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

Proceeding	91216061
Party	Defendant Axtron Global LLC
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Submission	Motion to Amend Application
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Date	09/23/2014
Attachments	14.09.23 Mtn to Amend Applic without consent RGB Systems.pdf(311930 bytes)

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

In re Application of:	Axtron Global LLC
Serial No.:	86/063,642
Filed:	September 13, 2013
Published:	March 25, 2014
MARK:	AXTRON (design)

RGB Systems, Incorporated Opposer, v. Axtron Global, LLC, Applicant.	)	Opposition No. 91216061

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

MOTION TO AMEND APPLICATION WITHOUT CONSENT

Pursuant to 37 C.F.R. § 2.133(a), Applicant, without the consent of Opposer, RGB Systems, Incorporated, respectfully requests that Application Serial No. 86/063,642 be amended to delete from the identification of goods:

> "cellular phones; amplifiers; memory cards; television sets; digital cameras; laser equipment for non-medical purposes; laser pointers; AM transmitters; turntables, namely, record players; printers; scanners; personal computers; keyboards; LED touch screens; LCD computer screens; audio converters; extension cables; audio cables; video cables; control signal cables; audio adapters; video adapters; network routers; USB cables; microchips; electronic components for computers; batteries; electronic circuits; circuit boards; electronic chips for the manufacturer of integrated circuits; programmable logic controller; signal processors; integrated circuits; static voltage regulators; LED display screens; plasma

display panel; electronic displays, namely, digital signage; tripods for cameras; printers; interactive touch screens, LED lighting panel control boards, lighting ballasts, DC Adapters, voltage stabilizers, voltage regulators, AC adapters, signal splitters for electronic apparatus; image sensors; UV Sensors; optical switches; light meters; color sensors; battery chargers; cell phone chargers; USB chargers for mobile cellular devices; solar mobile chargers for electronic apparatus, namely, computers and portable handheld devices; scanners."

The red-lined amendment appears as follows:

Headphones; headsets for mobile telephones; cases for mobile phones; ~~cellular phones~~; earphones; ~~amplifiers; memory cards; television sets; digital cameras; laser equipment for non-medical purposes; laser pointers~~; personal stereos; FM transmitters; ~~AM transmitters~~; portable radios; ~~turntables, namely, record players~~; audio speakers; ~~printers; scanners~~; wireless audio speakers; computer speakers; ~~personal computers; keyboards~~; portable audio speakers; wireless loud speakers; ~~LED touch screens; LCD computer screens; audio converters; extension cables; audio cables; video cables; control signal cables; audio adapters; video adapters; network routers~~; micro secure digital (SD) memory cards; ~~USB cables; microchips; electronic components for computers; batteries; electronic circuits; circuit boards; electronic chips for the manufacturer of integrated circuits; programmable logic controller; signal processors; integrated circuits; static voltage regulators; LED display screens; plasma display panel; electronic displays, namely, digital signage~~; microphones; ~~tripods for cameras; printers; interactive touch screens, LED lighting panel control boards, lighting ballasts, DC Adapters, voltage stabilizers, voltage regulators, AC adapters, signal splitters for electronic apparatus; image sensors; UV Sensors; optical switches; light meters; color sensors; battery chargers; cell phone chargers; USB chargers for mobile cellular devices; solar mobile chargers for electronic apparatus, namely, computers and portable handheld devices~~; universal chargers for electronic apparatus, namely, computers and portable handheld devices; ~~scanners~~.

The final, amended identification of goods appears as follows:

Headphones; headsets for mobile telephones; cases for mobile phones; earphones; personal stereos; FM transmitters; portable radios; audio speakers; wireless audio speakers; computer

speakers; portable audio speakers; wireless loud speakers; micro secure digital (SD) memory cards; microphones; universal chargers for electronic apparatus, namely, computers and portable handheld devices.

Three TTAB Opposition Proceedings have been initiated against Applicant's trademark registration application, and Applicant has obtained the consent to the proposed amendment from two of the three Opposers: MKS Instruments, Inc. (Proceeding No. 91216047) and LPD Music International (Proceeding No. 91217141). Applicant has filed motions to amend its application, with consent, in both of these proceedings. Further, Application has settled Proceeding No. 91217141 with LPD Music International, which has stipulated to the dismissal of its opposition as the proposed amendment will remove any risk of likelihood of confusion between Applicant and LPD Music International's goods and marks.

Nonetheless, while Applicant has been engaged in settlement discussions with Opposer RGB Systems, Incorporated, as of the date of this filing, RBG Systems, Incorporated does not consent to this amendment.

Respectfully submitted,

Dated: September 23, 2014

GONZALEZ SAGGIO & HARLAN, LLP

By: _____

Kristin L. Petersen
Attorneys for Applicant Axtron Global, LLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MEMORANDUM IN SUPPORT OF APPLICANT'S
MOTION TO AMEND APPLICATION WITHOUT CONSENT

Pursuant to 37 C.F.R. § 2.133(a), "an application involved in a proceeding may not be amended in substance nor may a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or except upon motion." *See also* TBMP 514.02. A proposed amendment must comply with all other applicable rules and statutory provisions, including 37 C.F.R. § 2.71-2.75.

Applicant seeks approval of the Trademark Trial and Appeal Board to amend the identification of goods in Application Serial No. 86/063,642 to **delete** from the identification of goods:

"cellular phones; amplifiers; memory cards; television sets; digital cameras; laser equipment for non-medical purposes; laser pointers; AM transmitters; turntables, namely, record players; printers; scanners; personal computers; keyboards; LED touch screens; LCD computer screens; audio converters; extension cables; audio cables; video cables; control signal cables; audio adapters; video adapters; network routers; USB cables; microchips; electronic components for computers; batteries; electronic circuits; circuit boards; electronic chips for the manufacturer of integrated circuits; programmable logic controller; signal processors; integrated circuits; static voltage regulators; LED display screens; plasma display panel; electronic displays, namely, digital signage; tripods for cameras; printers; interactive touch screens, LED lighting panel control boards, lighting ballasts, DC Adapters, voltage stabilizers, voltage regulators, AC adapters, signal splitters for electronic apparatus; image sensors; UV Sensors; optical switches; light meters; color sensors; battery chargers; cell phone chargers; USB chargers for mobile cellular devices; solar mobile chargers for electronic apparatus, namely, computers and portable handheld devices; scanners."

The red-lined amendment appears as follows:

Headphones; headsets for mobile telephones; cases for mobile phones; ~~cellular phones~~; earphones; ~~amplifiers; memory cards; television sets; digital cameras; laser equipment for non-medical purposes; laser pointers~~; personal stereos; FM transmitters; ~~AM transmitters~~; portable radios; ~~turntables, namely, record players~~; audio speakers; ~~printers; scanners~~; wireless audio speakers; computer speakers; ~~personal computers; keyboards~~; portable audio speakers; wireless loud speakers; ~~LED touch screens; LCD computer screens; audio converters; extension cables; audio cables; video cables; control signal cables; audio adapters; video adapters; network routers~~; micro secure digital (SD) memory cards; ~~USB cables; microchips; electronic components for computers; batteries; electronic circuits; circuit boards; electronic chips for the manufacturer of integrated circuits; programmable logic controller; signal processors; integrated circuits; static voltage regulators; LED display screens; plasma display panel; electronic displays, namely, digital signage~~; microphones; ~~tripods for cameras; printers; interactive touch screens, LED lighting panel control boards, lighting ballasts, DC Adapters, voltage stabilizers, voltage regulators, AC adapters, signal splitters for electronic~~

~~apparatus; image sensors; UV Sensors; optical switches; light meters; color sensors; battery chargers; cell phone chargers; USB chargers for mobile cellular devices; solar mobile chargers for electronic apparatus, namely, computers and portable handheld devices~~; universal chargers for electronic apparatus, namely, computers and portable handheld devices; ~~scanners~~.

The **final**, amended identification of goods appears as follows:

> Headphones; headsets for mobile telephones; cases for mobile phones; earphones; personal stereos; FM transmitters; portable radios; audio speakers; wireless audio speakers; computer speakers; portable audio speakers; wireless loud speakers; micro secure digital (SD) memory cards; microphones; universal chargers for electronic apparatus, namely, computers and portable handheld devices.

Applicant's proposed amendment deletes goods to clarify and limit the identification of goods in the application, consistent with 37 C.F.R. § 2.71.

Consequently, this amendment to limit the identification of goods removes any potential risk of likelihood of confusion between Applicant's mark and Opposer's mark. *See Drive Trademark Holdings LP v. Inofin and Mark Walsh*, 83 U.S.P.Q.2D (BNA) 1433, 2007 TTAB LEXIS 37, *4-*5 (2007) (noting "[w]hile the Board will generally defer determination of a timely filed (i.e., pre-trial) unconsented motion to amend in substance until final decision, or until the case is decided upon summary judgment, in practice, an acceptable amendment to the identification of goods or recitation of services often may be permitted, even where an opposer objects, if the proposed amendment serves to limit the identification of goods or recitation of services and if the applicant consents to the entry of judgment on the question of likelihood of confusion between opposer's and applicant's marks with respect to the broader identification of goods or recitation of services."). Likewise, Applicant believes that its proposed amendment eliminates any likelihood of confusion between its mark and goods and RGB Systems' mark and goods, and as such Applicant requests approval of its amendment.

Three TTAB Opposition Proceedings have been initiated against Applicant's trademark registration application, and Applicant has obtained the consent to the proposed amendment from two of the three Opposers: MKS Instruments, Inc. (Proceeding No. 91216047) and LPD Music International, Inc. (Proceeding No. 91217141). Applicant has filed consented motions to amend its application in both of these proceedings.

While Applicant has been engaged in settlement discussions with the third Opposer, RGB Systems, Incorporated (Proceeding No. 91216061) does not consent to this amendment as of the date of this filing. Nonetheless, because this proposed amendment serves to remove any potential risk of likelihood of confusion between Applicant and Opposer's marks, Applicant respectfully requests that the Board grants this motion.

Respectfully submitted,

Dated: September 23, 2014

GONZALEZ SAGGIO & HARLAN, LLP

By: _____

Kristin L. Petersen
Attorneys for Applicant Axtron Global, LLC

CERTIFICATE OF SERVICE

Applicant Axtron Global LLC, by and through its attorneys, hereby certifies that a true and complete copy of this **MOTION TO AMEND APPLICATION** has been served upon Opposer RGB Systems, Incorporated on this 23rd day of September, 2014, by First Class Mail at the following address:

John C. Holman, Robert S. Pierce Jacobson Holman PLLC 400 7th St., NW Washington, DC 20004	*ATTORNEYS FOR OPPOSER* RGB Systems, Incorporated

Dated: September 23, 2014

GONZALEZ SAGGIO & HARLAN, LLP

By: _____

Kristin L. Petersen
Attorneys for Applicant Axtron Global, LLC