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

Proceeding	91168716
Party	Defendant Key-Trak, Inc. Key-Trak, Inc. 6700 Hollister Houston, TX 77040
Correspondence Address	MARK A. TIDWELL JACKSON WALKER L.L.P. 112 E.PECAN, SUITE 2100 SAN ANTONIO, TX 78205
Submission	Motion to Suspend for Civil Action
Filer's Name	Mark A. Tidwell
Filer's e-mail	mtidwell@jw.com, zwilliams@jw.com, tadolph@jw.com
Signature	/Mark A. Tidwell/
Date	02/17/2006
Attachments	Motion to Suspend.pdf ( 31 pages )

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

Key Systems, Inc.  
Opposer

vs.

Key-Trak, Inc.,  
Applicant

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Opposition No. 91168716

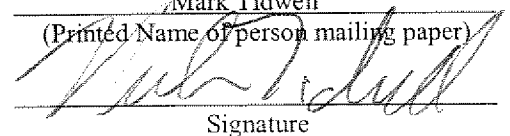
Serial No. 78413635

COMMISSIONER FOR TRADEMARKS  
2900 Crystal Drive  
Arlington, Virginia 22202-3514

I hereby certify that this Motion to Suspend Proceedings was filed through the Electronic System for Trials and Appeals (ESTTA) of the Trademark Trial and Appeal Board on the 17 day of February 2006

Mark Tidwell

(Printed Name of person mailing paper)



Signature

**APPLICANT'S MOTION TO SUSPEND PROCEEDINGS**

Pursuant to 37 C.F.R. §2.117, Key-Trak, Inc., Applicant, moves to suspend the opposition pending between it and the Opposer Key Systems, Inc.

More than a year and a half ago, on June 9, 2004 Applicant filed a lawsuit against Opposer that, when finally adjudicated or settled, will fully resolve all matters at issue in the opposition. That lawsuit, *Key Trak, Inc. v. Key Systems, Inc.* Civil Action No. H-04-2234 (S.D. Tex) (the "Action"), is currently pending in the United States District Court for the Southern District of Texas. The Action includes (i) Applicant's claims of ownership of the mark KeyKeeper (the "Mark") for the goods set forth in the publication, (ii) Applicant's claim that Opposer has infringed Applicant's exclusive right in the Mark, and (iii) Opposer's defenses to such allegations. As such the Action encompasses the issues raised in the opposition.

Applicant is the owner of the Mark. Applicant acquired ownership of the Mark from the original owner, Endurance Electronics Pty. Ltd. (“Endurance”). Opposer was a North American distributor for Endurance.

As part of its defense in the Action, Opposer has asserted a counterclaim seeking among other things a declaratory judgment that it is the first user in U.S. commerce of the Mark and that it is the owner of the Mark. Opposer also contends that Applicant was fraudulent in its application for registration of the Mark in regards to ownership. These are the same claims which Opposer is making in the instant opposition. Opposer’s claims in the instant opposition are incorporated within the claims raised by the Applicant in the Action and by the counterclaims raised by the Opposer.

Copies of the Second Amended Complaint and Counterclaim (Exhibit A), and Defendant Key Systems Inc.’s Answer, Affirmative Defenses and Counterclaim to Plaintiff’s Second Amended Complaint (Exhibit B) are attached hereto.

The District Court will be deciding the same issues in the Action that the Trademark Trial and Appeal Board is asked to determine in the opposition. Suspending the opposition proceeding will therefore save the Opposer and the Applicant time and expense, and reduce the burden on the resources of the U.S. Patent and Trademark Office.

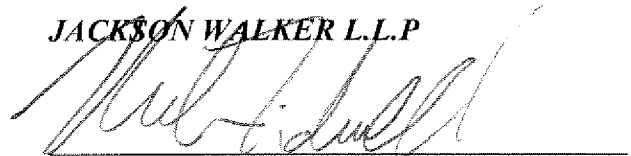
The Board routinely grants motions to suspend pending the outcome of a pending civil action which may be dispositive of the inter partes proceeding. 37 C.F.R. 2.117(a); T.M.B.P. §510.02(a); *See also Marie Claire Album S.A. v. Kruger GmbH & Co. KG*, 29 U.S.P.Q.2D 1792 (T.T.A.B. 1993)( suspending opposition pending disposition of civil action); *Jennifer Lopez v. Glow Industries*, Opposition No. 91154310 (T.T.A.B. April 9, 2003)(suspending opposition pending disposition of civil action); *Black Box Corporation of Pennsylvania and BB*

*Technologies, Inc. v. Better Box Communications Limited*, Opposition No. 107,800 Opposition No. 107,801, (T.T.A.B. March 29, 2002)(suspending opposition pending disposition of civil action).

Therefore, Applicant respectfully requests that its motion to suspend be granted.

Respectfully Submitted,

**JACKSON WALKER L.L.P**

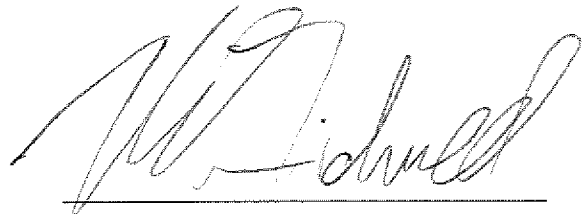


Mark Tidwell  
Registration No. 37,456  
State Bar No. 0928900  
1401 McKinney Street, Suite 1900  
Houston, TX 77002  
(713) 752-420  
(713) 752-4221 –Fax

**CERTIFICATE OF SERVICE**

I certify that a true and complete copy of the foregoing Motion to Suspend Proceedings has been served on Key Systems by mailing said copy on the 17 day of February 2006, via First Class Mail, postage prepaid to:

Steven R. Scott  
Brown & Michaels, PC  
400 M&T Bank Building  
118 North Tioga Street  
Ithaca, New York 14850



# EXHIBIT A

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