TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: April 3, 2007

Registration No. 1490543

Cancellation No. 92047319

LAUTH, EDWARD J., III 73/684,172

v.

EASTERN AIR LINES, INC.

EASTERN AIR LINES, INC.
MIAMI INTERNATIONAL AIRPORT,
MIAMI, FL 33148
UNITED STATES

Thomas W. Wellington,
Interlocutory Attorney:

On April 2, 2007, the Board issued an order instituting this proceeding and, at the same time, suspending matters based on information contained in the petition to cancel (filed March 29, 2007). Specifically, the Board believed (mistakenly) that respondent was in bankruptcy. Upon further review, however, the Board finds that the information referencing a bankruptcy in the petition was merely for background purposes.

In view thereof, the Board's April 2, 2007 order is set aside to the extent that cancellation proceedings are resumed.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available on the TTAB's web page at www.uspto.gov/web/offices/dcom/ttab/.

[redacted]

05-21-2007
U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

A copy of every paper or communication filed by the registrant regarding this matter must be mailed to the person or persons named below.

ANSWER IS DUE FORTY DAYS after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday, or a holiday).

Discovery and testimony dates are set as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Discovery period to open:	**4/23/2007**
Discovery period to close:	**10/20/2007**
30-day testimony period for party in position of plaintiff to close:	**1/18/2008**
30-day testimony period for party in position of defendant to close:	**3/18/2008**
15-day rebuttal testimony period to close:	**5/2/2008**

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

NOTE: The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. *See* TBMP § 502.06(a) (2d ed. Rev. 2004).

If the parties to this proceeding are (or during the pendency of this proceeding, become) parties to another Board or civil proceeding involving related marks or other common issues of law or fact, they shall notify the Board

immediately, so that the Board can consider consolidation or suspension of proceedings, if appropriate.

New Developments at the Trademark Trial and Appeal Board

For faster handling of all papers, the TTAB strongly encourages electronic filing whenever possible. TTAB forms for electronic filings are available at http://estta.uspto.gov. Images of TTAB proceeding files can be viewed using TTABvue at http://ttabvue.uspto.gov.

* * *

Trademark Trial and Appeal Board Electronic Filing System. http://estta.uspto.gov
ESTTA Tracking number: **ESTTA132673**
Filing date: **03/29/2007**

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

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mr.EdwardJ.LauthIII		
Entity	Individual	Citizenship	UNITED STATES
Address	485 Scenery Drive State College, PA 16801 UNITED STATES		

Attorney information	David J. Kera Oblon, Spivak, McClelland, Maier, & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com, dkera@oblon.com Phone:703-413-3000

Registration Subject to Cancellation

Registration No	1490543	Registration date	05/31/1988
Registrant	EASTERN AIR LINES, INC. MIAMI INTERNATIONAL AIRPORT MIAMI, FL 33148 UNITED STATES		
Goods/Services Subject to Cancellation	Class 039. First Use: 1964/11/03 , First Use In Commerce: 1964/11/03 Goods/Services: TRANSPORTATION OF PASSENGERS BY AIR		
Grounds for Cancellation	The registered mark has been abandoned.		

Related Proceedings	Cancellation No. 92/044,619

Attachments	251971-295563US-pet.pdf (20 pages)(569113 bytes)

Signature	/David J. Kera/ojb
Name	David J. Kera
Date	03/29/2007

OBLON
SPIVAK
McCLELLAND
MAIER
&
NEUSTADT
P.C.

ATTORNEYS AT LAW
DAVID J. KERA
(703) 412-6456
DKERA@OBLON.COM

March 29, 2007

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Re: Mr. Edward J. Lauth, III
Petition for Cancellation
Matter: Mr. Edward J. Lauth III v. Eastern Air Lines, Inc.
Mark: Design of Bird in Oval
Registration No.: 1,490,543
Class(es): 039
Atty Dkt. No.: 295563US-251971-21

Dear Trademark Trial and Appeal Board:

We enclose the following for filing in the U.S. Patent and Trademark Office, before the Trademark Trial and Appeal Board:

☑ Petition for Cancellation to Registration No. 1,490,543

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 50-2014.

Please note: All electronic correspondence relating to this matter should be sent to *tmdocket@oblon.com*.

The email address of the attorney representing Respondent in Cancellation No. 92/044,619 between Edward J. Lauth, III and Eastern Air Lines, Inc. is <Seisenberg@FeldmanGale.com>.

Respectfully submitted,

OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, P.C.

David J. Kera

DJK/ojb {I:\atty\DJK\251971-295563US-cov.doc}

Attorney Docket No.: 295563US-21 **BOX TTAB FEE**

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

In the matter of:

Mark: Design of Bird in Oval

Registration No.: 1,490,543

Registrant: Eastern Air Lines, Inc.

Registration Date: May 31, 1988

Edward J. Lauth, III, Petitioner v. Eastern Air Lines, Inc., Respondent	)	Cancellation No.: Registration No.: 1,490,543 Mark: Design of Bird in Oval

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

Edward J. Lauth, III, a citizen of the United States of America, residing at 485 Scenery Drive, State College, Pennsylvania 16801, believes he is or will be damaged by the continued registration of the mark identified above and hereby petitions to cancel the registration.

As grounds for cancellation, Lauth (hereafter "Petitioner") alleges:

STANDING

1. Petitioner has filed applications to register each of the service marks:

EASTERN AIR LINES & Design	Serial No. 78/375,530
EASTERN & Design	Serial No. 78/375,547.

2. The Design of Bird in Oval of Registration No. 1,490,543 is identical to the Design of Bird in Oval that is a component of the mark of Petitioner's Application Serial No. 78/375,547 and is arguably similar to the Design of Bird in Circle that is a component of the mark of Petitioner's Application Serial No. 78/375,530.

3. There are attached as Exhibits 1, 2, and 3 copies of TARR reports on Registration No. 1,490,543 and Applications Serial No. 78/375,547 and Serial No. 78/375,530.

4. Registration No. 1,490,543, if not cancelled, could be the basis of oppositions by Eastern Air Lines, Inc. against Petitioner's Applications Serial No. 78/375,547 and Serial No. 78/375,530 and thereby hamper and delay Petitioner's efforts to register his marks.

ABANDONMENT

5. Respondent Eastern Air Lines, Inc. is the owner of record in the Patent and Trademark office of Registration No. 1,490,543, issued May 31, 1988 for Design of Bird in Oval for the services of "transportation of passengers by air."

6. Respondent has abandoned its mark identified above as a result of nonuse of the mark for a period of time well in excess of three years. Since 1991, Respondent has made no use of the mark in the bona fide course of transporting persons or passengers by air.

7. Furthermore, Respondent abandoned its mark identified above by ceasing the use of the mark with intent not to resume such use.

8. In the Declaration under §§ 8 and 15 of the Trademark Act of 1946 which Respondent filed on March 21, 1994 to maintain Registration No. 1,490,543, Respondent stated that, on March 9, 1989, Respondent filed a voluntary petition seeking relief under Chapter 11 of the United States Bankruptcy Code (Title 11 §§ 301 and 1101 et seq.).

9. In that same Declaration, Respondent further stated that, "on January 19, 1991, in connection with said bankruptcy proceeding," Respondent "ceased providing transportation of passengers by air services; that such mark is not presently in use in interstate commerce."

10. In that same Declaration, Respondent further stated that it "is presently engaged in negotiations to sell its assets, including its trademarks and service marks and the goodwill associated therewith to a third party..."

11. The Declaration under Section 15 of the Trademark Act was not accepted by the Post Registration Division of the Trademark Examining Operation.

12. No assignment of the registration sought to be cancelled is of record in the Patent and Trademark Office. Petitioner attaches as Exhibit 4 the results of a Trademark Assignment query dated March 27, 2007 for Registration No. 1,490,543.

13. The address for Eastern Air Lines, Inc., known to Petitioner, in the Patent and Trademark Office is:

Eastern Air Lines, Inc.

Miami International Airport

Miami, Florida 33148.

14. The last address known to Petitioner for Ronald T. Bevans, Jr., the liquidator of the assets of Eastern Air Lines, Inc. is:

Ronald T. Bevans, Jr., Esquire

Law Offices of Ronald T. Bevans, Jr., P.A.

1221 Brickell Avenue, Suite 1780

Miami, Florida 33131.

The facsimile address for Mr. Bevans at the above address is 305-374-9869.

The email address for Mr. Bevans is <RBevans@oasiscorp.com>.

15. The address of counsel for Respondent in Cancellation No. 92/044,619, which is pending between the Petitioner and Respondent identified in this Petition, is:

Steven E. Eisenberg, Esquire

FELDMAN GALE, PA

Miami Center

19th Floor

201 South Biscayne Boulevard

Miami, Florida 33131

The email address for Mr. Eisenberg is <Seisenberg@FeldmanGale.com>.

WHEREFORE, Petitioner requests that this Petition be sustained and that the registration be ordered cancelled.

Respectfully submitted,

Edward J. Lauth, III

By: David J. Kera

David J. Kera
Brian B. Darville
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax: (703) 413-2220
email: tmdocket@oblon.com

Date: March 29, 2007

DJK/ojb {I:\ATTY\DJK\251971-295563US-PET.DOC}

EXHIBIT 1

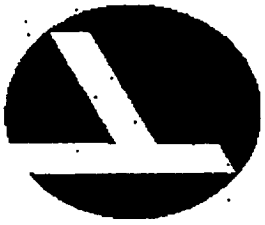
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-03-27 15:50:05 ET

Serial Number: 73684172 Assignment Information

Registration Number: 1490543

Mark



Standard Character claim: No

Current Status: A Section 8 affidavit has been accepted.

Date of Status: 1994-01-10

Filing Date: 1987-09-11

Transformed into a National Application: No

Registration Date: 1988-05-31

Register: Principal

Law Office Assigned: (NOT AVAILABLE)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -File Repository (Franconia)

Date In Location: 1994-04-07

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. EASTERN AIR LINES, INC.

Address:
EASTERN AIR LINES, INC.
MIAMI INTERNATIONAL AIRPORT
MIAMI, FL 33148
United States

Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 039
Class Status: Active
TRANSPORTATION OF PASSENGERS BY AIR
Basis: 1(a)
First Use Date: 1964-11-03
First Use in Commerce Date: 1964-11-03

ADDITIONAL INFORMATION

Design Search Code(s):
18.09.01 - Airplanes; Gliders, airplane
26.03.21 - Ovals that are completely or partially shaded

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

1994-01-10 - Section 8 (6-year) accepted

1994-01-07 - Post Registration action mailed Section 8 & 15

1993-07-27 - Section 8 (6-year) and Section 15 Filed

1988-05-31 - Registered - Principal Register

1988-03-08 - Published for opposition

1988-02-12 - Notice of publication

1988-02-06 - Notice of publication

1987-12-16 - Approved for Pub - Principal Register (Initial exam)

1987-12-14 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent
MITCHELL H. STABBE

HOLLAND & KNIGHT
888 17TH STREET, N.W., SUITE 900
WASHINGTON, DC 20006

EXHIBIT 2

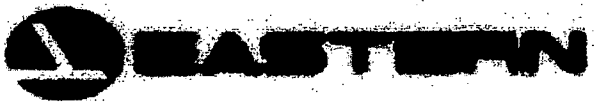
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-03-27 15:05:00 ET

Serial Number: 78375547 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark



(words only): EASTERN

Standard Character claim: No

Current Status: An office action suspending further action on the application has been mailed.

Date of Status: 2006-09-27

Filing Date: 2004-02-27

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 108

Attorney Assigned:
SHARPER JR SAMUEL E Employee Location

Current Location: L8X -TMEG Law Office 108 - Examining Attorney Assigned

Date In Location: 2006-09-27

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Edward J. Lauth III

Address:
Edward J. Lauth III
485 Scenery Drive
State College, PA 16801
United States
Legal Entity Type: Individual

Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 039
Class Status: Active
TRANSPORTATION OF PERSONS, PROPERTY, AND MAIL BY AIR; AIRLINE PASSENGER SERVICES IN THE NATURE OF A FREQUENT FLYER PROGRAM; PROVIDING INFORMATION IN THE FIELD OF TRAVEL AND TRANSPORTATION BY ELECTRONIC MEANS
Basis: 1(b)
First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Color(s) Claimed: The color blue and white are claimed as a feature of the mark.

Description of Mark and Any Color Part(s): Blue is the color of the oval in which the design of bird (stylized is depicted in white. The word mark EASTERN is in blue.

Description of Mark: The mark consists of Design of Bird in Circle & EASTERN (Stylized).

Design Search Code(s):
03.15.19 - Birds or bats in flight or with outspread wings
03.15.24 - Stylized birds and bats
26.01.21 - Circles that are totally or partially shaded.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-09-27 - LETTER OF SUSPENSION E-MAILED

2006-09-27 - Suspension Letter Written

2006-08-09 - LIE Checked Susp - To Atty For Action

2006-01-12 - LETTER OF SUSPENSION E-MAILED

2006-01-12 - Suspension Letter Written

2006-01-11 - Amendment From Applicant Entered

2005-12-30 - Communication received from applicant

2005-12-30 - PAPER RECEIVED

2005-09-15 - LETTER OF SUSPENSION E-MAILED

2005-09-15 - Suspension Letter Written

2005-08-15 - Petition To Revive-Granted

2005-06-07 - Petition To Revive-Received

2005-06-07 - PAPER RECEIVED

2005-04-27 - Abandonment Notice Mailed - Failure To Respond

2005-04-27 - Abandonment - Failure To Respond Or Late Response

2005-04-07 - Assigned To LIE

2004-09-17 - Non-final action e-mailed

2004-09-17 - Non-Final Action Written

2004-09-16 - Assigned To Examiner

2004-03-30 - PAPER RECEIVED

2004-03-16 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
David J. Kera

Correspondent
David J. Kera
Oblon, Spivak, McClelland, Maier & Neust
1940 Duke Street
Alexandria, VA 22314
Phone Number: 703-413-3000
Fax Number: 703-413-2220

EXHIBIT 3

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2007-03-27 15:04:22 ET

Serial Number: 78375530 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

(words only): DESIGN OF BIRD IN CIRCLE & EASTERN AIR LINES (STYLIZED)

Standard Character claim: No

Current Status: Further action on the application has been suspended.

Date of Status: 2006-12-22

Filing Date: 2004-02-27

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 109

Attorney Assigned:
RAUEN JAMES A Employee Location

Current Location: L90 -TMEG Law Office 109

Date In Location: 2006-12-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Lauth, Edward J., III

Address:
Lauth, Edward J., III
485 Scenery Drive

State College, PA 16801
United States
Legal Entity Type: Individual
Country of Citizenship: United States

GOODS AND/OR SERVICES

International Class: 039
Class Status: Active
TRANSPORTATION OF PERSONS, PROPERTY, AND MAIL BY AIR; AIRLINE PASSENGER SERVICES IN THE NATURE OF A FREQUENT FLYER PROGRAM; PROVIDING INFORMATION IN THE FIELD OF TRAVEL AND TRANSPORTATION BY ELECTRONIC MEANS
Basis: 1(b)
First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Color(s) Claimed: The color(s) red and blue is/are claimed as a feature of the mark.

Description of Mark and Any Color Part(s): The color red appears in the design of bird (stylized) and in the outer peripheral around the circle. The remaining features of the mark are in the color blue.

Disclaimer: "Air Lines"

Description of Mark: The mark consists of Design of Bird in Circle & EASTERN AIR LINES (Stylized).

Design Search Code(s):
03.15.19 - Birds or bats in flight or with outspread wings
03.15.24 - Stylized birds and bats
26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles
26.01.21 - Circles that are totally or partially shaded.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2006-12-22 - Report Completed Suspension Check Case Still Suspended

2006-12-22 - LIE Checked Susp - To Atty For Action

2006-12-22 - Assigned To LIE

2006-06-01 - Report Completed Suspension Check Case Still Suspended

2005-09-09 - LETTER OF SUSPENSION E-MAILED

2005-09-09 - Suspension Letter Written

2005-09-06 - Petition To Revive-Granted

2005-06-07 - Petition To Revive-Received

2005-06-07 - PAPER RECEIVED

2005-02-04 - PAPER RECEIVED

2005-04-18 - Abandonment Notice Mailed - Failure To Respond

2005-04-18 - Abandonment - Failure To Respond Or Late Response

2004-02-04 - PAPER RECEIVED

2004-09-17 - Non-final action e-mailed

2004-09-17 - Non-Final Action Written

2004-09-16 - Assigned To Examiner

2004-03-30 - PAPER RECEIVED

2004-03-16 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
David J. Kera

Correspondent
David J. Kera
Oblon, Spivak, McClelland, Maier & Neust
1940 Duke Street
Alexandria, VA 22314
Phone Number: 703-413-3000
Fax Number: 703-413-2220

EXHIBIT 4

United States Patent and Trademark Office

Assignments on the Web > Trademark Query

No assignment has been recorded at the USPTO

For Registration Number: 1490543

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
Web interface last modified: February 22, 2007 v.2.0

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA. 22313-1451
If Undeliverable Return in Ten Days

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0004202146 APR 04 2007
MAILED FROM ZIP CODE 22314

92047319

EASTERN AIRLINES, INC
MIAMI INTERNATIONAL AIRPORT
MIAMI, FL 33148