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

Proceeding	91161535
Party	Defendant ROSENUIST - GESTAO E SERVICOS SOCIEDADEUNIPessoal LDA ROSENUIST - GESTAO E SERVICOS SOCIEDADE UNIPessoal LDA Rua do Esmeraldo, 8-10 PTX 9000-051 Funchal - Madeira,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VIRGIN ENTERPRISES LIMITED,

Opposer,

v.

ROSENUIST – GESTAO E SERVICOS LDA
(f/n/a ROSENUIST – GESTAO E SERVICES
SOCIEDADE UNIPessoal LDA)

Applicant.

Opposition No. 91161535

**APPLICANT’S OPPOSITION IN RESPONSE TO OPPOSER’S
SECOND MOTION FOR ENLARGEMENT OF TESTIMONY PERIOD**

Opposer’s second motion to enlarge its now-expired testimony period is without merit and should be summarily denied. Opposer’s second motion also misstates in material respects both the position taken by Applicant and the rulings of the Court in the ancillary proceedings before the U.S. District Court for the Eastern District of Virginia.

The Board will recall that discovery in this proceeding opened on August 19, 2004 and closed on February 15, 2005. During that period, Opposer would have been entitled pursuant to 37 CFR §2.120(c) to depose Applicant in Portugal in the manner specified in 37 CFR §2.124. Opposer instead moved the Board on December 12, 2005 to compel Applicant to appear at an oral testimonial deposition in Portugal. The Board in its order of January 9, 2006 denied that Motion.

The ancillary proceedings in the Eastern District of Virginia arose in connection with Opposer’s subsequent attempts to have a corporate witness of Applicant appear involuntarily in this district from Portugal, an approach previously rejected by *Vogel v. Jones*, 443 F.2d 257 (3d

Cir. 1971), in which the court held that a district court could order only document production pursuant to its ancillary jurisdiction under 35 USC § 24, but that 35 USC § 24 would preclude an order that a witness be required to appear involuntarily from overseas.

What has changed since Opposer's previous motion is that the district court on April 7, 2006 expressly rejected Opposer's attempt to have a corporate witness of Applicant appear involuntarily in this district from Portugal, consistent with *Vogel* and 35 USC § 24. Opposer's appeal of this issue to the Fourth Circuit is not attended by any likelihood that either the longstanding contrary precedent or the meaning of 35 USC § 24 will be altered to suit its desires.

WHEREFORE, Applicant respectfully moves the Board to deny Opposer's second motion for enlargement of its testimony period.

Respectfully submitted,

/Mark Lebow/

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June 1, 2006

CERTIFICATE OF SERVICE

I hereby certify the foregoing Opposition to Opposer's Second Motion For Enlargement of Testimony Period was deposited as first class mail, postage prepaid, in an envelope addressed to James Dabney, Esq., Counsel for Opposer, Fried, Frank, Harris, Shriver, & Jacobson LLP, One New York Plaza, New York, New York 10004-1980 on this the 1st day of June 2006.

/Mark Lebow/

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