

ESTTA Tracking number: **ESTTA266856**

Filing date: **02/17/2009**

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

Proceeding	91162715
Party	Plaintiff PERSIS INTERNATIONAL, INC.
Correspondence Address	Edward F. Richards Persis International, Inc. 2647 N. Western Avenue, # 8030 Chicago, IL 60647 UNITED STATES edwardrichards@juno.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Edward F. Richards
Filer's e-mail	edwardrichards@juno.com
Signature	/Edward F. Richards/
Date	02/17/2009
Attachments	Motion To Suspend - Exhibits.pdf (48 pages)(1058687 bytes)

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

_____)		
PERSIS INTERNATIONAL, INC.)		
	)	Opposition No.:	91162715
Petitioner/Opposer	)	Application No.:	76/214,968
	)	Mark:	SOHMER
v.)		
)		
BURGETT, INC.,)		
)		
Respondent/Applicant.)		
_____)		

MOTION TO SUSPEND OPPOSER’S TESTIMONY PERIOD

Pursuant to TBMP 510.02(a), Opposer Persis International, Inc. (“Persis”) hereby moves the Court to suspend Opposer Persis’s testimony period pending outcome of the enforcement of a subpoena issued by the Clerk of the U.S. District Court, Eastern District of California commanding the appearance at a deposition by Gary Burgett, president of Applicant Burgett, Inc.

Background

A subpoena was issued by the Clerk of the U.S. District Court, Eastern District of California on February 3, 2009 commanding the appearance of Gary Burgett at a deposition for this Opposition Proceeding No 91162715. This subpoena was served upon Gary Burgett at Burgett, Inc.’s headquarters - PianoDisc 4111 N. Freeway Blvd. Sacramento, CA 95834 on February 5, 2009. Mr. Burgett was commanded to appear on February 13, 2009 at 9:30 am at the office of Carol Nygard and Associates 4180 Truxel Rd. #100 Sacramento, CA 95834 (located 2 miles from Burgett, Inc.’s headquarters). Mr. Burgett failed to appear for the deposition and a Statement of Non-Appearance of Gary Burgett was taken by the court reporter. A Motion To

Enforce Subpoena is being prepared for the U.S. District Court, Eastern District of California.
See Exhibits 1 and 2.

The testimony of Gary Burgett is key to the outcome of this proceeding. The Board has already found in its August 19, 2008 Order that the primary issue in this proceeding is the veracity, or lack thereof, of Gary Burgett's five years' use declaration.

Contrary to applicant's assertion, priority of use is not at issue in this proceeding. Rather, this proceeding is concerned primarily with the veracity, or lack thereof, of the five years' use declaration that applicant submitted in support of its claim that the mark in its involved application has acquired distinctiveness under Trademark Act Section 2(f), 15 U.S.C. Section 2(f). Emphasis Added. *See* Board's Order of August 19, 2008 at 8.

Gary Burgett is the president of a party to this proceeding. Gary Burgett signed the sworn five years' use declaration that is at the heart of this proceeding and that Opposer Persis contends was fraudulent. Opposer Persis has a right to depose Gary Burgett during its testimony period. Opposer Persis properly included Gary Burgett as a witness in its pretrial disclosures, and served notice of the deposition of Gary Burgett on January 23, 2009. *See* Exhibits 3 and 4.

On information and belief, Steven Smith and the law firm of O'Banion and Ritchey are acting in bad faith in its attempts to prevent the direct testimony of Gary Burgett during Opposer's testimony period. *See* Exhibit 5.

Persis International, Inc. respectfully requests the Board suspend Opposer's testimony period prior to its scheduled closing at the end of the day on February 17, 2009 pending the outcome of a Motion For Enforcement of subpoena of Gary Burgett in U.S. District Court, Eastern District of California. Opposer's deposition of Gary Burgett will include a significant number of exhibits¹ and will therefore have a significant impact upon Opposer's Notice of

¹ *See* Exhibit 3 – Opposer's Pretrial Disclosures.

Reliance. Once this issue is decided in the U.S. District Court, Persis will move the Board to reopen its testimony period to: a) file its Notice of Reliance, and b) if Opposer is successful in the enforcement of this subpoena in U.S. District Court, take the direct testimony deposition of Gary Burgett during Opposer Persis's testimony period.

Additionally, Opposer Persis respectfully requests the Board allow the deposition of Jacob Zeltser to take place on February 17, 2009 at 11 am Eastern Time as this deposition was already noticed to all parties in this proceeding prior to the Non-Appearance of Gary Burgett on February 13, 2009. *See Exhibit 6.*

Respectfully,

PERSIS INTERNATIONAL, INC.

Date: February 16, 2009

/Edward F. Richards/

Edward F. Richards

Authorized Representative and Officer of
Persis International, Inc.

Edward F. Richards
2647 N. Western Ave. #8030
Chicago, IL 60647
Tel. 616-828-0618
edwardrichards@juno.com

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer's Motion to Suspend Opposer's Testimony Period has been served on:

Steven L. Smith (email: sls@intellectual.com)
O'Banion & Ritchey LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814

Via email, and by mailing said copy on February 16, 2009 via First Class Mail postage paid to the above address.

/Edward F. Richards/

Edward F. Richards

Exhibit 1

To:

**Motion To Suspend
February 16, 2009**

**Opposer Persis International, Inc.
Opposition Proceeding No. 91162715**

**Issued by the
UNITED STATES DISTRICT COURT
Eastern District of California**

SUBPOENA IN A CIVIL CASE

Persis International, Inc.
V.
Burgett, Inc.

TO: Gary Burgett
PianoDisc
4111 N. Freeway Blvd.
Sacramento, CA 95834

Case Number: 91162715
Trademark Trial and Appeal Board
United States Patent and Trademark Office

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	
COURTROOM	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
Carol Nygard & Assoc. 4180 Truxel Rd #100 Sacramento, CA 95834 916.568.7344	Feb. 13, 2009 9:30am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Theresa J. Burgett, Deputy Clerk</i>	2/3/09

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Victoria C. Minor, Clerk

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

If action is pending in district other than district of issuance, state district under case number 9

For:
Address:
CSZ:

PERSIS INTERNATIONAL, INC.
2647 N. WESTERN AVE. #8030
CHICAGO, IL 60647

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO.: 91162715

AFFIDAVIT OF SERVICE

PERSIS INTERNATIONAL, INC.

Plaintiff/Petitioner,

vs.

BURGETT, INC.

Defendant/Respondent.

Received by Advanced Legal Service on 02/03/2009 at 03:46 PM to be served upon:

GARY BURGETT

ss.

I, TAMMIE PENA, depose and say that:

On 02/05/2009 at 09:14 AM, I served the within SUBPOENA IN A CIVIL CASE ON GARY BURGETT at 4111 N. FREEWAY BLVD., Sacramento, CA 95834 in the manner indicated below:

By delivering to the within named person a true copy of this process and informing the person of the contents.

I declare under penalties of perjury under the laws of the United States Of America that the foregoing is true and correct.

FEB 09 2009

Tammie Pena

TAMMIE PENA - SACRAMENTO #2008-16

Advanced Legal Service
Advanced Legal Service 816 H Street, Suite 207
Sacramento, CA 95814
916.446-2051
Atty File#: - Our File# 13579

For:
Address:
CSZ:

PERSIS INTERNATIONAL, INC.
2647 N. WESTERN AVE. #8030
CHICAGO, IL 60647

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO.: 91162715

Amended
AFFIDAVIT OF SERVICE

PERSIS INTERNATIONAL, INC.

Plaintiff/Petitioner,

vs.

BURGETT, INC.

Defendant/Respondent.

Received by **Advanced Legal Service** on **02/03/2009** at **03:46 PM** to be served upon:

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ss.

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On **02/05/2009** at **09:14 AM**, I served the within **SUBPOENA IN A CIVIL CASE** on **GARY BURGETT** at **4111 N. FREEWAY BLVD. , Sacramento, CA 95834** in the manner indicated below:

By delivering to the within named person a true copy of this process and informing the person of the contents.

Comments/Prev. Attempts: **NO WITNESS FEES WERE REQUESTED AT THE TIME OF SERVICE.**

I declare under penalties of perjury under the laws of the United States Of America that the foregoing is true and correct.

Tammie Pena
x _____
TAMMIE PENA - SACRAMENTO #2008-16
Advanced Legal Service
Advanced Legal Service 816 H Street, Suite 207
Sacramento, CA 95814
916.446-2051
Atty File#: - Our File# 13579

FEB 10 2009

Exhibit 2

To:

**Motion To Suspend
February 16, 2009**

**Opposer Persis International, Inc.
Opposition Proceeding No. 91162715**

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 IN AND FOR THE COUNTY OF SACRAMENTO

COPY

3
4 PERSIS INTERNATIONAL, INC.

Opposition No.: 91162715

5 Petitioner/Oposer

Application No.: 76/214,968

6 Mark: SOHMER

7 v.

8 BURGETT, INC,

9 Respondent/Applicant.
10 ----- /

11
12 --o0o--

13 FRIDAY, FEBRUARY 13, 2009

14 --o0o--

15 TRANSCRIPT OF STATEMENT

16 OF NONAPPEARANCE OF GARY BURGETT

17 --o0o--
18

19 **CAROL NYGARD**

20 & ASSOCIATES

21 DEPOSITION REPORTERS

22 **Sacramento**
23 4180 Truxel Road
24 Suite 100
25 Sacramento, CA 95834
916-928-8999

San Francisco
225 Bush Street
Suite 1830
San Francisco, CA 94104
415-956-9400

Toll Free: 1-877-438-7787
www.SacramentoCourtReporter.com
www.SanFranciscoCourtReporter.com

Reported by ANGELICA R. GUTIERREZ, CSR No. 13292

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1 Reported by ANGELICA R. GUTIERREZ, CSR No. 13292

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APPEARANCES

For the Petitioner/Opposer:

Edward F. Richards

2647 N. Western Ave. #8030

Chicago, IL 60647

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INDEX OF EXHIBITS

EXHIBIT No.	PAGE	DESCRIPTION
1	5	Three Letters
2	5	Two Letters

---oOo---

Gary Burgett 2/13/2009

1 FRIDAY, FEBRUARY 13, 2009

2 10:32 am.

3 My name is Edward F. Richards president of Persis International
4 Inc. located at 2647 North Western Avenue number 8030 Chicago
5 Illinois, 60647. The date and time is Friday, February 13th
6 2009 at 10:30 a.m. The location is Carol Nygard and Associates a
7 court reporting firm located at 4180 Truxel Road Suite 100
8 Sacramento, California. And for the record, we are here at the
9 notice and subpoenaed deposition of Gary Burgett who is
10 president of Burgett Inc., which is a party to this trademark
11 opposition proceeding, number 91162715 before the Trademark
12 Trial an Appeal Board of the United States Patent and Trademark
13 Office in Virginia. Persis International Inc. is also a party
14 to this proceeding. We have waited a full hour and the deponent
15 Gary Burgett has not appeared. Here is Exhibit 1, which is a
16 true and correct copy of the notice of deposition of Gary
17 Burgett to be recorded by stenographic means. Which was serve
18 upon opposing counsel Steven L. Smith of the law firm O'Banion &
19 Ritchey in Sacramento, California. It was served on
20 January 23rd, 2009 by e-mail and first-class mail. Exhibit 2 is
21 a true and correct copy of the subpoenaed in the civil case
22 along with the affidavit of service of this subpoenaed. This
23 subpoenaed was served on February 3rd 2009 on Mr. Gary Burgett
24 at his work address of 4111 North Freeway Boulevard in
25 Sacramento, California. For the record, this subpoenaed was

1 issued by the clerk's office of the U.S. District Court Eastern
2 District of California. This subpoenaed was not issued by an
3 attorney, and it was not issued by Edward Richards or Persis
4 International Inc. We have here at the deposition, ready for
5 the deponent, the witness, Gary Burgett the appearance fee and
6 mileage. Persis International Inc. ensures that the deponent
7 will be compensated for his appearance. The location for this
8 deposition was specifically chosen because it's only 2 miles
9 from deponent Gary Burgett's work address of 4111 North Freeway
10 Boulevard Sacramento, California, where the service of the
11 subpoenaed took place. This location is extremely convenient
12 and there's ample, free parking.

13 (Off the record)

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I, ANGELICA R. GUTIERREZ, a Certified Shorthand Reporter of the State of California, duly authorized to administer oaths, do hereby certify:

That I am a disinterested person herein; that the Witness, named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition was reported in shorthand by me, ANGELICA R. GUTIERREZ, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.



ANGELICA R. GUTIERREZ CSR #13292

--o0o--

<p>A action 7:9,11 address 5:24 6:9 affidavit 5:22 ample 6:12 ANGELICA 2:1 7:4 7:13 Appeal 5:12 appearance 6:5,7 APPEARANCES 3:1 appeared 5:15 Application 1:5 Associates 5:6 attorney 6:3 7:8 Ave 3:4 Avenue 5:4 a.m 5:6</p>	<p>County 1:2 7:3 court 1:1 5:7 6:1 CSR 2:1 7:13</p> <p>D date 5:5 deponent 5:14 6:5 6:6,9 deposition 5:9,16 6:4,8 DESCRIPTION 4:3 District 6:1,2 duly 7:6</p> <p>E Eastern 6:1 Edward 3:4 5:3 6:3 either 7:9 ensures 6:6 Exhibit 4:3 5:15,20 EXHIBITS 4:1 extremely 6:11 e-mail 5:20</p>	<p>I IL 3:5 Illinois 5:5 INDEX 4:1 interested 7:10 International 1:4 5:3,13 6:4,6 issued 6:1,2,3</p> <p>J January 5:20</p> <p>L L 5:18 law 5:18 Letters 4:4,5 located 5:4,7 location 5:6 6:7,11</p>	<p>6:16 7:15</p> <p>P PAGE 4:3 parking 6:12 parties 7:9 party 5:10,13 Patent 5:12 Persis 1:4 5:3,13 6:3,6 Petitioner/Oposer 1:5 Petitioner/Oppos... 3:3 place 6:11 president 5:3,10 proceeding 5:11 5:14 7:5</p>
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PERSIS INTERNATIONAL, INC.)	
)	
Petitioner/Opposer	)	Opposition No.: 91162715
	)	Application No.: 76/214,968
v.	)	Mark: SOHMER
)	
BURGETT, INC.,)	
)	
Respondent/Applicant.)	
)	

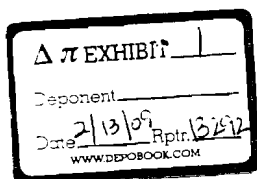
OPPOSER'S NOTICE OF TAKING DEPOSITION OF GARY BURGETT

To the parties who have appeared in the above cause of action, and their attorneys of record: PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. § 2.123, and the Federal Rules of Civil Procedure, Opposer Persis International, Inc. will take the testimonial deposition on oral examination, in-person to be recorded by stenographic means, of Gary Burgett 4111 N. Freeway Blvd. Sacramento, CA 95834 Tel. 916-567-9999 at the office of Carol Nygard & Associates 4180 Truxel Rd #100 Sacramento, CA 95834 Tel. 916-568-7344. The deposition will commence on February 13, 2009 at 9.30 am Pacific Time, and continuing thereafter until completed. The court reporting firm will be Carol Nygard & Associates 4180 Truxel Rd #100 Sacramento, CA 95834 Tel. 916-568-7344.

You are invited to attend to cross-examine.

Respectfully,

PERSIS INTERNATIONAL, INC.



PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer's Notice Of Taking Deposition Of Gary Burgett has been served on:

Steven L. Smith (email: sls@intellectual.com)
O'Banion & Ritchey LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814

Via email, and by mailing said copy on January 23, 2009 via First Class Mail postage paid to the above address.

_____/Edward F. Richards/_____.
Edward F. Richards

Date: January 23, 2009

Edward F. Richards

Edward F. Richards
Authorized Representative and Officer of
Persis International, Inc.

Edward F. Richards
2647 N. Western Ave. #8030
Chicago, IL 60647
Tel. 616-828-0618
edwardrichards@juno.com

Issued by the
UNITED STATES DISTRICT COURT

Eastern District of California

Persis International, Inc.

SUBPOENA IN A CIVIL CASE

v.
Burgett, Inc.

Case Number: 91162715
Trademark Trial and Appeal Board
United States Patent and Trademark Office

TO: Gary Burgett
PianoDisc
4111 N. Freeway Blvd.
Sacramento, CA 95834

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	DATE AND TIME

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Carol Nygard & Assoc. 4180 Truxel Rd #100 Sacramento, CA 95834 916.568.7344	Feb. 13, 2009 9:30am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

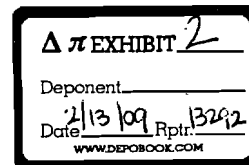
PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>V. Ymena Sanchez, Deputy Clerk</i>	2/13/09
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER	
Victoria C. Minor, Clerk	

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

⁹ If action is pending in district other than district of issuance, state district under case number.



For:
Address:
CSZ:

PERSIS INTERNATIONAL, INC.
2647 N. WESTERN AVE. #8030
CHICAGO, IL 60647

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Amended
AFFIDAVIT OF SERVICE

CASE NO.: 91162715

PERSIS INTERNATIONAL, INC.

Plaintiff/Petitioner,

vs.

BURGETT, INC.

Defendant/Respondent.

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GARY BURGETT

ss.

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On **02/05/2009** at **09:14 AM**, I served the within **SUBPOENA IN A CIVIL CASE** on **GARY BURGETT** at **4111 N. FREEWAY BLVD. , Sacramento, CA 95834** in the manner indicated below:

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Comments/Prev. Attempts: **NO WITNESS FEES WERE REQUESTED AT THE TIME OF SERVICE.**

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Tammie Pena
x _____
TAMMIE PENA - SACRAMENTO #2008-16
Advanced Legal Service
Advanced Legal Service 816 H Street, Suite 207
Sacramento, CA 95814
916.446-2051
Atty File#: - Our File# 13579

FEB 10 2009

For:
Address:
CSZ:

PERSIS INTERNATIONAL, INC.
2647 N. WESTERN AVE. #8030
CHICAGO, IL 60647

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO.: 91162715

AFFIDAVIT OF SERVICE

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Plaintiff/Petitioner,

vs.

BURGETT, INC.

Defendant/Respondent.

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By delivering to the within named person a true copy of this process and informing the person of the contents.

I declare under penalties of perjury under the laws of the United States Of America that the foregoing is true and correct.

x *Tammie Pena* FEB 09 2009
TAMMIE PENA - SACRAMENTO #2008-16
Advanced Legal Service
Advanced Legal Service 816 H Street, Suite 207
Sacramento, CA 95814
916.446-2051
Atty File#: - Our File# 13579

Exhibit 3

To:

**Motion To Suspend
February 16, 2009**

**Opposer Persis International, Inc.
Opposition Proceeding No. 91162715**

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

PERSIS INTERNATIONAL, INC.)	
)	
Petitioner/Opposer	)	Opposition No.: 91162715
	)	Application No.: 76/214,968
v.	)	Mark: SOHMER
)	
BURGETT, INC.,)	
)	
Respondent/Applicant.)	

OPPOSER’S PRETRIAL DISCLOSURES

To the parties who have appeared in the above cause of action, and their attorneys of record: PLEASE TAKE NOTICE that on January 4, 2009, Opposer Persis International, Inc. filed with the Trademark Trial and Appeal Board the following documents:

OPPOSER’S PRE TRAIL DISCLOSURE

Pursuant to Trademark Rule 2.121(e) Opposer Persis International, Inc. submits its Pre Trial Disclosure of the following witnesses it intends to depose during its 30-day testimony period.

- Daniel Kobida 24 Little Creek Lane Cincinnati, OH 45246 513-772-2282. Daniel Kobida is the owner and president of Ancott Associates which published the Music Product Directory - Acoustic Piano Edition from 1986-2006. Mr. Kobida was employed by the Wurlitzer and Baldwin piano companies from 1966-1984 in the areas of sales, district sales manager, education, and strategic planning. Daniel Kobida will testify regarding: procedures and practices in publishing the Music Product Directory - Acoustic Piano Edition; how the

information contained in the Music Product Directory - Acoustic Piano Edition was gathered or obtained. Mr. Kobida will not be asked his opinion, but will only be asked to testify as to what the published Music Product Directory - Acoustic Piano Edition states regarding: 1) the availability and source of pianos bearing the SOHMER or SOHMER & CO. marks from 1986 – 2006; 2) the availability and source of pianos bearing the PIANODISC, KNABE, GEORGE STECK, and MASON & HAMLIN marks from 1986 – 2006; 3) the availability, source, and brand of a piano model KB-43 from 1986 – 2006. Exhibits introduced may be all issues of the bi-annual Music Product Directory - Acoustic Piano Edition - Acoustic Piano Edition from 1986-2006.

- James Reeder 5660 W. Grand River Ave. Lansing, MI 48906 517-886-6000. James Reeder is a current authorized piano dealer of Applicant. He has been a piano retailer for 35 years including an authorized dealer for Applicant's predecessors in interest. He is also a master piano technician and piano rebuilder, and US importer of Blüthner pianos from Germany. Mr. Reeder will testify to the history of availability of SOHMER pianos from 1978 to the present. Mr. Reeder will also testify to the history of availability and sourcing of all of Applicant's other brands of pianos including PIANODISC, KNABE, GEORGE STECK, and MASON & HAMLIN. Exhibits introduced may be Publisher's Guide to the Music Industry 1994 – 2005; Piano Book 3rd and 4th editions and annual supplements 2001-2008; Pierce Piano Atlas 11th edition; Music Product Directory - Acoustic Piano Edition 1986 – 2006; Affidavit of James Reeder dated August 1, 2005.

- Theodore Golba 318 E. North St. Springfield, OH 45503 937-322-4921. Theodore Golba is president of the O.S. Kelly Company in Springfield, OH. The O.S. Kelly Co. is the sole USA supplier of cast-iron piano plates for the piano industry. Theodore Golba will testify regarding: 1) the O.S. Kelly Co.'s experience manufacturing piano plates and the custom patterns necessary to manufacture piano plates; 2) the O.S. Kelly Co.'s record of supplying cast-iron piano plates and storing and maintaining the custom patterns for Applicant's predecessors in interest; 3) the O.S. Kelly Co.'s possession, maintenance, and subsequent destruction or return to Applicant, of the SOHMER, KNABE and MASON & HAMLIN custom patterns for cast-iron plates which Applicant purchased from the bankruptcy court in 1996. Exhibits introduced may be Piano Book 3rd edition; Outdated Pattern Disposition Questionnaire; O.S. Kelly Co. Pattern Status Report; Affidavit of Theodore Golba dated October 17, 2005.

- Thomas Rourk 81 Craigie Circle Carlisle, MA 01741 978-369-5366. Thomas Rourk is a professional piano technician and piano rebuilder. He employed by Applicant's immediate successor, The Mason and Hamlin Companies when controlled by Premier Pianos, as head of piano production from late 1994-1996. Mr. Rourk will testify as to the non-use of the SOHMER trademark by The Mason and Hamlin Companies prior to Applicant's purchase of assets from the bankruptcy court in 1996. Exhibits introduced may be the Piano Book 4th edition; Affidavit of Thomas Rourk dated May 26, 2006.

- Jacob Zeltzer 384 Farrwood Dr Haverhill, MA 01835 (978) 469-0775. Jacob Zeltzer is a professional piano technician and piano builder. Mr. Zeltzer was employed for several months in 1996 by Applicant's immediate successor, The Mason and Hamlin Companies when controlled

by Premier Pianos. He was later employed by Applicant Burgett, Inc. from 1997 – 2003 at Applicant's Mason and Hamlin piano factory in Haverhill, MA. Mr. Zeltzer will testify as to Applicant's non-use of the SOHMER trademark during his years of employment by Applicant. Exhibits introduced may be the Piano Book 4th edition; Affidavit of Jacob Zeltzer dated May 27, 2006.

- Daniel Mattsson-Boze 1753 Itasca Ave. Sacramento Ave. 95835 906-204-0867. Daniel Mattsson-Boze is a professional engineer who was employed by Applicant as head mechanical engineer from 1999-2003. Mr. Mattsson-Boze will testify regarding his experiences and responsibilities while employed by Applicant. Mr. Mattsson-Boze will also testify regarding: 1) his experience in purchasing a piano from Applicant while employed by Applicant; 2) the use or non-use of the SOHMER trademark while he was employed by Applicant; 3) the use of other piano trademarks while employed by Applicant. Exhibits introduced may be Applicant's invoice dated March 5, 2001; photos of Mr. Boze's piano, Chinese translation of label in one of the photos of Mr. Daniel Mattsson-Boze's piano; Affidavit of Daniel Mattsson-Boze dated May 22, 2006.

- Gary Burgett 4111 N. Freeway Blvd. Sacramento, CA 95834 916-567-9999. President of Applicant Burgett, Inc. Gary Burgett will be asked to testify regarding the prosecution history of Applicant's involved trademark application no. 76214968 including but not limited to: all of Applicant's attempts to claim acquired distinctiveness, all Office Actions and Applicant's responses to Office Actions; Gary Burgett's sworn declarations submitted during its application process; Amendment to Allege Use and specimen; Ex Parte Appeal; Request For

Reconsideration of Final Refusal; Remand Letter of November 20, 2003; consequences of amending Applicant's application to the supplemental register; approval of Applicant's application for the principal register.

Gary Burgett will also be asked to testify regarding: Applicant's use or non-use of the SOHMER trademark; licensee's (Samick/SMC) use of the SOHMER trademark; whether Applicant and/or related parties used the SOHMER trademark as stated in the February 2004 declaration; examiner's repeated rejections of Applicant's claims of acquired distinctiveness; material representation of February 2004 sworn declaration; elements of fraud; Applicant's piano sale to Daniel Mattsson-Boze on March 5, 2001; source or manufacture of piano sold to Daniel Mattsson-Boze on March 5, 2001;

Exhibits introduced may be:

Sacramento Bee Article dated June 28, 2000

Publisher's Guide to the Music Industry and Applicant's advertisements 1994 – 2005.

Music Trades article dated August 2000.

Piano Book 3rd and 4th editions and annual supplements 2001-2008.

Music Product Directory 1986 – 2006.

Pierce Piano Atlas 11th edition.

Piano Disc Confidential Executive Summary.

Gary's Burgett's Declarations dated – May 5, 2003 and February 5, 2004.

Applicant's amended responses to Opposer's Interrogatories.

Applicant's amended responses to Opposer's Requests For Production.

Samick Licensing Agreement.

Applicant's invoice for piano sale to Daniel Mattsson-Boze dated March 5, 2001.

Photos of piano sold in Invoice dated March 5, 2001.

Chinese Translation of label inside piano sold in Invoice dated March 5, 2001.

Affidavits of former Burgett employees: David Foster (2), Jacob Zeltzer, Thomas Rourk, and Daniel Mattsson-Boze including exhibits.

Affidavit of Burgett piano dealer James Reeder.

Affidavit of O.S. Kelly president Theodore Golba including exhibits.

Affidavit of Pierce Piano Atlas publisher Larry Ashley.

Affidavit of Piano Book author Lawrence Fine.

Affidavit of Edward F. Richards including exhibits.

Cancelled or Expired trademark registration nos. 119130, 1786687, 137464, 0085691

Plaintiff's application no. 76210248

Board's Orders dated March 7, 2006, May 16, 2007, August 19, 2008, October 20, 2008, and December 10, 2008.

Applicant's Summary Judgment Motion dated April 28, 2006 and Applicant's Response and Reply Brief dated Jun 16, 2006 – and exhibits thereto.

Respectfully Submitted,

PERSIS INTERNATIONAL, INC.

Dated: January 4, 2009

/Edward F. Richards/
Edward F. Richards
President of Persis International, Inc.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the above **Notice Of Appearance on Behalf of Persis International, Inc.** has been served on:

Steven L. Smith (email: sls@intellectual.com)
O'Banion and Ritchie
400 Capitol Mall, Suite 1550
Sacramento, CA 95814

Via email at sls@intellectual.com and by mailing said copy on January 4, 2009 via First Class Mail postage paid to the above address.

/Edward F. Richards/
Edward F. Richards

Exhibit 4

To:

**Motion To Suspend
February 16, 2009**

**Opposer Persis International, Inc.
Opposition Proceeding No. 91162715**

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

_____)		
PERSIS INTERNATIONAL, INC.)		
	)	Opposition No.:	91162715
Petitioner/Opposer	)	Application No.:	76/214,968
	)	Mark:	SOHMER
v.)		
)		
BURGETT, INC.,)		
)		
Respondent/Applicant.)		
_____)		

OPPOSER'S NOTICE OF TAKING DEPOSITION OF GARY BURGETT

To the parties who have appeared in the above cause of action, and their attorneys of record: PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. § 2.123, and the Federal Rules of Civil Procedure, Opposer Persis International, Inc. will take the testimonial deposition on oral examination, in-person to be recorded by stenographic means, of Gary Burgett 4111 N. Freeway Blvd. Sacramento, CA 95834 Tel. 916-567-9999 at the office of Carol Nygard & Associates 4180 Truxel Rd #100 Sacramento, CA 95834 Tel. 916-568-7344. The deposition will commence on February 13, 2009 at 9.30 am Pacific Time, and continuing thereafter until completed. The court reporting firm will be Carol Nygard & Associates 4180 Truxel Rd #100 Sacramento, CA 95834 Tel. 916-568-7344.

You are invited to attend to cross-examine.

Respectfully,

PERSIS INTERNATIONAL, INC.

Date: January 23, 2009

/Edward F. Richards/

Edward F. Richards
Authorized Representative and Officer of
Persis International, Inc.

Edward F. Richards
2647 N. Western Ave. #8030
Chicago, IL 60647
Tel. 616-828-0618
edwardrichards@juno.com

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer's Notice Of Taking Deposition Of Gary Burgett has been served on:

Steven L. Smith (email: sls@intellectual.com)
O'Banion & Ritchey LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814

Via email, and by mailing said copy on January 23, 2009 via First Class Mail postage paid to the above address.

/Edward F. Richards/

Edward F. Richards

Exhibit 5

To:

**Motion To Suspend
February 16, 2009**

**Opposer Persis International, Inc.
Opposition Proceeding No. 91162715**

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

PERSIS INTERNATIONAL, INC.,)	
Opposer,)	
v	)	Opposition No. 91162715
BURGETT, INC.,	)	Serial No. 76/214968
Applicant.)	
)	

AFFIDAVIT OF EDWARD F. RICHARDS

I, Edward F. Richards, hereby depose and state that if called upon to testify in the above-captioned case, I could competently testify to the following statements based on my personal knowledge.

1. My name is Edward F. Richards. I am the president of Opposer Persis International, Inc., located in Chicago, Illinois.
2. From the first day Gary Burgett was listed on Persis International, Inc.'s Pretrial Disclosures as a witness, Applicant's counsel Steven Smith has been vague and evasive about producing Gary Burgett as a witness during Opposer's testimony period.
3. On January 23, 2009 I sent two separate emails to Steven Smith noticing the depositions of James Reeder and Gary Burgett. I followed up with a telephone call to verify Mr. Smith received the emails. Steven Smith acknowledged the receipt of the email noticing the deposition of James Reeder but stated to me, "I cannot find the email noticing Gary Burgett, maybe it is in my spam box. I'll check for it later." Immediately after this telephone call I forwarded again the email noticing the deposition of Gary Burgett for February 13, 2009. *See Exhibit: Three emails from Edward Richards to Steven Smith.*

4. I made two additional telephone calls to Steven Smith to confirm the noticed deposition of Gary Burgett. The responses from Mr. Smith were always vague and evasive.

Mr. Smith's comments included:

- a) "We're not sure yet how we're going to handle this."
- b) "We are going to call Gary Burgett as a witness in our testimony period, so you can just ask your questions at that time. Things are handled this way all the time."
- c) "I haven't heard back from Gary yet and the only way I have to contact Gary Burgett is by email. I guess I could call his secretary again."

5. Not once did Steven Smith request or offer an alternative date for Gary Burgett's deposition.

6. On February 3, 2009 I placed another telephone call to Steven Smith. Mr. Smith clearly stated to me that he and his law firm of O'Banion and Ritchey were going to withdraw as counsel to Burgett, Inc. in the next few days. Mr. Smith clearly stated to me, "Our withdrawal as counsel will have the effect of extending your testimony period, so you needn't be too concerned with deposing Gary Burgett right away. Persis will have plenty of time to depose Gary Burgett. This is actually good for you."

7. After being subjected to this withdrawal as counsel ruse I finally realized Steven Smith and the law firm of O'Banion and Ritchey are acting in bad faith. On information and belief, it is their intention, by any means necessary, to prevent Opposer Persis from taking direct testimony of Gary Burgett who signed the five years' use declaration that is the primary issue in this proceeding.

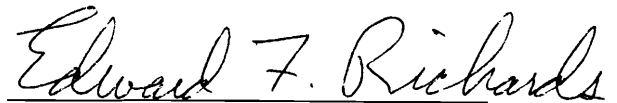
8. Later that same day February 3, 2009 a subpoena was issued by the Clerk of the U.S. District Court, Eastern District of California commanding Gary Burgett to appear for a deposition for this Opposition Proceeding No. 91162715 on the previously noticed date of February 13, 2009 (Friday). This subpoena was served on Gary Burgett on February 5, 2009 at the headquarters of Burgett, Inc. located at 4111 N. Freeway Blvd Sacramento, CA.

9. Gary Burgett ignored the subpoena by not appearing for this deposition. A Statement of Non-Appearance of Gary Burgett was taken by the court reporter.

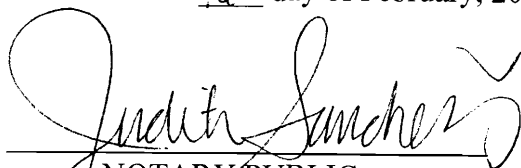
10. It is currently President's Day February 16, 2009, part of a 3-day holiday weekend and Opposer Persis's testimony period is scheduled to close at the end of Tuesday February 17, 2009.

11. A Motion To Enforce Subpoena is now being prepared for the U.S. District Court, Eastern District of California.

FURTHER AFFIANT SAYETH NOT.


Edward F. Richards

SUBSCRIBED AND SWORN TO
before me this 11th day of February, 2009


NOTARY PUBLIC



[Print Message](#) | [Close](#)

From : "edwardrichards@juno.com" <edwardrichards@juno.com>
To : sls@intellectual.com
Subject : Notice of Deposition of James Reeder - SOHMER Opp. No. 91162715
Date : Fri, Jan 23, 2009 04:47 PM
Attachment(s) : 1 file(s)/document(s) | Total File Size: 22K

Hello Steven,

Attached is the Notice of Deposition for James Reeder. If you have any questions please call.

Best Regards,

Edward Richards
Persis International, Inc.
Tel. 616-828-0618

Files & Documents



[Open this File](#)

Notice of Depo
siti... (22KB)

[Print Message](#) | [Close](#)

From : "edwardrichards@juno.com" <edwardrichards@juno.com>
To : sls@intellectual.com
Bcc : edwardrichards@juno.com
Subject : Notice of Deposition of Gary Burgett - SOHMER Opp. No. 91162715
Date : Fri, Jan 23, 2009 04:49 PM

Attachment(s) : 1 file(s)/document(s) | Total File Size: 22K

Hello Steven,

Attached is the Notice of Deposition for Gary Burgett. If you have any questions please call.

Best Regards,

Edward Richards
Persis International, Inc.
Tel. 616-828-0618

Files & Documents

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From : "edwardrichards@juno.com" <edwardrichards@juno.com>
To : sls@intellectual.com
Subject : Notice of Deposition of Gary Burgett - SOHMER Opp. No. 91162715
Date : Fri, Jan 23, 2009 05:36 PM
Attachment(s) : 1 file(s)/document(s) | Total File Size: 22K

Hello Steven,

Attached is the Notice of Deposition for Gary Burgett. If you have any questions please call.

Best Regards,

Edward Richards
Persis International, Inc.
Tel. 616-828-0618

Files & Documents



Open this File

Notice of Depo
siti... (22KB)

Exhibit 6

To:

**Motion To Suspend
February 16, 2009**

**Opposer Persis International, Inc.
Opposition Proceeding No. 91162715**

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

PERSIS INTERNATIONAL, INC.)	
)	
Petitioner/Opposer	)	Opposition No.: 91162715
	)	Application No.: 76/214,968
v.	)	Mark: SOHMER
)	
BURGETT, INC.,)	
)	
Respondent/Applicant.)	

OPPOSER'S NOTICE OF TAKING DEPOSITION OF JACOB ZELTSE

To the parties who have appeared in the above cause of action, and their attorneys of record: PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. § 2.123, and the Federal Rules of Civil Procedure, Opposer Persis International, Inc., will take the testimonial deposition on oral examination, in-person to be recorded by stenographic means, of Jacob Zeltser 24 Spruce Drive East Hampstead, NH 03826. Tel. 603-489-2424 at Bragan Reporting Associates 1087 Elm St., Suite 311 Manchester, NH 03101 603-669-7922. The deposition will commence on February 17, 2009 at 11:00 am Eastern Time, You are invited to attend to cross-examine.

Respectfully,

PERSIS INTERNATIONAL, INC.

Date: February 10, 2009

/Edward F. Richards/

Edward F. Richards
Authorized Representative and Officer of
Persis International, Inc.

Edward F. Richards
2647 N. Western Ave. #8030
Chicago, IL 60647
Tel. 616-828-0618
edwardrichards@juno.com

PROOF OF SERVICE

I hereby certify that a true and complete copy of the foregoing Opposer's Notice Of Taking Deposition Of Jacob Zeltser has been served on:

Steven L. Smith (email: sls@intellectual.com)
O'Banion & Ritchey LLP
400 Capitol Mall, Suite 1550
Sacramento, CA 95814

Via email, and by mailing said copy on February 10, 2009 via First Class Mail postage paid to the above address.

/Edward F. Richards/

Edward F. Richards