

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

In re Application Serial No.: 76308975

TTAB

Mark: DARKSTAR

Leo Stoller, d/b/a Central Manufacturing Company )

Opposer, )

v. )

Northern Telepresence Corporation )

Applicant. )

Opposition No. 91162195

**APPLICANT'S MOTION TO DISMISS THE OPPOSITION FOR  
OPPOSER'S FAILURE TO TIMELY FILE THE NOTICE OF OPPOSITION**

In response to the Notice of Opposition filed by Central Manufacturing Company ("Opposer") against Northern Telepresence Corporation ("Applicant") regarding Applicant's application for registration of the mark DARKSTAR, Applicant, by its attorneys, Burr & Brown, hereby moves for the rejection and dismissal of this proceeding, with prejudice, pursuant to §306.04 of the Trademark Trial and Appeal Board Manual of Procedure (T.B.M.P.) for Opposer's failure to timely file the Notice of Opposition in accordance with T.B.M.P. §306.01.

The factual and legal bases for Applicant's Notice to Dismiss are contained in the Memorandum filed concurrently herewith.

WHEREFORE, for the reasons stated above and in the accompanying Memorandum,  
Applicant respectfully requests that the Board grant this motion.

Respectfully submitted,

BURR & BROWN

Dated: October 7, 2004

By: Steven W. Caldwell  
Steven W. Caldwell, Esq.  
Attorney for Northern Telepresence Corporation

SWC:jms

Enclosures:

Memorandum

Certificate of Service

BURR & BROWN  
P.O. Box 7068  
Syracuse, New York 13261

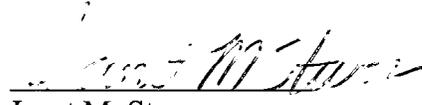
Telephone: (315) 233-8300  
Facsimile: (315) 233-8320

**CERTIFICATE OF SERVICE**

I, Janet M. Stevens, certify that on October 7, 2004, I caused a copy of Applicant's Motion to Dismiss the Opposition for Opposer's Failure to Timely File the Notice of Opposition to be delivered via first class mail to:

Leo Stoller  
President  
Central Manufacturing Company  
P.O. Box 35189  
Chicago, IL 60707-0189

by placing the same properly enclosed in a postpaid wrapper, in a post office box regularly maintained by the government of the United States, in the City of Syracuse, Onondaga County, New York, at Federal Station, 100 South Clinton Street 13261.

  
Janet M. Stevens

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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In re Application Serial No.: 76308975

Mark: DARKSTAR

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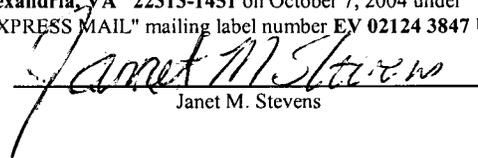
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I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 addressed to **Mail Stop TTAB, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451** on October 7, 2004 under "EXPRESS MAIL" mailing label number **EY 02124 3847 US**.

  
Janet M. Stevens

**MEMORANDUM IN SUPPORT OF APPLICANT'S MOTION  
TO DISMISS FOR FAILURE TO TIMELY FILE A NOTICE OF OPPOSITION**

Applicant, Northern Telepresence Corporation, (hereafter "Applicant"), (1) moves to dismiss Opposer's, Leo Stoller/Central Manufacturing Company's, (hereafter "Stoller"), Opposition of Applicant's Application Serial No. 76308975 for failure to timely file a Notice of Opposition in accordance with T.B.M.P. §306.01; and (2) requests that the Board exercise its inherent power and authority, and sanction Stoller for continuing his pattern of falsifying certificate of mailing dates, which is a blatant misuse of Applicant's and the Board's resources.

**I. Stoller's Opposition should be dismissed, with prejudice, as it is time barred under 15 U.S.C. §1063(a).**

Stoller's untimely filed opposition is clearly barred by 15 U.S.C. §1063(a), which requires that a written request for an extension of time must be filed within thirty days after the date of publication in the *Official Gazette*, or within an extension period granted by the Board. 15 U.S.C. §1063(a); 37 C.F.R. §2.102(c); T.B.M.P. §§306 *et seq.* The relevant language of §1063(a) provides that "upon written request *prior to the expiration of the thirty-day period*, the time for filing [an] opposition shall be extended for an additional thirty days...."(emphasis added). The time period for filing an opposition is statutory, and thus cannot be waived. *In re Kabushiki Kaisha Hitachi Seisakusho*, 33 USPQ2d 1477, 1478 (Comm'r Pats. 1994)("Since the time period for filing an opposition or requesting an extension of time to oppose is prescribed by statute, the Commissioner has no authority to waive this requirement").

Applicant's "DARKSTAR" mark was published for opposition on January 28, 2003. Therefore, the opposition period under §1063(a) closed on February 27, 2003. The record indisputably shows that Stoller filed an unsigned Request for a ninety-day extension to oppose Applicant's "DARKSTAR" mark on *April 3, 2003* (a copy of the Request is attached as Exhibit A). This is almost *six weeks* after the opposition period had already closed. As evidenced in an April 18, 2003 Notice from the United States Patent and Trademark Office (PTO), a PTO representative, Mr. Williams, stated on the record that Stoller's Request for an extension to oppose Applicant's "DARKSTAR" mark was received in the PTO on April 3, 2003 (a copy of the April 18, 2003 Notice is attached as Exhibit B).

The PTO's April 18, 2003 Notice granted Stoller until May 18, 2003 to submit a signed copy of his April 3, 2003 Request for extension of time to oppose. This Notice effectively

waived the statutory requirements of §1063(a) by improperly extending the opposition period beyond the statutorily prescribed thirty-day limit. Since the statutorily prescribed time period for filing the opposition ended on February 27, 2003, the Commissioner had no authority, on April 3, 2003 or at any point thereafter, to waive the mandates of §1063(a) and extend the opposition period beyond that date (i.e., until May 18, 2003). See *In re Kabushiki Kaisha Hitachi Seisakusho*, 33 USPQ2d at 1478.

Stoller finally submitted a signed copy of his April 3, 2003 request for a ninety-day extension of time to oppose Applicant's mark, which was apparently received in the PTO on May 5, 2003 (a copy of that Request is attached as Exhibit C). While Stoller's May 5, 2003 filing appears to be within the extension period granted by the Board in the April 18, 2003 Notice (attached as Exhibit B), the Board had absolutely no authority to grant Stoller until May 18, 2003 to file a signed copy of the April 3, 2003 request to extend the opposition period, because the record unquestionably shows that Stoller's original Request (filed April 3, 2003) was already *too late* (i.e., it was received in the PTO almost six weeks after the statutorily prescribed time period for filing the opposition had already ended). Accordingly, since the time period for filing an opposition is statutory, and thus cannot be waived, Stoller's opposition is time barred under 15 U.S.C. §1063(a). Therefore, Stoller's untimely filed opposition should be dismissed with prejudice.

**II. The Trademark Office has established that Stoller has a history of falsifying certificate of mailing dates.**

Applicant acknowledges that Stoller's unsigned April 3, 2003 Request to extend the opposition period (attached as Exhibit A) includes an *unsigned* certificate of mailing date of

February 25, 2003, which is two days before the expiration date of the statutory time period for filing such a Request. It is undisputed, however, that the PTO in fact received Stoller's request to extend the opposition period on April 3, 2003 (see Mr. Williams' Notice of April 18, 2003, attached Exhibit B). Plainly stated, the PTO received Stoller's Request nearly six weeks after the unsigned certificate of mailing was deposited with the U.S. Postal Service. It is inconceivable that the United States Postal Service took nearly six weeks to deliver Stoller's Request to the PTO. Stoller has played this game before. In *S Industries, Inc. v. Lamb-Weston, Inc.*, 45 USPQ2d 1293, 1295 (TTAB 1997), the Board sanctioned Stoller for a fraudulent certificate of mailing that he submitted with a motion to extend the time to respond to an Applicant's motion to vacate. In that proceeding before the Board, Stoller's motion to extend was not received in the PTO until more than two weeks after the date given in the certificate of mailing. Based on the evidence of record, the Board held that Stoller's certificate of mailing date on his motion to extend was incorrect and fraudulent. See *S Industries, Inc. v. Lamb-Weston, Inc.*, 45 USPQ2d at 1295.

In the present opposition proceeding, Stoller's initial request to extend the opposition period was not received by the PTO until April 3, 2003, almost *six weeks* after the February 25, 2003 date given in the unsigned certificate of mailing. The substantial delay between those dates is three times as egregious when compared to the two-week delay between the certificate of mailing date and the actual date that the PTO received Stoller's fraudulent paper in *S Industries, Inc. v. Lamb-Weston, Inc.*, discussed above. Based on the evidence of record, as in *S Industries, Inc. v. Lamb-Weston, Inc.*, the Board should find that Stoller's February 25, 2003 certificate of mailing date on his initial request to extend the opposition period (received in the PTO on April 3, 2003) is incorrect and fraudulent.

**III. The Board should exercise its inherent power and sanction Stoller for continuing his pattern of fraud on the PTO and TTAB, which fraud is a blatant misuse of both Applicant's and the Board's resources.**

The Board, like Article III courts, has the inherent power to manage its docket, prevent undue delays, and regulate the conduct of those who appear before it by allowing the Board to impose sanctions where necessary. *Carrini, Inc. v. Carla Carini, S.R.L.* 57 USPQ2d 1067, 1072-73 (TTAB 2000). The Board has, on numerous occasions, exercised its inherent authority and sanctioned Stoller for his bad-faith conduct and material misrepresentations in papers filed before the Board.<sup>1</sup> Indeed, the Board has prophetically noted that “we are not optimistic that Leo Stoller can be discouraged from submitting further bad-faith filings unless we impose a sanction.” *Central Manufacturing Inc. v. Third millennium Tecnology, Inc.*, 61 USPQ2d at 1215. Not surprisingly, other courts have taken notice of Stoller's history and sanctioned or reprimanded Stoller for his frivolous, harassing, and otherwise inappropriate litigation efforts, which include asserting claims with no basis in fact or law and making fraudulent representations to courts.<sup>2</sup>

In the present opposition proceeding, Stoller's initial request to extend the opposition

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<sup>1</sup> *Central Manufacturing Inc. v. Third millennium Tecnology, Inc.*, 61 USPQ2d 1210, 1215 (TTAB 2001) (sanctioning Stoller because two of his requests for extensions of time were based on untruths and filed in bad faith and for improper purposes, i.e., to obtain additional time to harass applicant, to obtain unwarranted extensions of the opposition period, and to waste resources of applicant and the Board); *S Industries, Inc. v. Lamb-Weston, Inc.*, 45 USPQ2d 1293, 1295 (TTAB 1997) (sanctioning Stoller for a fraudulent certificate of mailing for a motion to extend his time to respond to applicant's motion to vacate); *S. Industries, Inc. v. S&W Sign Company, Inc. d/b/a Westview Instruments* (Opposition No. 102,907, Dec. 16, 1999)(sanctioning Stoller for making misrepresentations regarding the existence of settlement negotiations between one of his corporations and an applicant).

<sup>2</sup> E.g., *S Industries, Inc. v. Centra 2000, Inc.*, 58 USPQ2d 1635 (7<sup>th</sup> Cir. 2001) (awarding attorneys' fees because of Stoller's unfounded claims and procedural maneuvering that multiplied defendant's costs); *S Industries, Inc. v. Stone Age Equipment, Inc.*, 49 USPQ2d 1071, 1090-1091 (N.D. Ill. 1998) (awarding attorneys' fees because of Stoller's highly questionable (and perhaps fabricated documents)); *S. Industries Inc. v. Diamond Multimedia Systems Inc.*, 45 USPQ2d 1705, 1715 (N.D.Ill.1998)(awarding attorneys' fees because Stoller's claim “crosses the border of legal frivolousness...and utterly lacks merit on its face”); *S Industries, Inc. v. Hobbico, Inc.*, 940 F.Supp. 210, (N.D.Ill. 1996)(“S Industries, Inc. ('S') appears to have entered into a new industry—that of instituting federal litigation...[A]nd this court has had occasion to note a proliferation of other actions brought by S....”).

period was not received by the PTO until April 3, 2003, almost six weeks after the February 25, 2003 date stated in the unsigned certificate of mailing. Based on Stoller's previous history with the Board, there is little doubt that Stoller's February 25, 2003 certificate of mailing date on his initial request to extend the opposition period (received in the PTO on April 3, 2003) is incorrect and fraudulent.<sup>3</sup> Stoller has been sanctioned by the Board for this same type of fraudulent misconduct. In *S Industries, Inc. v. Lamb-Weston, Inc.*, after Stoller was found to have falsified a certificate of mailing for a motion to extend his time to respond to an Applicant's motion to vacate, the Board granted respondent's motion for sanctions and prohibited Stoller from using or relying upon the certificate of mailing procedure described in Trademark Rule 1.8 for all papers henceforth filed in that proceeding. *S Industries, Inc. v. Lamb-Weston, Inc.*, 45 USPQ2d at 1295.

Stoller's history of fraud and harassment transcends the PTO and the Courts. A simple Google™ search for "Leo Stoller" will unveil websites that have been created to document Stoller's long history of coercing royalty fees out of individuals and small companies that simply cannot afford to defend against his frivolous and coercive tactics. This simply has to stop, and the PTO and the TTAB are in the position to make it stop.

Stoller clearly has not learned his lesson from the Board or the courts, Applicant, therefore, requests that the Board once again exercise its inherent power and (1) forever prohibit Stoller from challenging Applicant's use of the mark DARKSTAR; (2) hold all of Stoller's DARKSTAR registrations and applications to be void and unenforceable as to any third party; (3) permanently ban Stoller from filing opposition or cancellation proceedings before the Board

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<sup>3</sup>The Board has taken Stoller's history of bad-faith actions into consideration when using its inherent authority to apply sanctions against Stoller. See, e.g., *Central Mfg., Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210, 1215 (TTAB 2001).

without first obtaining leave from the Board; (4) require pre-filing review by the Board, in the event that Stoller is granted permission to file an action, before Stoller can file any additional pleadings, papers or documents; and (5) prohibit Stoller from ever using or relying upon the certificate of mailing procedures described in Trademark Rule 1.8 for all papers Stoller henceforth files in the PTO.

WHEREFORE, for the reasons stated above, Applicant respectfully requests that the Board grant its Motion to Dismiss.

Respectfully submitted,

BURR & BROWN

Dated: October 7, 2004

By: Steven W. Caldwell  
Steven W. Caldwell, Esq.  
Attorney for Northern Telepresence Corporation

SWC:jms

Enclosures:

Memorandum  
Certificate of Service

BURR & BROWN  
P.O. Box 7068  
Syracuse, New York 13261

Telephone: (315) 233-8300  
Facsimile: (315) 233-8320

TTAB



**IN THE UNITED PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD**

04-03-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #64

CENTRAL MFG. CO.  
P O Box 35189  
Chicago, IL 60707-0189  
Potential Opposer,  
vs.

Trademark: DARKSTAR  
Application SN: 76 308975  
Int. Class No: 009

Northern Telepresence Corp

Filed: 09/05/01

Published: January 28, 2003

Applicant.

Box TTAB/NO FEE  
(IN TRIPLICATE)

**REQUEST FOR A NINETY DAY EXTENSION  
OF OPPOSITION PERIOD**

NOW COMES the Potential Opposer and requests a extension of ninety (90) days from the present close of the opposition period, up to and including May 27, 2003 within which to consider the filing of an Opposition to the above identified application for trademark registration.

Potential Opposer invites opposing counsel to contact the Potential Opposer at Tel No. 773/283-3880 (L. Stoller) in order to discuss settlement of this potential trademark controversy as between the parties and/or to file an express abandonment.

This extension is requested to investigate facts, obtain documentation, and to enable the Potential Opposer to consider its position with regard to opposition of this application.

Respectfully submitted,

By: Leo Stoller Pres.  
Central Mfg. Co., Potential Opposer  
Trademark and Licensing Department  
P.O. Box 35189  
Chicago, Illinois 60707-0189  
773 283-3880 FAX 708 453-0083

Dated: Feb. 25,2003

Certification of Mailing

I hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to:  
Box TTAB/NO FEE, Asst. Commissioner of Patents and Trademarks,  
2900 Crystal Drive, Arlington, Virginia 22202-3513

Leo Stoller  
Dated: Feb. 25, 2003  
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EXHIBIT A

OPPOSITION NO. 91162195

SUBMITTED BY  
NORTHERN TELEPRESENCE CORPORATION

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

Mailed: April 18, 2003

Applicant: Northern Telepresence Corporation  
Serial No.: 76308975  
Filed: 09/05/2001  
Mark: DARKSTAR

Leo Stoller  
Central Mfg. Co.  
P.O. Box 35189  
Chicago, IL 60707-0189

**Eric McWilliams, Legal Assistant**

On April 3, 2003, potential opposer herein, Central Mfg. Co. filed an unsigned request for an extension of time to oppose the above-identified application.

Potential opposer is advised that Trademark Rule 2.119(e) provides that every paper filed in an inter partes proceeding, and every request for an extension of time to file an opposition, must be signed by the party filing it, or by the party's attorney or other authorized representative, but an unsigned paper will not be refused consideration if a signed copy is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

Accordingly, potential opposer is allowed until May 18, 2003 in which to submit a signed copy of its request for extension of time to oppose, failing which the request will not be given any consideration.

EXHIBIT B

OPPOSITION NO. 91162195

SUBMITTED BY  
NORTHERN TELEPRESENCE CORPORATION

IN THE UNITED PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

CENTRAL MFG. CO.  
P O Box 35189  
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Potential Opposer,  
vs.

Trademark: DARKSTAR  
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Northern Telepresence Corp

Filed: 09/05/01

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Applicant.

Box TTAB/NO FEE  
(IN TRIPLICATE)

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This extension is requested to investigate facts, obtain documentation, and to enable the Potential Opposer to consider its position with regard to opposition of this application.

Respectfully submitted,

*Leo Stoller*

By: Leo Stoller Pres.  
Central Mfg. Co., Potential Opposer  
Trademark and Licensing Department  
P.O. Box 35189  
Chicago, Illinois 60707-0189  
773 283-3880 FAX 708 453-0083

Certification of Mailing

I hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to:  
Box TTAB/NO FEE, Asst. Commissioner of Patents and Trademarks,  
2900 Crystal Drive, Arlington, Virginia 22202-3513

*Leo Stoller 4/29/03*  
Leo Stoller  
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EXHIBIT C (1 of 2)

OPPOSITION NO. 91162195

SUBMITTED BY  
NORTHERN TELEPRESENCE CORPORATION

REQUEST FOR AN EXTENSION  
AS PER BOARD ORDER 4-18-03  
FOR SN 76308975



05-05-2003

U.S. Patent & TMOtc/TM Mail Rpt Dt. #22

EXHIBIT C (2 of 2)

OPPOSITION NO. 91162195

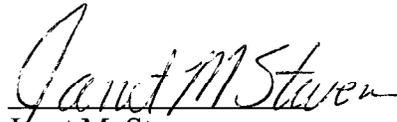
SUBMITTED BY  
NORTHERN TELEPRESENCE CORPORATION

**CERTIFICATE OF SERVICE**

I, Janet M. Stevens, certify that on October 7, 2004, I caused a copy of Memorandum in Support of Applicant's Motion to Dismiss For Failure to Timely File The Opposition to be delivered via first class mail to:

Leo Stoller  
President  
Central Manufacturing Company  
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by placing the same properly enclosed in a postpaid wrapper, in a post office box regularly maintained by the government of the United States, in the City of Syracuse, Onondaga County, New York, at Federal Station, 100 South Clinton Street 13261.

  
Janet M. Stevens