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Filing date: **04/11/2016**

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

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|------------------------|---|
| Proceeding | 91224423 |
| Party | Defendant Identillect Technologies, Inc. |
| Correspondence Address | ROBERT HART APOGEE LAW GROUP PC 401 N MICHIGAN AVE STE 1200-1 CHICAGO, IL 60611-4255 UNITED STATES robert@apogeelawgroup.com |
| Submission | Other Motions/Papers |
| Filer's Name | Robert Hart |
| Filer's e-mail | robert@apogeelawgroup.com |
| Signature | /Robert Hart/ |
| Date | 04/11/2016 |
| Attachments | 2016-04-11_Motion_to_Open_Time.pdf(465148 bytes) 2016-04-11_Motion_to_Amend_Goods.pdf(529945 bytes) |

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

Nant Holdings IP, LLC,

Opposer,

v.

Identillect Technologies, Inc.,

Applicant.

Marks: ID Logo

Serial Nos. 86/456,293

Opposition No. 91224423

**MOTION TO REOPEN TIME FOR FILING AN ANSWER OR IN THE ALTERNATIVE
AN EXTENSION OF TIME TO FILE AN ANSWER**

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Applicant Identillect Technologies, Inc. (“Applicant”), files this Motion to Reopen Time for Filing an Answer or in the Alternative an Extension of Time to file an Answer. The Opposer has consented to Applicant’s Motion to Reopen Time for Filing an Answer or in the Alternative an Extension of Time to file an Answer. Applicant files this Motion pursuant to §509.01(b)(1) based on excusable neglect.

In *Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), the U.S. Supreme Court clarified the meaning of “excusable neglect” in the context of F.R.C.P. and other procedural rules. In *Pioneer*, the Court held that “excusable neglect” includes situations where the late filings are due to “inadvertence, mistake, or carelessness” and not limited to those situations where the late filing is due to circumstances beyond the control of the party’s control. The Court laid out four factors to weigh when considering whether a failure

to file was the result of excusable neglect. These factors are: (1) the potential prejudice to the other party in reopening the period, (2) the length of the delay and the impact on the judicial proceedings, (3) the reason for the delay, and (4) the good faith of the movant.

In this case, the four *Pioneer* factors strongly favor granting Applicant's Motion.

Applying the first *Pioneer* factor, the Opposer consents to the Applicant's Motion so there is no prejudice. Applying the second *Pioneer* factor, the length of the delay was approximately two (2) weeks.

During February 2016, the Parties to this Opposition have entered into a Settlement Agreement to resolve this dispute. The Applicant failed to file an Answer or an Extension of Time within the specified deadline of March 27, 2016. The Applicant's reason for the delay in timely filing an Answer or Extension of Time is due to two factors. First, Apogee's trademark paralegal changed jobs on March 1, 2016, and during the transition of duties to the replacement paralegal a mistake was made causing the docketing deadline for this Opposition to be missed in the firm's trademark docketing system. Second, the Applicant's attorney developed a severe case of the flu and by the time he recovered, the deadline had been missed. On April 6, 2016, the mistake was identified and Applicant's attorney called the Opposer's counsel and obtained their consent to file this Motion.

Applicant respectfully requests the Board reopen time and reset the dates for responding so that this Opposition can be resolved pursuant to the parties' Settlement Agreement.

The Applicant has contemporaneously filed a Motion to Amend the Applicant's Goods pursuant to 37 C.F.R. §2.133(a) and TBMP 514.02 amending the Applicant's goods as agreed between the Applicant and the Opposer as set forth in the parties' Settlement Agreement.

Serial Nos. 86/456,293
Opposition No. 91224423

Respectfully submitted,



Dated: April 11, 2016

Robert P. Hart
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TTAB PROOF OF SERVICE

I, the undersigned, declare and certify as follows:

I am over the age of eighteen (18) years and employed in the County of Orange, State of California. I am employed in the office of Apogee Law Group P.C., members of the Bar of the above titled Court, and I made the service referred to below at their direction. My business address is 2020 Main Street, Suite 600, Irvine, CA 92614. On April 11, 2016, I hereby certify that a true and complete copy of:

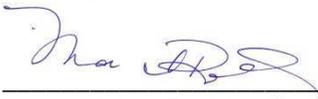
OPPOSITION NO. 91224423 – Motion To Reopen Time For Filing An Answer Or Extension Of Time To File An Answer

- VIA FACSIMILE.** – Pursuant to Rule 2.306, the parties have agreed to service by fax, and a written confirmation of that agreement has been made. I transmitted, pursuant to Rule 2.306, the above-described document by facsimile machine, to the below-listed fax number(s). The transmission originated from facsimile phone number (949) 597-2644 and was reported as complete and without error. The facsimile machine properly issued a transmission report, a copy of which is attached.
- VIA U.S. MAIL.** I am personally and readily familiar with the business practice of Apogee Law Group P.C. for collection and processing of correspondence for mailing with the United States Postal Services, and I served an envelope(s) with postage thereon fully prepared via First Class Mail, postage prepaid and placed in the United States Postal Service at Irvine, California.
- VIA PERSONAL SERVICE.** By consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.
- VIA ELECTRONIC MAIL** – I transmitted the aforementioned document(s) directly, through an agent, or through a designated electronic filing service provided to the aforementioned electronic notification address(es). The transmission originated from my electronic notification address, which is robert@apogeelawgroup.com, and was reported complete and without error, I will maintain a printed form of this document bearing my original signature and will make the document available for inspection and copying on the request of the court or any party to the action or proceeding in which it is filed.
- VIA OVERNIGHT MAIL** –I am personally and readily familiar with the business practice of Apogee Law Group P.C. for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by _____ for overnight delivery.

Addressed to:

Zack Gordon
Lewis Roca Rothgerber
3993 Howard Hughes Parkway
Suite 600
Las Vegas, NV 89169

I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct. Executed on April 11, 2016, in Orange County, California.



Mara Rodríguez

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

Nant Holdings IP, LLC,

Opposer,

v.

Identillect Technologies, Inc.,

Applicant.

Marks: ID Logo

Serial Nos. 86/456,293

Opposition No. 91224423

**MOTION TO AMEND GOODS PURSUANT TO
37 C.F.R. §2.133(A) AND TBMP 514.02**

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

Applicant Identillect Technologies, Inc. (“Applicant”), files this Motion to Amend Goods Pursuant to 37 C.F.R. §2.133(a) and TBMP 514.02. The Opposer has consented to Applicant’s Motion to Amend Goods Pursuant to TBMP 514.02 and Applicant files this Motion pursuant to the parties in this Opposition entering into a Settlement Agreement.

Specifically, the Applicant requests that the description of goods in International Class 009 be amended to:

Computer programs for the encryption and authentication of
electronic information sent and received in connection with data
communications applications

Serial Nos. 86/456,293
Opposition No. 91224423

The amended identification of goods narrows rather than broadens the scope of this Application and therefore the Applicant will not require republication. TMEP §1505.01(a).

Accordingly, the Applicant respectfully request that the Board enter this amendment.

Respectfully submitted,



Dated: April 11, 2016

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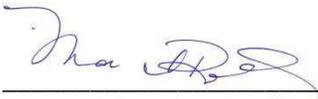
OPPOSITION NO. 91224423 – Motion to Amend Goods Pursuant 37 C.F.R. §2.133(A) and TBMP 514.02

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