

# TTAB

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

DUNN  
Mailed: April 9, 2006

Opposition No. 91163825

KIRISUN ELECTRONICS  
(SHENZHEN) CO., LTD.

v.

KIRISUN USA LLC

**Elizabeth A. Dunn, Attorney:**

Applicant filed a communication on March 1, 2005.<sup>1</sup> It is presumed that this communication is intended as an answer to the notice of opposition.

Answer was due February 27, 2006. Applicant's filing was not accompanied by a motion to accept late answer, or a showing of good cause for the late filing. While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is

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<sup>1</sup> Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

04-19-2006

U.S. Patent & TMOft/TM Mail Rcpt Dt. #72

justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991).

Correspondence required to be filed within a set period of time will be considered as being timely filed, even though the correspondence is not received by the Office until after the expiration of the set period, if, prior to the expiration of the set period, (1) the correspondence is mailed to the Office by first-class mail, with the address shown at the top of this order and (2) includes a certificate of mailing.<sup>2</sup>

Applicant also is advised that any future failure to comply with the Board's deadlines may result in a filing being given no consideration.

Moreover, a reading of this informal "answer" reveals that it is argumentative and more in the nature of a brief on the case than a responsive pleading to the notice of

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<sup>2</sup> Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

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Date

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Signature

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of person signing certificate

opposition. As such, it does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer herein consists of thirteen paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.

In view of the foregoing, applicant is allowed until thirty days from the mailing date of this order in which to file an answer herein which complies with Fed. R. Civ. P. 8.

As noted earlier in this order, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board.

Consequently, copies of all papers which applicant may subsequently file in this proceeding, including its answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service. This written statement should take the form of a "certificate of service" and should read as follows: The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address]. The certificate of service must be signed and dated.

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, it is

generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. General guidance to Board procedures is available through the Trademark Trial and Appeal Board Manual of Procedure (TBMP), on the USPTO website, [www.uspto.gov](http://www.uspto.gov).

Discovery and trial dates remain as previously set.

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**United States Patent and Trademark Office**

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA. 22313-1451

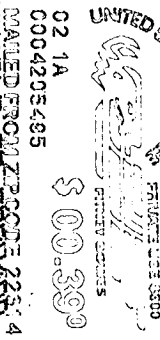
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