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Filing date: **03/28/2005**

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

<b>Proceeding</b>	91153755
<b>Party</b>	Defendant PRIDE OF PLACE PLANTS, INC.  674 CROMARTY AVENUE CAX SIDNEY, BRITISH COLUMBIA V8L 5G6,
<b>Correspondence Address</b>	VINCENT G. GIOIA CHRISTIE, PARKER & HALE, LLP, PO BOX 7068 PASADENA, CA 91109
<b>Submission</b>	Motion for Order to Show Cause for Opposer's Failure to File Opening Brief
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<b>Signature</b>	/s/
<b>Date</b>	03/28/2005
<b>Attachments</b>	mtnose.PDF ( 3 pages )

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

WALTERS GARDENS, INC.

Opposer,

v.

PRIDE OF PLACE PLANTS, INC.

Applicant.

Opposition No. 91153755

**MOTION FOR ORDER TO SHOW  
CAUSE FOR OPPOSER'S FAILURE  
TO FILE OPENING BRIEF**

Applicant, Pride of Place Plants, Inc. ("PoPP") moves for an order requiring Opposer, Walters Gardens, Inc. ("WGI") to show cause why judgment should not be entered against it as a result of WGI's failure to file its opening brief.

On November 9, 2004, the Board issued a scheduling order that required WGI to file its opening brief on or before March 18, 2005.<sup>1</sup> PoPP has not received a copy of WGI's brief, and the Board's docket indicates that no brief was filed. Trademark Rule 2.128(a)(3) provides that where "a party in the position of plaintiff fails to file a main brief, an order may be issued allowing plaintiff until a set time, not less than fifteen days, in which to show cause why the Board should not treat such failure as a concession of the case." 37 CFR § 2.128(a)(3); TBMP § 801.02(a). If the plaintiff then fails to respond to the order to show cause, or files a response that confirms it has lost interest in the case, the Board may enter judgment against plaintiff. *Id.* An adverse party may file a motion requesting that the Board issue an order to show cause of the Board does not issue such an order *sua sponte*. TBMP § 536.

<sup>1</sup> Specifically, the order set January 17, 2005 as the date on which the rebuttal testimony period was to close. As a result, WGI's brief was due 60 days later, or March 18, 2005. *See* 37 CFR § 2.128(a)(3), TBMP § 801.02(a).

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On February 16, 2005, WGI filed a motion to reset the rebuttal testimony period and for an extension of time to file its opening brief. PoPP opposed that motion in part, pointing out that there was no basis for resetting the testimony period (as WGI itself had represented in writing).<sup>2</sup> The Board has not granted WGI's motion, and as a result there was no basis for WGI's failure to file its brief on time. *See* TBMP § 509.02 ("A party has no right to assume that its motion to extend (much less a motion to reopen) made without the consent of the adverse party will always be granted automatically").

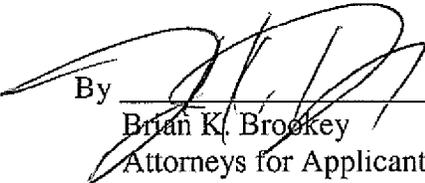
Therefore, PoPP requests that the Board issue an order for WGI to show cause, within 15 days, why judgment in this matter should not be entered against it.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date: March 28, 2005

By

  
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<sup>2</sup> PoPP had previously offered WGI a two-week extension to file its brief, but WGI rejected that offer and instead filed its motion to reset the rebuttal testimony period.

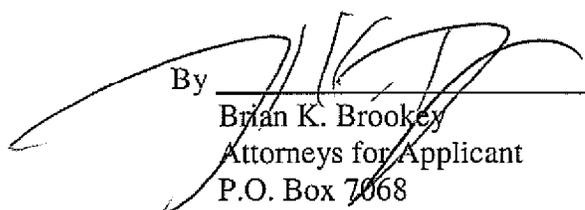
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**CERTIFICATION OF MAILING AND SERVICE**

I certify that on March 28, 2005, the foregoing **MOTION FOR ORDER TO SHOW CAUSE FOR OPPOSER'S FAILURE TO FILE OPENING BRIEF** was electronically filed with the United States Patent and Trademark Office of the United States.

It is further certified that on March 28, 2005, the foregoing **MOTION FOR ORDER TO SHOW CAUSE FOR OPPOSER'S FAILURE TO FILE OPENING BRIEF** is being served by mailing a copy thereof by first class mail addressed to:

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By 

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