

ESTTA Tracking number: **ESTTA278368**

Filing date: **04/15/2009**

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

Proceeding	91162780
Party	Defendant KEITH CANGIARELLA
Correspondence Address	KEITH CANGIARELLA 331 N. HARRINGTON DRIVE FULLERTON, CA 92831 UNITED STATES 1mib@dreamweaverstudios.com, kccandrgrn@sbcglobal.net
Submission	Opposition/Response to Motion
Filer's Name	Keith Cangiarella
Filer's e-mail	lgllc@bottlemeamessage.com
Signature	/Keith Cangiarella/
Date	04/15/2009
Attachments	upload this one reply to motion for reconsideration.pdf ( 14 pages )(201119 bytes )



Keith Cangiarella  
DreamWeaver Studios  
331 N. Harrington Dr  
Fullerton, CA. 92831  
714 – 441-3442  
270-817-4195 efax  
lgllc@bottlemeamessage.com

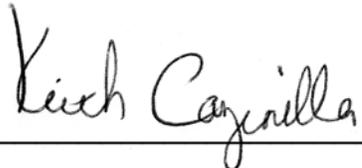
April 15, 2009

To the Board:

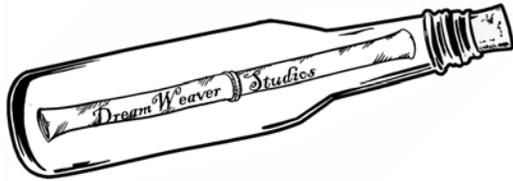
On April 10th, the applicant received the Opposer's Motion for Partial Reconsideration, the Opposer's counsel accidentally did not properly address the envelope, see the Applicant's and Opposer's Stipulation for Extension of Time filed April 13th(attached here to). On April 14th, the Applicant received a phone call from the Interlocutory Attorney, Mr. Robert Coggins, advising the Applicant that his reply to the Motion for Partial Reconsideration would be taken orally in less than three days, he was available April 15th, April 16th or April 17th. The Applicant was taken aback by this, since the Opposer and the Applicant had agreed to a Stipulation for an Extension of time to reply. Surely the Board would not require a legal professional to be prepared in as short as three days to reply to a motion. When the actual time frame is 15 or 20 days. The Applicant faxed Mr. Coggins, the following attached letter, some parts edited as it has information regarding a medical issue in my immediate family, asking for at least seven days. The Applicant received no reply, the Applicant is putting forth said Reply to Motion for Partial Reconsideration working feverishly not to further delay the proceedings, as the Opposing party has done with its numerous motions.

Let it also be known that the Applicant will not be able to attend the requested oral hearing taking place on Friday, April 17th at 11am, for the personal reasons discussed in the faxed letter to Mr. Coggins, faxed to 571-273-9467 on April 15th. This response will speak for the Applicant, if justice is to prevail, the facts and all evidence should be allowed and presented.

Respectfully,

  
\_\_\_\_\_

Keith Cangiarella



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April 15th, 2009

Dear Mr. Coggins,

I am contacting you today to advise you of my current circumstances, as you may know or not know the Opposer's Counsel "accidentally" put the wrong address on the Motion for Reconsideration. I would have not received the motion if it had not been for my strong ties to the community in Fullerton, and more importantly being well known to the Fullerton United States Post Office employees. The motion was delivered on Friday, April 10th, I contacted Mr. Smith on Monday, April 13th, advised him and asked for extra time to reply, for the first time he was cooperative. If he was more cooperative than uncooperative, we would be through testimony and proceeding to closing arguments.

I respectfully request the proper time given to reply:

518 Motion for Reconsideration of Decision on Motion  
37 CFR § 2.127(b)

Any brief in response to a request for reconsideration or modification of an order or decision issued on a motion must be filed within 15 days from the date of service of the request (20 days if service of the request was made by first-class mail, "Express Mail," or overnight courier--see 37 CFR § 2.120(c)).<sup>284</sup>

I did not receive this motion until three days ago, and the weekend was a holiday weekend, Easter weekend. The delay in I receiving the motion was caused by Mr. Smith not I, I humbly ask for the proper time to file a response. At least seven days from today.

On a personal note, I (removed because of personal nature). I only wish for due process, the 15 days would have been enough, I have not been delaying these proceedings, I have answered all motions in a timely fashion.

I have been extremely cooperative with Mr. Smith, if he could be a bit more cooperative this case would be done. Review the case file, Mr. Smith has caused numerous delays during Discover, needless delays from an experienced attorney.

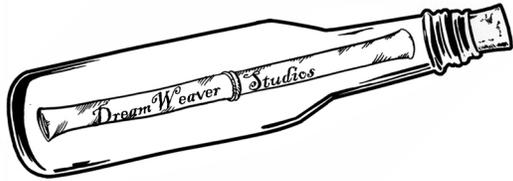
If you could kindly reply via fax 270-817-4195 efax it would be appreciated

Respectfully,

---

Keith Cangiarella



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714 – 441-3442  
270-817-4195 efax  
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April 13th, 2009

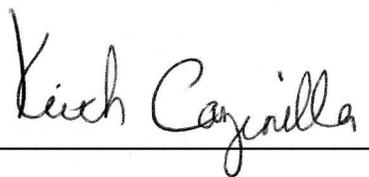
To the Board:

Please be advised the Opposer and Applicant have agreed to an extension of time for the Applicant to reply to the Opposer's Motion for Partial Reconsideration. As the faxed copy has lost some of its quality it reads as follows;

**" STIPULATION TO EXTENSION OF TIME  
"IN PRO PER"**

Opposer and Petitioner jointly stipulate to an extension of time of seven business days for the Applicant to reply to the Opposer's Motion for Partial Reconsideration. The Opposer accidentally addressed the envelope, incorrectly containing the Motion. Please see exhibits attached. Luckily, the Applicant is well known throughout the postal community and the city of Fullerton, the Motion was delayed but was received on Friday, April 10th. "

Respectfully,

  
\_\_\_\_\_

Keith Cangiarella

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

In the Matter of Trademark Application  
Serial No. : 78/229,875  
Mark: MESSAGE IN A BOTTLE

Opposition No. 91162780

Cancellation No. \_\_\_\_\_

MESSAGE IN A BOTTLE, INC.,  
a California corporation,  
Opposer,

**STIPULATION TO EXTENSION OF TIME**

v.  
KEITH CANGIARELLA,  
Applicant.

In the Matter of Trademark  
Registration No. : 2,243,269  
Mark: MESSAGE IN A BOTTLE

KEITH CANGIARELLA,  
Petitioner,

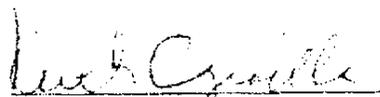
v.  
Gold Shells, Inc.,  
Assignee

**STIPULATION TO EXTENSION OF TIME  
"IN PRO PER"**

Opposer and Petitioner jointly stipulate to an extension of time of seven business days for the Applicant to reply to the Opposer's Motion for Partial Reconsideration. The Opposer accidentally addressed the envelope, incorrectly containing the Motion. Please see exhibits attached. Luckily, the Applicant is well known throughout the postal community and the city of Fullerton, the Motion was delayed but was received on Friday, April 10th.



Peter H. Smith  
Attorney at Law  
1535 J St Ste A  
Modesto, CA. 95354



Keith Cangiarella  
"In Pro Per"  
331 N. Harrington Dr  
Fullerton, CA. 92831

Date April 13, 2009  
DreamWeaver Studios  
Keith Cangiarella  
331 N. Harrington Dr  
Fullerton, CA. 92831  
714-441-3442 phone  
270-817-4195 efax  
lgllc@bottlemeamessage.com

Certificate of Service

I hereby certify a copy of the foregoing **STIPULATION TO EXTENSION OF TIME**, was faxed to Mr. Peter H. Smith at 209-579-9940 – Attorney at law, attorney of Opposer.

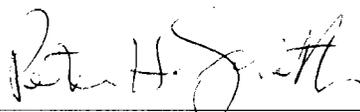
April 13, 2009

/Keith Cangiarella/  
Keith Cangiarella

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Opposer Message In A Bottle, Inc.'s Motion for Partial Reconsideration of Order Re: Motion to Strike Applicant's Notice of Reliance was mailed first-class mail, postage prepaid, to Keith Cangiarella, 33 N. Harrington Drive, Fullerton, California 92831, on April 2, 2009.

Dated: April 2, 2009

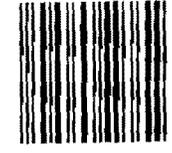


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PETER H. SMITH



Peter H. Smith  
Attorney at Law  
1535 J Street, Suite A  
Modesto, CA 95354



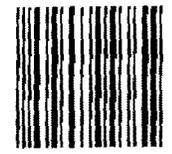
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98231

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FIRST CLASS



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U.S. POSTAGE  
PAID  
MODESTO, CA  
95354  
APR 02, '09  
AMOUNT

**\$0.00**  
00025432-05

Mr. Keith Cangiarella  
33 N. Harrington Drive  
Fullerton, CA 92831

33  
2.

Handwritten notes and markings on the right edge of the envelope.

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

In the Matter of Trademark Application Serial No.: 78/229,875 Mark: MESSAGE IN A BOTTLE  MESSAGE IN A BOTTLE, INC., a California corporation,  Opposer,  v. KEITH CANGIARELLA, Applicant.	Opposition No. 91162780  Cancellation No. _____
----- In the Matter of Trademark Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE  KEITH CANGIARELLA, Petitioner,  v. Message in a Bottle, Inc, Assignee	

**APPLICANT'S RESPONSE TO MESSAGE IN A BOTTLE, INC'S MOTION FOR  
PARTIAL RECONSIDERATION OF ORDER RE: MOTION TO STRIKE  
APPLICANT'S NOTICE OF RELIANCE.  
"IN PRO PER"**

I. INTRODUCTION

Applicant Keith Cangiarella (Applicant) hereby reply pursuant to the opposer MESSAGE IN A BOTTLE Inc.'s (Opposer) motion for partial reconsideration of the motion of the Board dated March 17, 2009 on the ground, that the applicant will be unfairly prejudiced with respect to his Constitutional right : to be heard in one's own defense, if such a motion is granted by the Board, among others.

II. FACTS

Current proceedings has been pending since October 21, 2004, when opposer filed its opposition proceedings against applicant. On June 18, 2007 the applicant's motion for summary judgment was dismissed by the Board on account of existence of genuine issues of material facts. On January 28, 2008, the second motion by the applicant for summary judgment and also the motion to amend the counterclaim were dismissed. Vide order dated March 17, 2008, the motion by the opposer to strike applicants testimonial declaration and the exhibits attached thereto and the motion to strike the applicant's sur-reply were granted by the Board in its entirety while granting the applicant additional time to conduct a testimony. Aggrieved from this decision the opposer has filed the impugned motion.

**ARGUMENTS IN REPLY TO THE MOTION FOR PARTIAL  
RECONSIDERATION OF THE BOARD'S ORDER, FILED BY THE OPPOSER  
ON APRIL 2, 2009.**

A. Since the decisions of the Board have been continuously prejudicial to the applicant's cause, the applicant is hereby forcibly prompted to uphold his constitutional right lest his cause will be prejudiced to an irreparable extent. The applicant humbly submits that his testimonial declaration and exhibits attached thereto and the applicants sur reply were struck down by the Board vide order dated March 17, 2009. Moreover the application to amend the counterclaim by the applicant was also mercilessly rejected by the Board vide order dated January 28, 2008. The favorable portion of the Board's judgment granting the applicant additional time to conduct testimony is now at stake. It is in this context the applicant is forced to please to the Board for the safeguard of his constitutional rights. The applicant alleges that his right to be heard in one's own defense will be irreparably prejudiced if the opposer's motion is granted by the Board.

Due process of law is the principle that the government must respect all of the legal rights that are owed to a person according to the law of the land. Due process has also been frequently interpreted as placing limitations on the laws and legal proceedings, in order for judges instead of legislatures to define and guarantee fundamental fairness, justice and liberty.

The fifth amendment of the U.S. Constitution reads:

“No person shall be ... deprived of life, liberty, or property, without due process of law ...”

The Fourteenth Amendment of the U.S. Constitution reads:

“nor shall any State deprive any person of life, liberty, or property, without due process of law ...”

In the United States, criminal prosecutions and civil cases are governed by explicit guarantees of procedural rights under the Bill of Rights, most of which have been incorporated under the Fourteenth Amendment to the States. Due process has also been construed to generally protect the individual so that statutes, regulations, and enforcement actions must ensure that no one is deprived of "life, liberty, or property" without a fair opportunity to affect the judgment or result. This protection extends to all government proceedings that can result in an individual's deprivation, whether civil or criminal in nature

This ‘due process’ clause guarantees among the following others,....

- Right to a fair and public trial conducted in a competent manner
- Right to be heard on one’s own defense

Hence, by allowing the opposer’s motion for partial reconsideration, the Board will be causing irreparable hardship to the applicant in defending his case.

B. It is in the discretion of the Board to decide on what remedies it should grant to the parties to achieve the ends of justice. The opposer has opined on various alternative decisions that are available to the Board regarding Notice of Reliance rather than granting additional time to the applicant to conduct testimony. The applicant clearly denies the allegation that the notice of reliance is defective. The opposer is trying to raise frivolous contentions regarding the notice of reliance only to force the board to reconsider its decision on March 17, 2009. Also this adds to the agony of the applicant that his cause is

not properly served. Since the opposer has himself moved the Board to strike down the non favorable portions notice of reliance, the applicant will be put in a prejudicial situation as not having proper means to defend his case leading the proceedings to be conducted in an incompetent manner. Hence it is humbly submitted that the opposer should not be put in a position as to direct the Board as to its proper course of action to be taken in regard to the proceedings before it.

C. The opposer's ploy to adduce the sympathy of the Board by stating incurrence of huge pecuniary liability should be watched carefully by the Board lest it shall prejudice justice being done to the applicant. Every person has the right to defend his own cause by all available means. It is humbly submitted that incurring heavy liability with respect to one's own case shall not have a good play in justice being done to the fair party.

D. Further more it is most humbly submitted that the copy of motion was irregularly and improperly delivered to the applicant as the address recorded in the envelope containing the copy of the impugned motion was erroneous. However due to the familiarity of the applicant within the United States Postal Community and the community the applicant works in, the envelope even though erroneous was delivered to the applicant. Even though under Rule 211.01 of the TBMP Manual, there is no requirement that a request for reconsideration to be served upon the non filing party, it is humbly submitted that any positive steps taken by the Board pending service of a copy to applicant with regard to the motion for reconsideration should have been prejudicial to the applicant and therefore could have been prejudicial to the constitutional right of the applicant.

E. By Rule 114.01 of the TBMP Manual, a party may represent itself in an exparte or interpartes proceedings before the Board. It is the right granted by the applicable law to the party who wishes to contest his case in person.

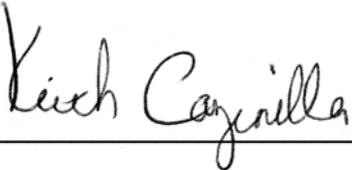
F. The applicant also denies the allegation of the opposer that the applicant has flagrantly violated the rules of TBMP by filing multiple frivolous motions on the ground

that applicant's motion were all warranted by circumstances. It is the opposer himself who is trying to raise frivolous motions and strike down applicant's remedy to a fair trial being conducted in a competent manner.

### III. CONCLUSION

For the reasons set forth above, applicant most respectfully request the Board to dismiss the motion filed by the opposer for partial reconsideration of the order of the Board dated March 17, 2009.

Dated : April 15, 2009



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KEITH CANGIARELLA  
"Pro Se"  
331 N. Harrington Dr  
Fullerton, CA. 92831

#### *Certificate of Service*

I hereby certify that a copy of the foregoing APPLICANT'S RESPONSE TO MESSAGE IN A BOTTLE, INC'S MOTION FOR PARTIAL RECONSIDERATION OF ORDER RE: MOTION TO STRIKE APPLICANT'S NOTICE OF RELIANCE. "IN PRO PER" was first class mailed to Mr. Peter H. Smith Attorney at law, 1535 J Street, Suite A., Modesto, CA. 95353. As a matter of Professionalism, the applicant has faxed this reply to 209.579.9940 on April 15, 2009 after this was filed electronically.

Date : April 16, 2009

Keith Cangiarella

Keith Cangiarella