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

Proceeding	91207444
Party	Plaintiff Bridgeline Digital, Inc
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Date	01/28/2013
Attachments	Opposer's Reply ISO its Mtn to Strike (M0498648).PDF (7 pages)(254125 bytes)

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

Bridgeline Digital, Inc.,	In re App. Ser. No. 85/594,068
Opposer,	Mark: !APPS
v.	Filing Date: April 10, 2012
Jive Software, Inc.	Publ'n Date: Sept. 4, 2012
Applicant.	Opposition No.: 91207444

OPPOSER'S REPLY IN SUPPORT OF ITS
MOTION TO STRIKE APPLICANT'S AFFIRMATIVE DEFENSES

Bridgeline Digital, Inc.'s ("Opposer" or "Bridgeline"), by and through its attorneys, hereby submits its reply in support of its Motion to Strike Affirmative Defenses.[1]

In support of its purported affirmative defense that Opposer lacks standing, Applicant argues that Opposer is not the owner of U.S. Registration No. 2,015,430 (the "Registration") because the trademark assignment (the "Assignment") is invalid. By way of background, Bridgeline Software, Inc. (now Bridgeline Digital, Inc.) and Interactive Applications Group, Inc. ("IAG") entered into a merger agreement on December 15, 2004 (see attached Certificate of Merger, **Exhibit A**). By the Agreement of Merger, referred in the Certificate of Merger, all assets of IAG, including the Registration, were acquired by Bridgeline. Because the Agreement of Merger contains confidential information, Opposer drafted and recorded the short form Assignment with the Patent and Trademark Office, as is customary.

[1] Bridgeline Digital respectfully requests that the Board exercise its discretion to consider this reply because it does not rehash points made in Opposer's Motion to Strike Affirmative Defenses but rather addresses solely Jive's arguments in its Response. *Seculus da Amazonia SIS v. Toyota Jidosha Kabushiki Kaisha,* 66 USPQ2d 1154, 1156 n.4 (TTAB 2003); 37 CFR § 2.127(a); TBMP § 502.02(b).

Opposer respectfully disagrees that the Assignment is invalid. First, Applicant argues that the term "the Marks" is never defined. However, the term "the Marks" is nothing more than the plural version of the term defined in the Assignment, "the Mark," expressly recited only as U.S. Reg. No. 2,015,430. While it is true that the defined term "the Mark" appears in both singular and plural forms, this is clearly nothing more than a typographical inconsistency. *See United States Hosiery Corporation v. The Gap, Inc.* 707 F. Supp. 800, 809 (W.D.N.C. 1989) (rejecting Defendant's argument that the corporation in the Plaintiff's assignment did not exist and therefore the assignment was invalid because of a typographical error which stated the corporation was incorporated in North Carolina when it was actually incorporated in Delaware.) Similarly, here, the Board should reject Applicant's argument and find the Assignment valid because the plural version of the defined term "the Mark" in the Assignment is merely a typographical inconsistency that was intended to be read as "the Mark," and as such the assignor effectively assigned the Registration to the assignee.

Second, Applicant asserts that the Assignment is invalid because it claims the Assignment only "notes" that there is a registration for the mark IAPPS, but fails to assign it because the services in connection with which "the Mark" is used are not listed within the body of the Assignment. However, the Assignment does more than simply "note" that the mark is registered because it incorporates by reference the Registration, which is defined as "the Mark." The services in connection with which "the Mark" is used – along with all other information recited in the Registration - are ascertainable from the Registration. The Assignment "assigns… all right, title, and interest" in and to the Registration to the assignee. Applicant is effectively requesting the Board to require every assignment recite not only the registration number but also

select additional information from the registration in order for it to be valid, and Applicant does so without citing any precedent. The Board should reject the adoption of such a policy.

Finally, Applicant's argument that Opposer lacks standing is based solely on whether Opposer's recorded Assignment is valid. While Opposer has established ownership, whether the Opposer is the owner of the Registration immaterial to the issue of standing because ownership of a trademark is not required in order to establish standing. "The issue is not whether the opposer owns the mark or is entitled to register it, but merely whether it is likely that he would be somehow damaged if a registration were granted to the applicant." McCarthy on Trademarks and Unfair Competition, §§20:7; citing *Wilson v. Delaunay,* 114 USPQ 339, 341 (CCPA 1957) (finding that the appellee had standing because it derived revenues from the sale of goods under the mark and therefore would be injured by the registration of applicant's mark). Opposer has standing because it derives revenues from the sale of the services under the IAPPS mark identified in the Registration and it would be damaged by the registration of Applicant's mark. As such, Applicant's affirmative defense that Opposer lacks standing should be stricken because it is redundant, immaterial, and/or impertinent.

Finally, based on the foregoing, Applicant's affirmative defense that Opposer has unclean hands should be stricken because Opposer has standing. Opposer has not engaged in wrongdoing by filing its Notice of Opposition based on the Registration and Applicant is not personally injured by the conduct of the Opposer. As such, Applicant's affirmative defense that Opposer has unclean hands should be stricken because it is redundant, immaterial, and/or impertinent.

CONCLUSION

In light of the foregoing, the Board should grant Opposer's motion and strike Applicant's purported affirmative defenses.

Date: January 28, 2013

BRIDGELINE DIGITAL, INC.

By its attorneys,

MORSE, BARNES-BROWN & PENDLETON, P.C.

By: _____

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