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

Proceeding	91162715
Party	Defendant BURGETT, INC.
Correspondence Address	JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL, SUITE 1550 SACRAMENTO, CA 95814-4498 UNITED STATES sls@intellectual.com
Submission	Opposition/Response to Motion
Filer's Name	Steven L. Smith
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Date	03/18/2009
Attachments	Response to Second Motion To Suspend.pdf (5 pages)(153769 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.)	Owner: Burgett, Inc.
)	
BURGETT, INC.,)	
)	
Respondent/Applicant.)	

OPPOSITION TO OPPOSER’S SECOND MOTION TO SUSPEND

The Applicant, Burgett, Inc., hereby opposes the second motion of the Opposer to Suspend the Testimony Period of the Opposer. The continued antics of the Opposer through its representative should *not* be tolerated by the Board. The present motion is further tactic to delay the final resolution of the issues surrounding the trademarks of the Applicant.

The Opposer states as the ground for suspending its testimony period that the attorneys for Applicant said that Gary Burgett “would not be attending the March 18, 2009 deposition.” This statement is false. Furthermore, Mr. Burgett *appeared* for his deposition¹ as scheduled. It was Mr. Richards that was not present at the designated place and time, even after sending an e-mail communication indicating that the deposition would take place. (Exhibit A).

¹ Mr. Burgett spent many hours preparing for his deposition over several days including meeting with Applicant’s attorneys and reviewing his previous declarations and evidence presented in support of the 2(f) claim. Mr. Burgett agreed to appear on March 18, 2009 to be deposed and he did appear.

Later, Mr. Richards appeared by telephone at the designated court reporters office and decided that he did not want to take the deposition of Mr. Burgett because Opposer had filed the present motion. It is clear that Mr. Richards and the Opposer did not want to take the opportunity that was provided to take testimony from Mr. Burgett even after great measures were taken to formally arrive at a suitable date.

Mr. Burgett should not be forced to be deposed again outside of the Applicant's testimony period when Mr. Burgett will have to testify on behalf of the Applicant. The Opposer has never articulated any reason why a single deposition of Mr. Burgett would be prejudicial. The Opposer has had the opportunity to depose Mr. Burgett out of sequence but chose not to use it. Further opportunities should not be granted without some rational basis.

While it is true that the ownership of the SOHMER trademarks and applications have changed and that new attorneys will represent the new owner, these facts do not justify suspension of the testimony period of the Opposer or the failure to take the testimony of Gary Burgett. Both the attorneys for Burgett, Inc. and the new attorneys that have associated in the case tried to negotiate a stipulation with the Opposer to continue the deposition of Mr. Burgett to a date in the future that was convenient for the new attorneys, Mr. Burgett and the Opposer so that the new attorneys could participate. However, the Opposer refused to stipulate to continue the deposition of Mr. Burgett or deal with the attorneys for the new owner of the trademarks.


Furthermore, it was explained to Mr. Richards by telephone on Monday that unless such a stipulation was made the deposition of Gary Burgett would proceed as scheduled and that the attorneys for the Applicant were planning to appear. The assignment related documents that were given to Mr. Richards were part of the request for a stipulation and to emphasize the need to open communications with the new attorneys. Mr. Richards expressed doubt that the ownership was going to change and that he was going forward with the deposition. (See Exhibit A). Mr. Richards also refused to deal substantively with the firm of Cislo & Thomas, the new attorneys. Exhibit A was the last communication received by the Applicant through Tuesday evening. Consequently, the deposition of Gary Burgett was confirmed with Mr. Burgett and then convened as scheduled on March 18, 2009.

In conclusion, the Applicant respectfully requests that the motion of the Opposer be denied and that any questions that Opposer has for Mr. Burgett will be given during the testimony period of the Applicant.

Respectfully, Submitted,

Dated: March 18, 2009

O'BANION & RITCHEY LLP

By:  _____.

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Attorneys for Applicant
Burgett, Inc.

Steve Smith

From: edwardrichards@juno.com
Sent: Tuesday, March 17, 2009 4:47 PM
To: Steve Smith
Subject: Your Unsigned Proposal

Hello Steven and John O'Banion,

I have reviewed your attached unsigned document. Given that this proposal has not been executed, we cannot alter the scheduled and noticed deposition of Gary Burgett for March 18, 2009 at 10am. It is simply a proposal, an allegation nothing more.

Shortly after your email I received a rather strange telephone call from a person named Daniel Cislo attempting to discuss settlement negotiations in our Opposition Proceeding. After this telephone call I checked the uspto.gov website and even at this late time of 7:30pm Eastern Time (Board Time) nothing has been filed in this proceeding and O'Banion & Ritchey is still the attorney of record. No new appearance has been filed with the TTAB. Therefore, I don't see how Mr. Cislo can conduct anything in this proceeding. His telephone call and questions were inappropriate at this time.

Since nothing has changed in the record, I look forward to proceeding with the deposition of Gary Burgett as scheduled.

See You Tomorrow Morning,

Best Regards,
Edward Richards
Persis International, Inc.

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EXHIBIT A

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the enclosed Applicant's RESPONSE OF APPLICANT TO SECOND MOTION OF OPPOSER TO SUSPEND with Exhibit A, was served upon the Opposer this 18th day of March, 2009, as follows:

VIA FIRST CLASS MAIL, POSTAGE PREPAID

Edward F. Richards
Persis International, Inc.
2647 N. Western Ave. #8030.
Chicago, IL 60647

For PERSIS INTERNATIONAL, INC.



Steven L. Smith