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

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| HERA, LLC,<br><br>Opposer,<br><br>v.<br><br>EC&C TECHNOLOGIES, INC.,<br><br>Applicant. | ) | Opposition No. 91161648<br>Opposition No. 91161633 |

TRANSMITTAL LETTER (GENERAL)
(With Certificate of Mailing by Express Mail)

Transmitted herewith is the following document:

APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND FOR SUSPENSION OF THESE PROCEEDINGS, APPLICANT'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT, DECLARATION OF JOSEPH E. MUETH WITH EXHIBITS AND DECLARATION OF HERBERT W. SPENCER III WITH EXHIBITS (in triplicate)

Applicant believes there is no fee due with this communication, however, if there is a fee due, said insufficiency should be debited to Deposit Account No. 13-4892.

Dated: February 11, 2005

JOSEPH E. MUETH, ESQ.
JOSEPH E. MUETH LAW CORPORATION
225 South Lake Ave., 8th Floor
Pasadena, CA 91101
Telephone: (626) 584-0396
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I certify that this document is being deposited on February 11, 2005 with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10, Express Mail Label Number ED 261718440US and is addressed to the U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451

LAURA VELARDE
Dated: February 11, 2005

02-15-2005

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| HERA, LLC,<br><br>Opposer,<br><br>v.<br><br>EC&C TECHNOLOGIES, INC.,<br><br>Applicant. | ) | Opposition No. 91161633<br>Opposition No. 91161648 |

APPLICANT'S MOTION FOR SUMMARY JUDGMENT
AND FOR SUSPENSION OF THESE PROCEEDINGS

Applicant, EC&C Technologies, Inc., by and through its counsel, hereby moves in these consolidated cases for Summary Judgment pursuant to Fed. R. Civ. P. 56 maintaining that the Opposition filed by Opposer, Hera LLC, should be dismissed as a matter of law, there being no genuine issue as to any material fact. Since Applicant's pending applications are "intent-to-use" and Applicant relies on the filing dates of these applications to establish prior rights to the trademarks, it is understood that the Summary Judgment would be conditional upon Applicant subsequently satisfying the requirements for registration.

Applicant also requests that, pursuant to Rule 2.127(d), the Board suspend these proceedings pending determination of its Motion For Summary Judgment as of the date of submission of this motion. In the event the Board denies the Applicant's Motion for Summary Judgment, Applicant hereby requests that the testimony periods be reset no

sooner than sixty (60) days after disposition of this motion.

This Motion is made on the grounds that Applicant's intent-to-use Applications Serial Nos. 78/2295543 and 78/295514 establish priority of right as against the Opposer and that Ammonia On Demand has become generic and cannot serve to distinguish any single source for the goods.

Applicant's Motion is supported by:

(I) Applicant's Memorandum in Support of its Motion for Summary Judgment;

(II) Declaration of Joseph E. Mueth and Exhibits Thereto;

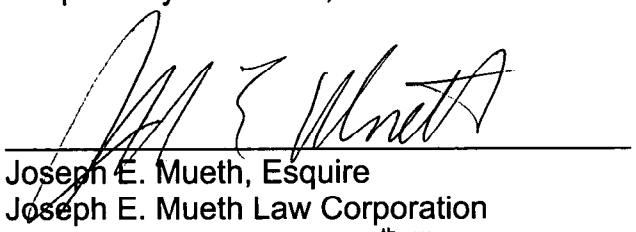
(III) Declaration of Herbert Spencer and Exhibits thereto; and

(IV) The pleadings herein

Wherefore, Applicant respectfully prays that its Motion for Summary Judgment be conditionally granted, and that the Oppositions be dismissed.

Dated: February 11, 2005

Respectfully submitted,



Joseph E. Mueth, Esquire
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APPLICANT'S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT

1. Introduction

Applicant has moved, pursuant to Fed. R. Civ. P. 56 for Summary Judgment, based on the material facts as to which there are no genuine issues to be tried. As a matter of law, these consolidated Oppositions against U.S. Trademark Applications Serial No. 78/295543 and 78/295514 (hereinafter, the applications) for "AOD" and "Ammonia On Demand" should be dismissed.

THE PRESENT OPPOSITION PROCEEDINGS ARE RIPE FOR SUMMARY JUDGMENT

Summary judgment is appropriate in a trademark opposition proceeding where, as here, there are no genuine issues of material fact to be tried. In the seminal case of Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 222 USPQ 741 (Fed. Cir. 1984), the Federal Circuit affirmed the TTAB's grant of summary judgment in an opposition proceeding. Citing Exxon Corp. v. National Food Line Corp., 198 USPQ 407, 408 (CCPA 1978), the Federal Circuit explained that the basic purpose of summary judgment is that of judicial economy. It is against the public interest to conduct useless trials, and where the time and expense of a full trial can be avoided by the summary judgment procedure, such action is favored.

In the present proceeding, the presentation of more evidence than is already available in connection with this motion could not reasonably be expected to change the conclusion that Applicant is entitled to prevail against the Oppositions.

In Pure Gold, the Court encouraged the disposition of matters before the TTAB by summary judgment as follows:

> "The practice of the U.S. Claims Court and the former U.S. Court of Claims in routinely disposing of numerous cases on the basis of cross-motions for summary judgment has much to commend it. The adoption of similar practice is to be encouraged in inter partes cases before the Trademark Trial and Appeal Board, which seem particularly suitable to this type of disposition. Too often we

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