

ESTTA Tracking number: **ESTTA656250**

Filing date: **02/17/2015**

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

Proceeding	92057344
Party	Plaintiff Cloudpath Networks, Inc.
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Date	02/17/2015
Attachments	Petitioner's Response to Motion to Strike 2.17.2015.pdf(49396 bytes )

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

Cloudpath Networks, Inc.  <p style="text-align:right">Petitioner,</p> <p style="text-align:center">v.</p> <p style="text-align:left">Racemi, Inc.,</p> <p style="text-align:right">Registrant.</p>	Cancellation No. 92057344  <b>Date: February 17, 2015</b>
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**PETITIONER’S OPPOSITION TO REGISTRANT’S MOTION TO STRIKE**

Pursuant to TMBP §707.02, Petitioner Cloudpath Networks, Inc. (“Cloudpath”) hereby opposes Registrant Racemi, Inc.’s (“Racemi”) *Motion to Strike Petitioner’s Notice of Reliance*, and requests that the Board deny the motion.

Listed below are the documents or document categories objected to by Registrant, and Petitioner’s response to each objection, detailing reasons that Registrant’s motion should be denied. Petitioner notes that despite Registrant’s contentions, the procedural defects objected to by Registrant may be cured by the propounding party as soon as it is raised by the adverse party. *Safer Inc. v. OMS Invs. Inc.*, 94 USPQ2d 1031, 1040 (TTAB 2010). Therefore, Petitioner submits with this Response a Supplemental Notice of Reliance for the purpose of curing any defects in compliance with procedural requirements for admission of documents under 37 C.F.R. §2.122(e) as printed publications, to the extent any defects existed.

- 1) Response to objections regarding Strayer Deposition Exhibit No. 17:

Petitioner responds that under Petitioner's Supplemental Notice of Reliance, Strayer Deposition Exhibit No. 17 is properly submitted in compliance with 37 C.F.R. §2.122(e) as a printed publication. The document, therefore is authenticated as a printed publication.

2) Response to objection to all documents produced by Petitioner Cloudpath Networks bearing "CLD" prefix control numbers:

a) Objection to alleged "Improper submission of party's own document production:"

Petitioner responds that it is not *per se* improper to submit a party's own production documents when the documents may be properly submitted as evidence meeting all the requirements under the Federal Rules of Evidence, such as documents that are authenticated and submitted through witness testimony. Trademark Rule 2.122(a), 37 C.F.R. §2.122(a). Certain documents included in Petitioner's production documents were submitted under a Notice of Reliance specifically because Petitioner intended to, and subsequently did, authenticate and enter them into evidence through the trial testimony of Kevin Koster. These documents include, specifically, documents labeled CLD 001-003, 022, 028, 029-033, 034-037, 039, 041-045, 135-141, 356, and select documents from between CLD 181-349. The same documents, or copies thereof, will be submitted as exhibits to Kevin Koster's trial testimony prior to the deadline for submitting such exhibits. Therefore, Registrant's objection as to those particular documents is moot.

b) Objection to alleged "Lack of authentication:"

To the extent certain documents from Petitioner's document production are not authenticated and submitted as exhibits to testimony, several of them are printed publications properly authenticated and submitted under procedural requirements of §37 C.F.R. 2.122(e). Under Petitioner's Supplemental Notice of Reliance, the following documents are properly authenticated according to §37 C.F.R. 2.122(e): CLD 004-006, 015, 046, 134, 142, 181-349, 350-351, and 361.

- c) Objection to alleged "No indication of relevance:"

Petitioner responds that it has given an indication of relevance in its Supplemental Notice of Reliance regarding documents labeled CLD 004-006, 015, 046, 134, 142, 181-349, 350-351, and 361, which are submitted as printed publications under §37 C.F.R. 2.122(e).

- d) Objection to alleged "Hearsay, incompetent and immaterial:"

Petitioner responds that these objections as to the substance of the evidence submitted are untimely because the Board does not consider substantive objections until the final hearing. *Weyerhaeuser Co. v Katz*, 24 USPQ2d 1230 (TTAB 1992).

- e) Objection to alleged "Failure to comply with procedural requirements for admission under 37 C.F.R. §2.122(e):"

Petitioner responds that the documents identified in its Supplemental Notice of Reliance, labeled CLD 004-006, 015, 046, 134, 142, 181-349, 350-351, and 361, are now properly submitted under 37 C.F.R. §2.122(e).

3) Response to objection to all documents produced by Registrant during discovery bearing “RAC” prefix control numbers.

a) Objection to alleged “Improper submission of documents obtained under production from adverse party—substantive defect which cannot be cured:”

Petitioner responds that it is not *per se* improper to submit documents disclosed production documents when the documents may be properly submitted as evidence meeting all the requirements under the Federal Rules of Evidence. 37 C.F.R. 2.120(j)(3)(i) states that “an admission to a request for admission” may be offered into evidence, provided that “a copy of the request for admission and any exhibit thereto and the admission...together with a notice of reliance” are submitted. In this case, in response to a properly served Request for Admission, Registrant has admitted the genuineness of the documents that it submitted during production. Though Registrant qualified its admission with objections, Registrant admits that “...inasmuch as Racemi has claimed only that it believes each produced document is a true and correct copy of a document in its possession, custody, or control which is responsive to one or more discovery requests, Racemi admits such.” Petitioner has submitted Registrant’s Responses to Requests for Admission, and has also included the documents produced in discovery (i.e., the “exhibits thereto”), together with a notice of reliance. Therefore, documents containing “RAC” prefix control numbers have been properly submitted.

b) Objection to alleged “Lack of authentication:”

Petitioner incorporates its arguments made with respect to the previous objection, answered under section 3(a) above, and asserts that the documents have been admitted as authentic.

f) Objection to alleged “No indication of relevance:”

Petitioner responds that this objection as to the substance of the evidence submitted is untimely because the Board does not consider substantive objections until the final hearing. *Weyerhaeuser Co. v Katz*, 24 USPQ2d 1230 (TTAB 1992).

g) Objection to alleged “Hearsay, incompetent and immaterial:”

Petitioner responds that these objections as to the substance of the evidence submitted are untimely because the Board does not consider substantive objections until the final hearing. *Weyerhaeuser Co. v Katz*, 24 USPQ2d 1230 (TTAB 1992).

h) Objection to alleged “Failure to comply with procedural requirements for admission under 37 C.F.R. §2.122(e):”

Petitioner responds that the documents submitted bearing the “RAC” prefix control numbers are not necessarily submitted solely under 37 C.F.R.

§2.122(e). Therefore, the objection is moot.

Accordingly, Petitioner Cloudpath respectfully requests that the Board enter an order denying Registrant Racemi's Motion to Strike Petitioner's Notice of Reliance.

Dated: February 17, 2015

Respectfully Submitted,

/Craig A. Neugeboren/

Craig A. Neugeboren

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Certificate of Service

I certify that on February 17, 2015, I had the foregoing Notice of Reliance document served on Mr. Larry Jones, counsel for Racemi, Inc. via email, at the e-mail addresses listed below, pursuant to an agreement between the parties to serve all such documents electronically.

[Larry.Jones@alston.com](mailto:Larry.Jones@alston.com)

[Carla.Clements@alston.com](mailto:Carla.Clements@alston.com)

Dated: February 17, 2015

Respectfully Submitted,

/Craig A. Neugeboren/

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