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Filing date: **02/20/2008**

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

Proceeding	91177708
Party	Plaintiff Network Appliance, Inc.
Correspondence Address	Rochelle D. Alpert Morgan, Lewis & Bockius LLP One Market, Spear Street Tower San Francisco, CA 94105 UNITED STATES srsmith@morganlewis.com, kkappes@morganlewis.com
Submission	Motion to Compel Discovery
Filer's Name	Leigha E. Wilbur
Filer's e-mail	ralpert@morganlewis.com, lwilbur@morganlewis.com
Signature	/LEW/
Date	02/20/2008
Attachments	Opp.'s Motion to Compel Responses, Decl. of Wilbur, Exh A-C -- 059055-9017.pdf (30 pages)(308086 bytes)

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

In the matter of application Serial No. 78/749,922
Filed November 8, 2005
For the mark **SNAP RESTORE**
Published in the OFFICIAL GAZETTE on February 13, 2007

In the matter of application Serial No. 78/894,811
Filed May 27, 2006
For the mark **ACRONIS SNAP RESTORE**
Published in the OFFICIAL GAZETTE on January 30, 2007

NETWORK APPLIANCE, INC., a Delaware
corporation,

Opposer,

v.

ACRONIS INC., a corporation of the British
Virgin Islands,

Applicant.

Opposition No.: 91, 177,708

**OPPOSER NETWORK APPLIANCE, INC.'S MOTION TO COMPEL
RESPONSES TO DISCOVERY REQUESTS**

Opposer, Network Appliance, Inc. ("Registrant" or "Opposer"), through its undersigned counsel and pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 37(a), hereby moves for an order directing Applicant Acronis, Inc. ("Applicant"), to respond fully and completely to Registrant's discovery requests identified below, deeming waived any objections going to the merits of those requests.

1. Registrant's Motion to Compel Should Be Granted Because Applicant Has Completely Failed to Respond to Registrant's Request for Production of Documents and Interrogatories

A motion to compel is available when a party fails to provide requested discovery. 37 C.F.R. §2.120(e); TBMP §§ 411, 523.01. The propounding party must file a motion to compel prior to the commencement of the first testimony period. 37 C.F.R. §§2.120(e)(1), 2.120(h)(1); TBMP §523.03.

Registrant propounded and served its First Set of Interrogatories and First Set of Requests for Production of Documents to Applicant by mail on December 20, 2007. Registrant's requests all seek information relevant to or likely to lead to relevant information in this opposition proceeding. *See* Wilbur Decl. ¶2. Applicant's responses were due on January 25, 2008, yet to date Registrant has not received any response whatsoever to its discovery requests.

Registrant's testimony period commences on February 23, 2008, and closes on March 23, 2008, and Registrant's attempts to resolve these discovery issues have failed. As a result, in order to preserve its right to receive discovery in this opposition, Registrant has no choice but to move to compel Applicant's responses to the outstanding discovery.

A party that completely fails to respond to interrogatories or requests for production of documents during the time allowed and is unable to show its failure was the result of excusable neglect, may be found, on motion to compel filed by the propounding party, to have forfeited its right to object to the content of the discovery requests. *Enviorntech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. 448, 449 (T.T.A.B. 1979); TBMP §§ 403.03, 405.04(a), 406.04(a). As a result, Registrant requests

that the Board rule that Applicant is not entitled to raise any objections regarding the interrogatories or requests for production of documents.

2. Registrant Has Acted in Good Faith to Meet and Confer Before Filing This Motion to Compel

Registrant has made a good faith effort to resolve this discovery dispute prior to filing this Motion to Compel, but Applicant has not even acknowledged Registrant's attempts to meet and confer, much less offered any assistance in resolving the discovery matters at hand.

In an effort to obtain Applicant's discovery responses without resorting to a motion before the Board, Registrant wrote to Applicant's counsel on February 12, 2008, advising that Applicant's discovery responses were overdue, and requesting that Applicant contact Registrant within two business days to discuss the matter further. *See Wilbur Decl. ¶3.* Registrant requested an immediate response from Applicant so that it would have sufficient time to consider the responses before the commencement of its testimony period. *See Wilbur Decl. ¶3.* Yet, Applicant has not responded to or in any way even acknowledged Registrant's request. *See Wilbur Decl. ¶4.*

Registrant cannot wait any longer for its discovery responses, as to do so will shorten Registrant's testimony period and eliminate its ability to file a motion to compel. *See Wilbur Decl. ¶3.*

In light of Applicant's failure to respond at all to Registrant's interrogatory and document requests and Registrant's good faith effort to obtain discovery without resorting to this motion, Registrant respectfully seeks relief from the Board. Specifically, Registrant requests that the Board order Applicant to respond by a specific date to the interrogatories and document requests that were due on January 25, 2008, and for which

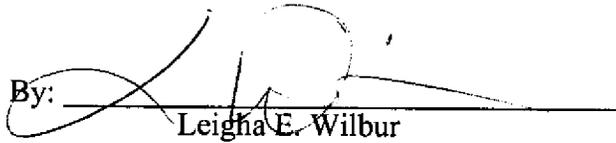
Applicant has now had nearly two (2) months to prepare responses. Registrant further requests, pursuant to 37 C.F.R. § 2.120(e), that the Board suspends all matters not germane to the motion. *See also* TBMP §523.01.

CONCLUSION

For the forgoing reasons, Registrant respectfully requests that the Board enter an order directing (1) that Applicant immediately respond to Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents, deeming any objections to these discovery requests forfeited, (2) that these proceedings be suspended pending Applicant's providing timely and full answers to the discovery requests, (3) that the Board allow Registrant additional time for it to propound follow-up discovery once answers and documents are provided and (4) pending the resolution of all matters raised by this motion the proceeding be suspended.

Dated: February 20, 2008

MORGAN, LEWIS & BOCKIUS LLP

By: 
Leigha E. Wilbur

Attorney for Opposer,
NETWORK APPLIANCE, INC.

Rochelle D. Alpert
Leigha E. Wilbur
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1326
Facsimile: (415) 442-1001

PROOF OF SERVICE

I, Yelena Lolua, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Spear Street Tower, One Market, San Francisco, California 94105.

On **February 20, 2008**, I served a copy(ies) of the following document(s)

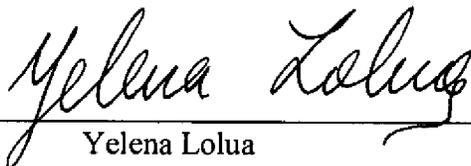
**OPPOSER NETWORK APPLIANCE, INC.'S MOTION TO COMPEL
RESPONSES TO DISCOVERY REQUESTS; DECLARATION OF
LEIGHA E. WILBUR; and EXHIBITS A-C**

by placing them in a sealed envelope(s) addressed as follows:

**George S. Bardmesser, Esq.
BARDMESSER LAW GROUP
910 17th Street, N.W.
Washington, DC 20006**

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on **February 20, 2008**, at San Francisco, California.



Yelena Lolua

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

In the matter of application Serial No. 78/749,922
Filed November 8, 2005
For the mark **SNAP RESTORE**
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In the matter of application Serial No. 78/894,811
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For the mark **ACRONIS SNAP RESTORE**
Published in the OFFICIAL GAZETTE on January 30, 2007

NETWORK APPLIANCE, INC., a Delaware
corporation,

Opposer,

v.

ACRONIS INC., a corporation of the British
Virgin Islands,

Applicant.

Opposition No.: 91, 177,708

DECLARATION OF LEIGHA E. WILBUR

I, Leigha E. Wilbur, declare as follows:

1. I am an associate at the law firm of Morgan, Lewis & Bockius LLP, which is the attorney of record for Opposer, Network Appliance, Inc. (“Registrant” or “Opposer”) in the above referenced case. I have personal knowledge of the matters set forth in this Declaration and could testify thereto if called as a witness.
2. Opposer’s First Set of Interrogatories and First Set of Requests for Production of Documents seek information relevant to or likely to lead to relevant information in this opposition proceeding. For example, Interrogatory 32 asks Applicant to “identify and describe any inquiries Applicant has received regarding any association, affiliation and relationship with Opposer.” This interrogatory seeks information

about instances of actual confusion between Applicant and Registrant, which is directly relevant to Registrant's claim that there is a likelihood of confusion between Applicant's proposed mark and Registrant's registered marks. Attached hereto as Exhibits A and B are true and correct copies of Registrant's discovery requests.

3. On February 12, 2008, I wrote to Applicant's counsel reiterating our request for responses to Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents. I requested that Applicant's counsel contact me within two days to discuss the matter further. We requested a response from Applicant by that date so that we would have sufficient time to review the discovery responses, and, if appropriate, file a motion to compel by February 22, 2008, the last day before the testimony periods commenced. A true and correct copy of Registrant's correspondence to Applicant is attached hereto as Exhibit C.
4. To date, Applicant has not responded to or in any way acknowledged our request.
5. Applicant also has not served any responses to our interrogatory or document requests as of the date of this declaration.

The undersigned, being hereby warned that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this declaration are true; all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: February 20, 2008

By: _____

Leigha E. Wilbur

EXHIBIT A

to DECLARATION OF LEIGHA E. WILBUR

NETWORK APPLIANCE, INC. v. ACRONIS INC.
Opposition No.: 91,177,708
Submitted by: Network Appliance, Inc. (Opposer)

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

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Opposition No.: 91, 177,708

**OPPOSER'S FIRST SET OF
INTERROGATORIES TO APPLICANTS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer NETWORK APPLIANCE, INC. ("Opposer") hereby propounds the following interrogatories to be answered by Applicant ACRONIS INC. ("Applicant") in writing under oath within thirty (30) days of service hereof.

INSTRUCTIONS

A. These interrogatories seek answers as of the date of response, and those interrogatories set forth below that address matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant have

acquired additional knowledge or information relating in any way to those interrogatories.

B. Your answers must include all information concerning the matters inquired about that is available to you, your attorneys or other agents, or agents for your attorneys.

C. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiries and secure the information necessary to do so, please so state and answer each such interrogatory to the fullest extent possible, specify the portion of each interrogatory that you claim you are unable to answer fully and completely, state the facts upon which you rely to support your contention that you are unable to answer the interrogatory fully and completely, and state what knowledge, information or belief you have concerning the unanswered portion of each such interrogatory.

D. Whenever you are requested to "identify" a "person" by any of the interrogatories herein, you shall specify the full name, present position and present business affiliation, business address, and business telephone number of such person, or, if none, then the home address and telephone number of such person.

E. Whenever you are requested to "identify" an "entity," state its full name, the present or last known address of its principal officer or place of business, the type of entity (*i.e.*, corporation, partnership, unincorporated association), the jurisdiction in which it is incorporated or otherwise formed and its principal place of business.

F. If you object to any interrogatory, or any part thereof, based upon the claim of privilege or any other claim, describe the nature and basis of your claim and the information withheld in a manner sufficient:

1. to disclose the facts upon which you are relying in asserting your claim;
2. to permit the grounds and reasons for withholding the information to be unambiguously identified; and
3. to permit the information withheld to be unambiguously identified.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

- A. "You," "Your," or "Applicant" means ACRONIS INC., the Applicant in this proceeding, and its officers, employees, attorneys, agents and representatives, and any predecessor, affiliate, successor, parent or subsidiary entity, either domestic or foreign.
- B. "Opposer" means NETWORK APPLIANCE, INC., the Opposer in this proceeding, and its officers, employees, attorneys, agents and representatives, and any predecessor, affiliate, successor, parent or subsidiary entity, either domestic or foreign.
- C. "Applicant's Marks," unless otherwise modified, means Applicant's SNAP RESTORE (Serial No. 78/749,922) and ACRONIS SNAP RESTORE (Serial No. 78/894,811) marks and any other of Applicant's marks or names that incorporate the term SNAP or a variant thereof.
- D. "Applicant's SNAP RESTORE Mark," unless otherwise modified, means Applicant's SNAP RESTORE (Serial No. 78/749,922) mark.
- E. "Applicant's ACRONIS SNAP RESTORE Mark," unless otherwise modified, means Applicant's ACRONIS SNAP RESTORE (Serial No. 78/894,811) mark.

F. The term "Opposer's SNAP Marks," unless otherwise modified, shall mean the mark SNAPRESTORE® (Reg. No. 2,485,892), the mark SNAPMIRROR® (Reg. No. 2,488,676), the mark SNAPMANAGER® (Reg. No. 2480,545), the mark SNAPVAULT® (Reg. No. 2,903,585), the mark SNAPMOVER® (Reg. No. 2,855,337), the mark SNAPLOCK® (Reg. No. 2,962,614), the mark SNAPDRIVE® (Reg. No. 3,066,260) and the mark SNAPVALIDATOR® (Reg. No. 3,066,260), or any other of Opposer's marks or names that incorporate the SNAP element or a variant thereof.

E. "Any" or "each" should be understood to include and encompass "all."

F. "Or" should be understood to include and encompass "and."

G. "And" should be understood to include and encompass "or."

H. "Date" means the exact day of the month, the month and the year. If only the approximate date is known or available to you, please state the approximate date, indicating that it is an approximation only.

I. "Person" or "persons" means, unless otherwise specified, any individual, corporation, proprietorship, partnership, association, firm or entity.

J. The term "third parties" shall mean all persons, individuals, corporations, partnerships and other entities of any kind which are not parties to this lawsuit, including, without limitation, customers and investors, as well as all persons acting on behalf of such third parties, including, without limitation, their officers, agents, employees and attorneys.

INTERROGATORIES

INTERROGATORY NO. 1:

State all facts that support the statement in Applicant's First Affirmative Defense set forth in Applicant's Answer that Applicant's Marks are dissimilar in appearance and sound.

INTERROGATORY NO. 2:

State all facts that support the statement in Applicant's First Affirmative Defense set forth in Applicant's Answer that no likelihood of confusion exists between Applicant's marks and Opposer's marks.

INTERROGATORY NO. 3:

State all facts that support the statement in Applicant's First Affirmative Defense set forth in Applicant's Answer that Opposer's and Applicant's customers are highly sophisticated.

INTERROGATORY NO. 4:

State all facts that support the statement in Applicant's First Affirmative Defense set forth in Applicant's Answer that Opposer's and Applicant's customers are unlikely to be confused.

INTERROGATORY NO. 5:

Identify the types of customers to whom Applicant has promoted, or advertised, or to whom Applicant intends to promote or advertise, the products identified in the application for Applicant's Marks.

INTERROGATORY NO. 6:

For each type of product Applicant offers, sells or intends to sell under Applicant's Marks, separately state when Applicant first started selling or offering for sale any product under Applicant's Marks.

INTERROGATORY NO. 7:

Identify all individuals with knowledge as to any promotion, sale or distribution, or any intent to sell, promote or distribute any product or service under Applicant's Marks.

INTERROGATORY NO. 8:

Identify all persons or companies involved in the distribution of Applicant's products identified in its applications for Applicant's Marks.

INTERROGATORY NO. 9:

For each expert Applicant has retained to give testimony in this proceeding, provide the information required in Fed. R. Civ. Pro. Rule 26(a)(2)(B).

INTERROGATORY NO. 10:

Identify all searches conducted by or on behalf of Applicant in connection with its decision to file applications for Applicant's Marks.

INTERROGATORY NO. 11:

Identify any market research or survey conducted by or on behalf of Applicant regarding Applicant's Marks.

INTERROGATORY NO. 12:

Identify any agreements (assignments, licenses, authorizations, permissions or consents) entered into by Applicant regarding any use or prospective use of Applicant's Marks.

INTERROGATORY NO. 13:

State the total dollar amount of sales of any product using Applicant's Marks by year.

INTERROGATORY NO. 14:

Identify all trade shows, fairs, conventions, exhibitions, retail shops, or distribution locations where Applicant has promoted its products in connection with Applicant's Marks.

INTERROGATORY NO. 15:

State whether Applicant had knowledge of Opposer's use in commerce of Opposer's SNAPRESTORE® mark prior to Applicant's decision to adopt Applicant's Marks.

INTERROGATORY NO. 16:

State whether Applicant had knowledge of Opposer's SNAPRESTORE® mark prior to Applicant's decision to adopt Applicant's Marks.

INTERROGATORY NO. 17:

State the current or anticipated price for each product listed in Applicant's applications offered or intended to be offered under Applicant's Marks.

INTERROGATORY NO. 18:

State when and how Applicant first learned of Opposer's SNAPRESTORE® mark.

INTERROGATORY NO. 19:

State whether Applicant had knowledge of Opposer's use in commerce of any of Opposer's SNAP Marks prior to Applicant's decision to adopt Applicant's Marks.

INTERROGATORY NO. 20:

State whether Applicant had knowledge of Opposer's SNAP Marks prior to Applicant's decision to adopt Applicant's Marks.

INTERROGATORY NO. 21:

Identify each person who has participated in or supplied information in responding to Opposer's First Set of Interrogatories.

INTERROGATORY NO. 22:

Identify each person who has participated in or supplied information in responding to Opposer's First Requests for Admissions.

INTERROGATORY NO. 23:

Identify each person who has supplied documents or information for, Opposer's First Request for Production of Documents and Things.

INTERROGATORY NO. 24:

Describe all of the facts on which Applicant will rely to prove its use in interstate commerce of Applicant's Marks for the goods identified in Applicant's applications.

INTERROGATORY NO. 25:

State all facts that support the Applicant's denial of the allegations in paragraph 5 of Opposer's Notice of Opposition set forth in Applicant's Answer.

INTERROGATORY NO. 26:

State all facts that support the Applicant's denial of the allegations in paragraph 6 of Opposer's Notice of Opposition set forth in Applicant's Answer.

INTERROGATORY NO. 27:

State all facts that support the Applicant's denial of the allegations in paragraph 7 of Opposer's Notice of Opposition set forth in Applicant's Answer.

INTERROGATORY NO. 28:

State all facts that support the Applicant's denial of the allegations in paragraph 8 of Opposer's Notice of Opposition set forth in Applicant's Answer.

INTERROGATORY NO. 29:

Identify all customers of any product sold under Applicant's Marks.

INTERROGATORY NO. 30:

For each request for admission contained in Opposer's First Requests for Admissions that Applicant denied in whole or in part, state the factual bases for the denials.

INTERROGATORY NO. 31:

Identify the end users of goods offered or to be offered under Applicant's Marks.

INTERROGATORY NO. 32:

Identify and describe any inquiries Applicant has received regarding any association, affiliation and relationship with Opposer.

INTERROGATORY NO. 33:

Identify the channels of trade Applicant uses or intends to use to promote and sell all services identified in the applications for Applicant's Marks.

INTERROGATORY NO. 34:

Identify all magazines, newspapers, newsletters and other periodicals which have featured information about products and/or services intended to be sold or sold under Applicant's Marks.

INTERROGATORY NO. 35:

Identify all domain names owned by Applicant that are comprised of Applicant's Marks.

INTERROGATORY NO. 36:

Describe any inquiries Applicant has received regarding Opposer, Opposer's SNAP Marks or Opposer's products and/or services.

INTERROGATORY NO. 37:

Describe any confusion Applicant has encountered with Opposer, Opposer's SNAP Marks or Opposer's products and/or services.

INTERROGATORY NO. 38:

Identify any products that use Applicant's Marks.

INTERROGATORY NO. 39:

Identify all persons responsible for the accuracy of the statements on the web site at www.acronis.com.

INTERROGATORY NO. 40:

State each reason You adopted Applicant's SNAP RESTORE mark.

INTERROGATORY NO. 41:

State each reason You adopted Applicant's ACRONIS SNAP RESTORE mark.

Dated: December 20, 2007

MORGAN, LEWIS & BOCKIUS LLP

By: Rochelle Alpert (sm)
Rochelle D. Alpert

Attorney for Opposer
NETWORK APPLIANCE, INC.

Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, CA 94105
Telephone: (415) 442-1326
Facsimile: (415) 442-1001

PROOF OF SERVICE

I, Yelena Lolua, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Spear Street Tower, One Market, San Francisco, California 94105.

On December 20, 2007, I served a copy(ies) of the following document(s)

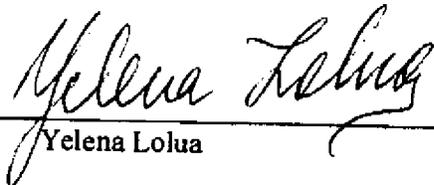
OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANTS

by placing them in a sealed envelope(s) addressed as follows:

**George S. Bardmesser, Esq.
BARDMESSER LAW GROUP
910 17th Street, N.W.
Washington, DC 20006**

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on **December 20, 2007**, at San Francisco, California.



Yelena Lolua

EXHIBIT B

to DECLARATION OF LEIGHA E. WILBUR

NETWORK APPLIANCE, INC. v. ACRONIS INC.
Opposition No.: 91,177,708
Submitted by: Network Appliance, Inc. (Opposer)

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

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ACRONIS INC., a corporation of the British
Virgin Islands,

Applicant.

Opposition No.: 91, 177,708

**OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer NETWORK APPLIANCE, INC. ("Opposer") hereby requests that Applicant ACRONIS INC. ("Applicant") produce for inspection and copying the documents listed below at the offices of Morgan, Lewis & Bockius LLP, One Market, Spear Street Tower, San Francisco, CA 94105, within thirty (30) days of the date of service hereof.

INSTRUCTIONS

These requests seek documents as of the date of response, and those requests set forth below that address matters falling within Rules 26(e)(1) and (2) of the applicable Federal Rules of Civil Procedure shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further responses and documents promptly after Applicant has acquired additional knowledge or information to those requests in any way.

DEFINITIONS

As used herein, the following terms shall have the following meanings:

1. "Opposer" means Network Appliance, Inc., the party opposing the applications challenged in this proceeding, and its officers, employees, attorneys, agents and representatives, and any predecessor, affiliate, successor, parent or subsidiary entity, either domestic or foreign.
2. "Applicant," "You" or "Your" means Acronis Inc., the owner of the applications challenged in this proceeding, and its officers, employees, attorneys, agents and representatives, and any predecessor, affiliate, successor, parent or subsidiary entity, either domestic or foreign.
3. "Applicant's Marks," unless otherwise modified, means Applicant's SNAP RESTORE (Serial No. 78/749,922) and ACRONIS SNAP RESTORE (Serial No. 78/894,811) mark and any other of Applicant's marks or names that incorporate the term SNAP or a variant thereof.
4. "Applicant's SNAP RESTORE Mark," unless otherwise modified, means Applicant's SNAP RESTORE (Serial No. 78/749,922) mark.

5. "Applicant's ACRONIS SNAP RESTORE Mark," unless otherwise modified, means Applicant's ACRONIS SNAP RESTORE (Serial No. 78/894,811) mark.

6. The term "Opposer's SNAP Marks," unless otherwise modified, shall mean the mark SNAPRESTORE® (Reg. No. 2,485,892), the mark SNAPMIRROR® (Reg. No. 2,488,676), the mark SNAPMANAGER® (Reg. No. 2480,545), the mark SNAPVAULT® (Reg. No. 2,903,585), the mark SNAPMOVER® (Reg. No. 2,855,337), the mark SNAPLOCK® (Reg. No. 2,962,614), the mark SNAPDRIVE® (Reg. No. 3,066,260) and the mark SNAPVALIDATOR® (Reg. No. 3,066,260), or any other of Opposer's marks or names that incorporate the SNAP element or a variant thereof.

7. "Any" or "each" should be understood to include and encompass "all."

8. "Or" should be understood to include and encompass "and."

9. "And" should be understood to include and encompass "or."

10. "Person" or "persons" means, unless otherwise specified, any individual, corporation, proprietorship, partnership, firm or entity.

11. "Related to," "relating to" or "relate to" means constituting, concerning, containing, reflecting, identifying, stating, supporting, contradicting, evidencing or referring.

12. "Document" or "Documents" means anything upon which any expression, communication or representation has been fixed, recorded or preserved by any means including, but not limited to, handwriting, typewriting, printing, photostating, photographing, magnetic impulse, or mechanical, digital or electronic recording and any non-identical copies, (whether different from the original because of notes or interlineations made on such copies, because of indications that said copies were sent to

different individuals than were the originals, or because of any other reason), including but not limited to, working papers, preliminary, intermediate or final drafts, correspondence, memoranda, charts, notes, records of any sort of meetings, invoices, financial statements, financial calculations, diaries, reports of telephone or other oral conversations, desk calendars, appointment books, audio or video tape recordings, electronic mail, voice-mail, facsimiles, microfilm, microfiche, computer tapes, computer disks, computer printouts, computer cards, and all other writings and recordings of every kind that are in your actual or constructive possession, custody or control.

13. "All Documents" means every document known to Applicant and every document that can be located or discovered by reasonably diligent efforts on Applicant's part.

14. "Communication" or "Communications" means, unless otherwise specified, any of the following: (1) any written letter, memorandum, or other document; and (2) any conversation or meeting between two or more persons, whether or not such contact was by chance or prearranged, formal or informal.

15. Any document withheld in responding to these requests on the ground of privilege should be identified by the author(s), recipient(s), and person(s) to whom copies were furnished, together with job titles of all such persons, the date of the document, subject matter of the document and the nature of the privilege claimed.

DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1: All Documents that relate to or reflect all use and planned or intended uses of Applicant's Marks in connection with the advertisement, promotion or marketing of products including, but not limited to,

sales brochures, promotional materials, business plans, displays and advertisements.

REQUEST FOR PRODUCTION NO. 2: All Documents that relate to Applicant's selection of Applicant's Marks for registration and use as trademarks.

REQUEST FOR PRODUCTION NO. 3: All Documents demonstrating any use of Applicant's Marks.

REQUEST FOR PRODUCTION NO. 4: All searches related to the selection of Applicant's Marks.

REQUEST FOR PRODUCTION NO. 5: All searches related to the use of Applicant's Marks.

REQUEST FOR PRODUCTION NO. 6: All Documents that describe or discuss the nature, function or features of any product that Applicant offers, intends to offer, render, provide or market under Applicant's Mark including, but not limited to, promotional materials and instructional manuals.

REQUEST FOR PRODUCTION NO. 7: All Documents that relate to any applications to register Applicant's Marks, including, but not limited to, all Communications by and between Applicant and the United States Patent and Trademark Office or any other governmental agency.

REQUEST FOR PRODUCTION NO. 7: All Documents that identify any domain name owned or reserved by Applicant comprised of the term SNAP.

REQUEST FOR PRODUCTION NO. 8: All Documents that relate to the channels of trade Applicant has used, or intends to use, for any products offered or to be offered under Applicant's Marks.

REQUEST FOR PRODUCTION NO. 9: All Documents that identify or relate to any market or markets to which Applicant intends to or does promote, offer or sell services under Applicant's Marks including, but not limited to, customer lists, market identifications, market analyses or market studies.

REQUEST FOR PRODUCTION NO. 10: All Documents that reference Opposer or Opposer's Marks.

REQUEST FOR PRODUCTION NO. 11: All Documents that identify or are related to the actual purchasers of products offered or intended to be offered under Applicant's Marks including, but not limited to, customer lists, market identifications, market analyses, market surveys or market studies.

REQUEST FOR PRODUCTION NO. 12: All Documents that identify or are related to the end-users of products offered or intended to be offered under Applicant's Marks including, but not limited to, customer lists, market identifications, market analyses or market studies.

REQUEST FOR PRODUCTION NO. 13: All Documents that relate to any challenges to Applicant's right to own or use Applicant's Marks.

REQUEST FOR PRODUCTION NO. 14: All documents that relate to Applicant's knowledge of Opposer or Opposer's Marks.

REQUEST FOR PRODUCTION NO. 15: All Documents from trade shows or other industry events that Applicant attended and used Applicant's Marks.

REQUEST FOR PRODUCTION NO. 16: All Documents that reference the price or anticipated price of the products identified in the applications for Applicant's Marks.

REQUEST FOR PRODUCTION NO. 17: All Documents relating to any confusion resulting from the use of Applicant's Marks.

REQUEST FOR PRODUCTION NO. 18: All Documents relating to any inquiries about Opposer or Opposer's products.

REQUEST FOR PRODUCTION NO. 19: All advertisements referencing Applicant's Marks.

REQUEST FOR PRODUCTION NO. 20: All articles referencing Applicant's Marks.

REQUEST FOR PRODUCTION NO. 21: All Documents evidencing the first use date for Applicant's Marks.

REQUEST FOR PRODUCTION NO. 22: All Documents evidencing the first use date in commerce for Applicant's Marks.

Dated: December 20, 2007

Respectfully submitted,

By: Rochelle D. Alpert /sks/
Rochelle D. Alpert
Attorney for Opposer
Network Appliance, Inc.

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Telephone: (415) 442-1326
Facsimile: (415) 442-1001

PROOF OF SERVICE

I, Yelena Lolua, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Spear Street Tower, One Market, San Francisco, California 94105.

On December 20, 2007, I served a copy(ies) of the following document(s)

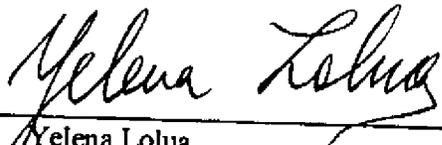
OPPOSER'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS

by placing them in a sealed envelope(s) addressed as follows:

**George S. Bardmesser, Esq.
BARDMESSER LAW GROUP
910 17th Street, N.W.
Washington, DC 20006**

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on December 20, 2007, at San Francisco, California.



Yelena Lolua

EXHIBIT C

to DECLARATION OF LEIGHA E. WILBUR

NETWORK APPLIANCE, INC. v. ACRONIS INC.
Opposition No.: 91,177,708
Submitted by: Network Appliance, Inc. (Opposer)

Leigha E. Wilbur/SF/MLBLaw

To george@bardmesserlaw.com

02/12/2008 04:29 PM

cc Rochelle D. Alpert/SF/MLBLaw@MorganLewis

bcc

Subject Discovery Responses in the Opposition to SNAP RESTORE
and ACRONIS SNAP RESTORE

Dear Mr. Bardmesser:

We are writing to inquire about the status of your discovery responses for Opposition No. 91,177,708. As you know, your responses to Opposer's First Set of Interrogatories, First Set of Requests for Production and First Set of Requests for Admission were due on January 25, 2008. 37 C.F.R. 2.119(c). As of today, we have not received any discovery responses from you. Thus, you have already forfeited your right to object to our discovery requests. T.B.M.P. §§ 403.03, 405.04(a).

Given the upcoming trial date, we expect your responses immediately. Please contact us to discuss this matter further. If we do not receive a response from you within 2 business days, we will assume that you will not be providing any discovery responses in this proceeding.

Leigha Wilbur
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San Francisco, CA 94105
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