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

Proceeding	91187606
Party	Defendant Duran Rubero Beauty Center Inc.
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Date	12/07/2009
Attachments	Motion for leave phone Depo.pdf ( 4 pages )(98403 bytes )

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

In Re:           Application Serial No. 77/411,075

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<b>EDUCATIONAL TESTING SERVICE</b>	)
	)
<b>Opposer,</b>	)
	)
<b>v.</b>	)
	)
<b>DURAN RUBERO BEAUTY CENTER, INC.</b>	)
	)
<b>Applicant.</b>	)
-----)	)

**Cancellation No. 91187606**

**APPLICANT’S MOTION FOR LEAVE TO  
CONDUCT DISCOVERY DEPOSITION BY TELEPHONE**

Duran Rubero Beauty Center, Inc. d.b.a. The Praxis Institute (“Applicant”) respectfully asks that the Board for leave to conduct the deposition of Educational Testing Service’s (“Opposer”) corporate representative by telephone.

1. On November 30, 2009, Opposer responded in the negative to Applicant’s November 25, 2009 communication attempting to cooperate in setting the discovery deposition of Opposer’s corporate representative by telephone.
2. On December 2, 2009, Applicant served Opposer with its notice of deposition pursuant to Fed. R. Civ. P. 30(b)(6). The notice scheduled the oral deposition for December 17, 2009 in Princeton, New Jersey (Opposer’s place of business).
3. On December 4, 2009, Opposer once again responded in the negative to Applicant’s communication requesting that Opposer reconsider its reluctance to conduct the above referenced deposition by telephone given the lack of prejudice to Opposer.

## ARGUMENT

The Board may grant leave to a party to conduct a deposition by telephone. TBMP § 404.06; Fed. R. Civ. P. 30(b)(4). Current federal practice favors the use of technological benefits to promote flexibility, simplification of procedure and reduction of cost to parties. *Hewlett-Packard co. v. Healthcare Personnel Inc.*, 21 U.S.P.Q.2d 1552, 1553 (TTAB 1991) (Board granted leave to applicant's Florida attorney to conduct the defense of opposer's deposition of opposer's witness in California by telephone). Granting of leave to take depositions by telephone should be granted unless the non-moving party shows harm or prejudice arising therefrom. *Id* (inconvenience and the possibility of technical problems do not constitute prejudice); *Jahr v. IU International Corp.*, 109 F.R.D. 429, 431 (M.D.N.C. 1986).

Applicant's desire to reduce costs by taking the deposition of Opposer's corporate representative is a sufficient purpose contemplated by the Federal Rule. Furthermore, Opposer has not provided, nor can it reasonably show how the taking of this deposition by telephone would prejudice or harm Opposer. The proposed deposition is scheduled to be taken in the city of Opposer's principal place of business. Opposing counsel's attendance at the deposition is not affected by whether or not Applicant's counsel attends the deposition physically or by telephone. If any party is prejudiced, it would be Applicant who would not be physically present to see the witness.

In conclusion, Applicant requests that the Board issue an order granting leave for Applicant to attend the December 17, 2009 deposition of Opposer's corporate representative by telephone.

Respectfully submitted,

By: /henry rodriguez/\_\_\_\_\_

Henry Rodriguez, Esq.

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**CERTIFICATE OF SERVICE**

I hereby certify that this correspondence is being deposited with the United States Postal Service's and sent via First Class Mail in an envelope addressed to Opposer's counsel Lile H. Deinard, Dorsey & Whitney, LLP, 250 Park Avenue, New York, NY 10177, on this 7th day of December, 2009.

/henry rodriguez/  
Henry Rodriguez, Esq.