ESTTA Tracking number: **ESTTA657743**

Filing date: **02/24/2015**

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

Proceeding	91216061
Party	Plaintiff RGB Systems, Incorporated
Correspondence Address	JOHN C HOLMAN ROBERT S PIERCE JACOBSON HOLMAN PLLC 400 7TH STREET NW WASHINGTON, DC 20004 UNITED STATES trademark@jhip.com,rpierce@jhip.com,jholman@jhip.com
Submission	Motion to Compel Discovery
Filer's Name	Robert S. Pierce
Filer's e-mail	trademark@jhip.com,rpierce@jhip.com,jholman@jhip.com
Signature	/Robert S. Pierce/
Date	02/24/2015
Attachments	I06766 Motion to Compel.pdf(14169 bytes)

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

In re the application of:

Axtron Global LLC
Serial No. 86063642
Filed: September 13, 2013
Mark: AXTRON and Design
Published: March 25, 2014

RGB SYSTEMS, INCORPORATED,	)	
	)	
Opposer,	)	
	)	Opposition No: 91216061
v.	)	
	)	
AXTRON GLOBAL LLC	)	
	)	
Applicant.	)	

OPPOSER'S MOTION TO COMPEL, TO SUSPEND
THE PROCEEDINGS AND TO RESET THE TRIAL DATES

The Opposer, RGB Systems, Incorporated, moves for an Order from the Trademark Trial and Appeal Board (the "Board") compelling and admonishing Applicant, Axtron Global LLC, immediately to serve its Initial Disclosures. Additionally, RGB Systems requests that the Board suspend these proceedings and reset the discovery and trial dates upon lifting the suspension.

I. Introduction and Background

According to the Board's scheduling order, mailed December 15, 2014, the parties were required to exchange initial disclosures on January 9, 2015. RGB Systems timely served its initial disclosures on January 6, 2015, sending them by first class mail to Mr. Pablo Fernandez, Chief Executive Office, Axtron Global LLC, 466 Foothill Boulevard, Suite 152, La Canada, California 91011.

Axtron Global had not contacted RGB Systems and had not sent its Initial Disclosures by the January 9th deadline. RGB Systems's counsel sent a letter by first class mail and email to Mr. Fernandez on January 20, 2015. This letter reminded him of Axtron Global's obligation to serve Initial Disclosures, briefly described the nature of the required disclosures, and advised him that RGB Systems may ask this Board to compel the disclosures if they were not served. On January 20th, Mr. Fernandez replied that he would arrange for a response, but did not specify a date or time. RGB Systems's counsel sent a second reminder email on February 3, 2015, advising Mr. Fernandez of Axtron Global's obligation to provide initial disclosures and asking when he intended to serve them. Mr. Fernandez has not responded to this latest email. To date, Mr. Fernandez or other authorized representative of Axtron Global has not served Initial Disclosure or provided a date when they would be forthcoming. See Exhibit A for the parties' correspondence regarding initial disclosures.

Counsel has not called about the initial disclosures because the telephone number on the record is for Axtron Global's customer service. When counsel has called that number before, he was informed that a ticket was opened, but did not receive a return call.

The discovery period is still open and not scheduled to close until June 8, 2015.

Accordingly, RGB Systems respectfully requests the Board to grant its Motion to Compel, as set forth more fully below.

II. Argument

Parties are required to serve initial disclosures no later than 30 days after the opening of the discovery period. 37 C.F.R. § 2.120(a)(2). According to Axtron Global's motion for extension of time as granted by the Board on July 31, 2014, the discovery period opened

September 30, 2014. However, the proceedings were suspended when Axtron Global's counsel withdrew. The Board suspended the proceeding as a result. Once Axtron Global confirmed that it was proceeding *pro se*, the Board issued an order on December 15, 2014, resuming the opposition and reset the due date for initial disclosures to January 9, 2015. Axtron Global did not serve its initial disclosures on that date, and has yet to do so.

Initial disclosures are to be treated like responses to discovery requests. *See Notice of Final Rulemaking, Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 72 Fed. Reg. 42242, 42246 (Aug. 1, 2007). The parties are required to serve initial disclosures under Fed. R. Civ. P. § 26(a)(1). *See also* 37 C.F.R. § 2.120(a). Under 37 C.F.R. § 2.120(e), RGB Systems is entitled to file a motion with the Board seeking to compel Axtron Global's responses.

RGB Systems's motion is timely filed under 37 C.F.R.. §.2.120(e) because the discovery period does not close until June 8, 2015.

As noted above, RGB Systems's counsel has asked for Axtron Global's Initial Disclosures more once. In an email more than a month ago, Axtron Global advised that it would respond. However, Axtron Global has yet to serve them, ask for an extension to respond or otherwise indicate when they might be forthcoming. In short, Axtron Global has not provide any information regarding its Initial Disclosures.

Accordingly, RGB Systems respectfully request that the Board enter an Order compelling Axtron Global to serve its Initial Disclosures by first class mail to RGB Systems's counsel.

III. Rule 2.120(e) Statement

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice, RGB Systems's counsel states that it has made a good faith effort by conference and correspondence to resolve with the

other party or the attorney therefor the issues presented in the motion, and has been unable to reach agreement due to Axtron Global's failure to respond to RGB Systems's inquiries.

IV. Request for Suspension

RGB Systems understands that this proceeding will be suspended based on the filing of this Motion to Compel, pursuant to Trademark Rule 2.120(e) (*When a party files a motion for an order to compel discovery, the case will be suspended by the Trademark Trial and Appeal Board . . . .*") (Emphasis supplied). Nevertheless, RGB Systems requests that the proceeding be suspended to allow the Board to consider the present Motion (and any responsive filings), to issue an Order and to allow Axtron Global time to comply with that Order.

V. Conclusion

For all the foregoing reasons, RGB Systems respectfully requests that the Board GRANT its Motion to Compel; and issue an Order to: 1) compel Axtron Global to serve its Initial Disclosures; 2) compel Axtron Global to serve its disclosures by first class mail on RGB Systems's counsel at Robert S. Pierce, Jacobson Holman PLLC, 400 7th St., NW, Washington, DC 20004, 3) admonish Axtron Global that the failure to timely serve disclosures in accordance therewith subjects it to judgment by default; 4) suspend these proceedings; and 5) reset the trial dates upon lifting the suspension.

Respectfully submitted,

By: /Robert S. Pierce/
John C. Holman and Robert S. Pierce
Attorneys for the Opposer
JACOBSON HOLMAN PLLC
400 Seventh Street, Northwest
Washington, District of Columbia 20004
(202) 638-6666

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing ***Motion to Compel*** was served on this 24th day of February 2015, by first class mail, postage prepaid, addressed to Mr. Pablo Fernandez, Chief Executive Office, Axtron Global LLC, 466 Foothill Boulevard, Suite 152, La Canada, California 91011, Applicant *pro se*.

/Robert S. Pierce/
Robert S. Pierce