

UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: May 4, 2004

Opposition No. 91158802

Z-Tel Technologies, Inc.

v.

BIZzLine

**David Mermelstein, Attorney:**

**Institution Vacated**

Opposer commenced this proceeding on November 26, 2003. On December 16, 2003, the Board instituted the opposition, mailing the notice of opposition and an institution order to applicant at its address of record. However, on December 8, 2003, applicant had filed a paper appointing counsel to represent it, although the paper had not been associated with the file at the time the institution order was mailed.

Accordingly, the Board's December 16, 2003 institution order is VACATED to the extent it set dates for this proceeding. A copy of the original institution order and notice of opposition are enclosed with applicant's copy of this order.<sup>1</sup> Applicant is allowed until FORTY DAYS from the mailing date of this order in which to answer the notice of opposition. Discovery and trial dates are reset below.

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<sup>1</sup> Images of Board files are available on the Web using TTABVue. See <http://ttabvue.uspto.gov>.

**Amendment of Application**

Next, we note that the subject of applicant's December 8, 2003, paper was an amendment to its application.

However,

[a]n application involved in a proceeding may not be amended in substance ... except with the consent of the other party or parties and the approval of the ... Board, or except upon motion.

Trademark Rule 2.133(a). Opposer's consent does not appear in the record. Moreover, it does not appear that applicant's amendment was served upon opposer.<sup>2</sup>

Accordingly, applicant's amendment will be given no further consideration.

**Dates Reset**

Proceedings are RESUMED. The parties are allowed THIRTY DAYS from the mailing date of this order to serve responses to any outstanding discovery requests. Trial dates, including the close of discovery, are reset as follows:

DISCOVERY PERIOD TO CLOSE: **October 30, 2004**

Thirty-day testimony period for party in position of plaintiff to close: **January 28, 2005**

Thirty-day testimony period for party in position of defendant to close: **March 29, 2005**

Fifteen-day rebuttal testimony period to close: **May 13, 2005**

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<sup>2</sup> All papers filed in an opposition proceeding (with the exception of the original notice of opposition) must be served upon all other parties to the proceeding. "Proof of such service must be made before the paper will be considered by the Office." Trademark Rule 2.119(a).

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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. 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.

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