its response is deficient.

Regarding Request for Admission nos. 34-41, Symplicity denied all requests subject to a privilege objection. However, the identification of discovery documents (as opposed to their substance) is not privileged or confidential. *See Goodyear Tire & Rubber Co. v. Tyrco*

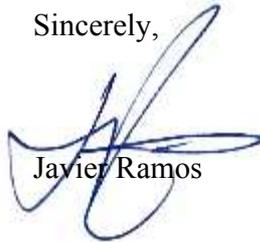
Sean E. Jackson, Esq.
April 14, 2016
Page 4

Industries, 186 USPQ 207, 208 (TTAB 1975) (fact that client received legal opinions and identity of documents related thereto, not privileged). Therefore, to the extent that Symplicity's denial is based on the alleged privileged nature of the information sought, appropriate supplementation to Symplicity's responses is warranted.

Please let us know when we can expect responses to each of the enumerated deficiencies.

We are available to discuss this letter and settlement of the opposition tomorrow and all of next week. We are still waiting on your response regarding our proposed modification to the draft settlement agreement. *See* Exh. A (e-mail correspondences between J. Ramos and S. Jackson). More than three weeks have passed now since our last substantive discussion regarding settlement terms. We are still interested in reaching settlement in this matter.

Sincerely,



Javier Ramos

JJR/SRA

Enclosures: Exhibit A

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora Moffat, Esq.
Preetha Chakrabarti, Esq.
Alison J. Field, Esq.

Exhibit A

From: [Jackson, Sean](#)
To: [Ramos, Javier](#)
Cc: [Koch, Robert](#); [Moffatt, Lora](#); [Chakrabarti, Preetha](#); [Field, Alison J.](#)
Subject: Re: Opposition No. 91223510 - SHINE INSIGHT
Date: Thursday, March 31, 2016 1:40:00 PM

Javier,

I have not yet received instruction, but am working to do so. I'll contact you as soon as I know more.

Regards,
Sean

Sent from my iPhone

On Mar 31, 2016, at 1:29 PM, Ramos, Javier <JRamos@milbank.com<<mailto:JRamos@milbank.com>>> wrote:

Sean,
This e-mail follows up my call of a few minutes ago. Have you received instruction from your client regarding our proposed modification to the settlement agreement? If not, do you plan on doing so in the near future?

Regards,
Javier

Javier J. Ramos | Milbank
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jramos@milbank.com<<mailto:jramos@milbank.com>> | www.milbank.com<<http://www.milbank.com/>>

From: Ramos, Javier
Sent: Wednesday, March 30, 2016 11:48 AM
To: 'Jackson, Sean'
Cc: Koch, Robert; Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Sean,

When are you available to continue our settlement discussions this week. We are generally available anytime.

Regards,
Javier

Javier J. Ramos | Milbank
Admitted in Virginia and Washington, D.C. only
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jramos@milbank.com<<mailto:jramos@milbank.com>> | www.milbank.com<<http://www.milbank.com/>>

From: Jackson, Sean [<mailto:SJackson@crowell.com>]
Sent: Monday, March 28, 2016 6:06 PM
To: Ramos, Javier
Cc: Koch, Robert; Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: Opposition No. 91223510 - SHINE INSIGHT

Javier,

Attached please find Symplicity's responses to Acelero's first set of discovery requests. As I mentioned in my email of last week, I hope to continue settlement discussions this week.

Regards,
Sean

Sean E. Jackson
sjackson@crowell.com<<mailto:sjackson@crowell.com>>
Direct 1.212.803.4038 | Fax: 1.212.223.4134

Crowell & Moring LLP | www.crowell.com<<http://www.crowell.com/>>
590 Madison Avenue
New York, NY 10022

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Exhibit K



Sean Jackson
(212) 803-4038
SJackson@crowell.com

May 19, 2016

VIA E-MAIL

Javier J. Ramos, Esq.
Milbank, Tweed, Hadley & McCloy, LLP
1850 K Street NW, Suite 1100
Washington, DC 20006
(202) 835-7500

Re: *Opposition No. 91223510 – SHINE INSIGHT – Symplicity Corp. v. Acelero Learning Data & Technical Assistance, Inc.*

Dear Javier:

This letter responds to your letter of April 14, 2016. We disagree that Symplicity has failed to fulfill its obligations and respond in good faith to Acelero's discovery requests. Symplicity's investigation in connection with this matter is on-going and Symplicity will supplement its discovery responses as appropriate.

As you know, Symplicity produced responsive documents to Acelero on May 2 and May 6, 2016. As Symplicity's investigation continues, additional responsive, non-privileged documents will be produced to the extent they exist and are located after a reasonable search. To the extent responsive privileged documents exist and are located after a reasonable search, a privilege log will be produced identifying any such documents.

With regard to Acelero's Document Request Nos. 7-12, 21, and 31, Symplicity is not withholding documents. Non-privileged documents responsive to a number of these requests have been produced. *See, e.g.*, SYMP000212-SYMP000213; SYMP000218-SYMP000221.

Regarding Acelero's Document Request Nos. 16-18, responsive, non-privileged documents that have been located have been produced. *See, e.g.*, SYMP000038-SYMP000059; SYMP000145-SYMP000158.

Regarding Acelero's Document Request Nos. 26-29, 32, and 38, Symplicity objects to those requests as seeking documents that are protected from discovery by the attorney-client privilege and/or work-product immunity. Symplicity does not intend to produce documents that

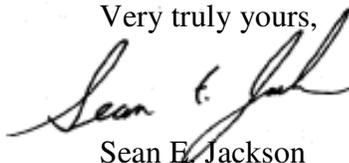
Javier J. Ramos, Esq.
May 19, 2016
Page 2

are protected from disclosure by the attorney-client privilege, work-product immunity, and/or any other applicable privilege or immunity. As indicated above, to the extent responsive privileged documents exist and are located after a reasonable search, a privilege log will be produced identifying any such documents.

With regard to Symplicity's responses to Acelero's Interrogatories, we disagree that there is any violation or any forfeiture of any objections, and note that Acelero's contention is belied by the fact that Symplicity's amended interrogatory responses, which contain identical substantive responses to those served on March 28 (except for a correction to an individual's title), were served a mere three (3) days after Symplicity's initial responses were served. In view of Symplicity's continuing investigation in connection with this matter, and the responsive information that has been provided to Acelero, Symplicity expects to be able to provide supplemented interrogatory responses during the week of May 23, 2016.

Regarding Acelero's Requests for Admission Nos. 6-9, Symplicity disagrees that it has "recategorized" any terms. In its Notice of Opposition, Symplicity simply recites the phrase used by Acelero in its own identification of goods and services. Acelero's Requests for Admission are quite different, seeking admissions regarding Symplicity's use of its INSIGHT mark, and not Acelero's purported or intended use of the SHINE INSIGHT mark. Symplicity's responses are not deficient and are consistent with Acelero's own Instruction No. 2 set forth in its First Set of Requests for Admission (No. 1-46). Concerning Acelero's Requests for Admission Nos. 34-41, Symplicity's denials are not based on an asserted privilege, but rather are based on the facts set forth in Acelero's requests and the information presently available to Symplicity based on its continuing investigation in connection with this matter.

Very truly yours,



Sean E. Jackson

cc: Robert J. Koch, Esq.
Stephanie R. Amoroso, Esq.
Lora A. Moffatt, Esq.
Preetha Chakrabarti, Esq.

Exhibit L

Ramos, Javier

From: Jackson, Sean <SJackson@crowell.com>
Sent: Thursday, March 17, 2016 8:39 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Follow Up Flag: Follow up
Flag Status: Completed

Thank you, Javier.

From: Ramos, Javier [mailto:JRamos@milbank.com]
Sent: Thursday, March 17, 2016 3:35 PM
To: Jackson, Sean
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Sean,
As discussed during our call a few minutes ago, my client agrees to grant a 7-day extension (to March 28, 2016) for Symplicity to serve its discovery responses. In the meantime, we look forward to receiving your response regarding [REDACTED]

Best regards,
Javier

Javier J. Ramos | Milbank

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T: +1 202.835.7507 | F: +1 202.263.7507
jramos@milbank.com | www.milbank.com

From: Jackson, Sean [mailto:SJackson@crowell.com]
Sent: Thursday, March 17, 2016 5:05 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Thanks, Javier. I'll call you today around 3:15 pm my time.

Regards,
Sean

From: Ramos, Javier [mailto:JRamos@milbank.com]
Sent: Thursday, March 17, 2016 12:03 PM
To: Jackson, Sean

Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: AW: Opposition No. 91223510 - SHINE INSIGHT

Dear Sean,

I can speak today or tomorrow. I am travelling, but have a window between 2 and 4 pm your time today or anytime until noon EST tomorrow. I am reachable at 202-835-7507.

Best,
Javier

Javier J. Ramos | Milbank
1850 K Street NW, Suite 1100 | Washington, DC 20006
T: +1 202.835.7507 | F: +1 202.263.7507
jramos@milbank.com | www.milbank.com

Von: Jackson, Sean
Gesendet: Donnerstag, 17. März 2016 16:57
An: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Betreff: FW: Opposition No. 91223510 - SHINE INSIGHT

[REDACTED]

[REDACTED]

[REDACTED] I'm generally available today and tomorrow.

So that the parties can focus on trying to resolve the matter, we request an additional extension of time to respond to Acelero's discovery requests. Please advise whether Acelero is amenable to agreeing to such an extension.

Thanks,
Sean

Sean E. Jackson
sjackson@crowell.com
Direct 1.212.803.4038 | Fax: 1.212.223.4134

Crowell & Moring LLP | www.crowell.com
590 Madison Avenue
New York, NY 10022

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From: Jackson, Sean
Sent: Tuesday, March 15, 2016 8:54 PM

To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT
Importance: High

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sean E. Jackson

sjackson@crowell.com

Direct 1.212.803.4038 | Fax: 1.212.223.4134

Crowell & Moring LLP | www.crowell.com

590 Madison Avenue

New York, NY 10022

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From: Ramos, Javier [<mailto:JRamos@milbank.com>]

Sent: Monday, March 07, 2016 4:44 PM

To: Jackson, Sean

Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert

Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Javier J. Ramos | **Milbank**

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1850 K Street NW, Suite 1100 | Washington, D.C. 20006

T: +1 202.835.7507 | F: +1 202.263.7507

jramos@milbank.com | www.milbank.com

From: Jackson, Sean [<mailto:SJackson@crowell.com>]
Sent: Wednesday, March 02, 2016 11:39 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Thanks, Javier.

From: Ramos, Javier [<mailto:JRamos@milbank.com>]
Sent: Wednesday, March 02, 2016 5:37 PM
To: Jackson, Sean
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: RE: Opposition No. 91223510 - SHINE INSIGHT

Dear Sean,

As noted on our call today, my client agrees to a 14-day extension of time, to March 21, 2016, for Symplicity to serve its responses to our discovery requests.

I look forward to speaking with you again on Monday at 2 pm EST. The dial-in number will be as follows.

Dial In: 1-888-385-6846
International Dial In: 719-955-2427
Participant Passcode: 55 7507
PIN: 8439

Best,
Javier

Javier J. Ramos | Milbank

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1850 K Street NW, Suite 1100 | Washington, D.C. 20006
T: +1 202.835.7507 | F: +1 202.263.7507
jramos@milbank.com | www.milbank.com

From: Jackson, Sean [<mailto:SJackson@crowell.com>]
Sent: Monday, February 29, 2016 3:01 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: FW: Opposition No. 91223510 - SHINE INSIGHT
Importance: High

Javier,

Following up on my email below, [REDACTED]

Can we agree to an extension of time in order to concentrate on trying to finalize an agreement to settle the opposition, [REDACTED]

I'm happy to discuss by phone if you'd like.

Thanks,
Sean

From: Jackson, Sean
Sent: Friday, February 26, 2016 1:09 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.; Koch, Robert
Subject: Re: Opposition No. 91223510 - SHINE INSIGHT

Javier,

[REDACTED]

[REDACTED]

Thanks,
Sean

Sent from my iPhone

On Feb 26, 2016, at 1:04 PM, Ramos, Javier <JRamos@milbank.com> wrote:

Sean,

[REDACTED]

Thanks,
Javier

Javier J. Ramos | Milbank
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T: +49 89 25559 3633 | F: +49 89 25559 3700
M: +49 173 3463765

1850 K Street NW, Suite 1100 | Washington, D.C. 20006
T: +1 202.835.7507 | F: +1 202.263.7507
jramos@milbank.com | www.milbank.com

From: Jackson, Sean [<mailto:SJackson@crowell.com>]
Sent: Thursday, February 25, 2016 7:06 PM
To: Ramos, Javier
Cc: Moffatt, Lora; Chakrabarti, Preetha; Field, Alison J.
Subject: Opposition No. 91223510 - SHINE INSIGHT
Importance: High

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] we'd appreciate your consent in extending current discovery due dates for a reasonable period of time.

I will be available tomorrow to discuss.

Regards,
Sean

Sean E. Jackson
sjackson@crowell.com
Direct 1.212.803.4038 | Fax: 1.212.223.4134

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