ESTTA Tracking number: **ESTTA279205**
Filing date: **04/20/2009**

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

Proceeding	91179480
Party	Plaintiff Plasti-Fab Ltd.
Correspondence Address	David E. Sipiora Townsend and Townsend and Crew LLP 1400 Wewatta Street, Suite 600 Denver, CO 80202 UNITED STATES denverteas@townsend.com, desipiora@townsend.com
Submission	Motion for Default Judgment
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Date	04/20/2009
Attachments	2009 0420 Motion for Default Judgment.pdf (6 pages)(197956 bytes) Exhibit A.pdf (12 pages)(364042 bytes) Exhibit B.pdf (13 pages)(362390 bytes) Exhibit C.pdf (8 pages)(204519 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE

TRADEMARK TRIAL AND APPEAL BOARD

In re: Application Ser. Nos. 79/023,935 and 79,023,934
Published: August 7, 2007, in the Official Gazette
Mark: **GEOSPEC and ACERA GEOSPEC (and design)**
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

v.

Consolidated Opposition Nos.
91179480 (parent) and 91179842

KOBELCO CONSTRUCTION
MACHINERY CO., LTD.

Applicant.

OPPOSER PLASTI-FAB'S MOTION FOR DEFAULT JUDGMENT AND, IN THE ALTERNATIVE, FOR PERMISSION TO FILE MOTION FOR SUMMARY JUDGMENT OUTSIDE OF THE DISCOVERY PERIOD

I. INTRODUCTION

On September 2, 2008, Opposer Plasti-Fab Ltd. ("Plasti-Fab") served its First Set of Requests for Admission, Requests for Production of Documents, and Interrogatories in this Opposition. Applicant Kobelco Construction Machinery Co. Ltd. ("Applicant") owed responses and answers to these discovery requests no later than October 2, 2008. On October 7, 2008, Applicant filed a motion without consent for a 30-day extension to respond to Plasti-Fab's

discovery requests. Despite its ex-parte motion, Applicant did not respond to Plasti-Fab's discovery requests.

Plasti-Fab filed a Motion to Compel on October 28, 2008, and a renewed Motion to Compel on November 26, 2008. Applicant did not respond to either motion, nor did it request an extension of time to respond to either motion.

On January 27, 2009, the Trademark Trial and Appeal Board ("the Board") granted the renewed motion to compel and ordered Applicant to respond to Plasti-Fab's discovery requests within thirty (30) days of the order, that is, by February 26, 2009. *See* January 27, 2009 Order. The Board noted that the Requests for Admission were deemed admitted pursuant to applicable rules. Despite the issuance of the Order to Compel, Applicant did not respond. On March 9, 2009, the Board issued a second order which also granted the renewed motion to compel. However, the second order provided additional time to serve already untimely responses; it ordered Applicant to respond to Plasti-Fab's discovery requests within thirty (30) days of that order, that is, by April 8, 2009.[1] *See* March 9, 2009 Order. The reason or occasion for the second order is not clear.

On April 8, 2009 – the last possible day on which to serve discovery responses pursuant to the second order – Applicant served responses to Plasti-Fab's Interrogatories, Requests for Production and Requests for Admission (attached hereto as Exhibits A, B, and C, respectively). Pursuant to the first order, the responses are untimely. Moreover, Applicant's responses consist of objections only. Applicant has failed to provide substantive responses to *any* of the discovery requests. Specifically, it did not answer any interrogatories and did not produce any documents,

[1] The second order also reset the trial dates. *Id.*

nor did it provide any indication that it would produce documents at any future time. While Applicant served responses to the Requests for Admission, the requests had already been deemed admitted by both Orders. *See* January 27, 2009 and March 9, 2009 Orders.

II. In Light of Applicant's Failure to Participate in Discovery and Its Defiance of an Order of the Board, Judgment By Default Is Fair and Proper.

Given the foregoing behavior by Applicant, including its disregard for the rules of discovery and the Order of the Board, sanctions are proper and warranted. TMBP Section 2.120 states:

> Sanctions. (1) If a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery, including a protective order, the Board may make any appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board will not hold any person in contempt or award any expenses to any party.

37 C.F.R § 2.120(g)(1).

Rule 37(b)(2) of the Federal Rules of Civil Procedure provides:

> (A) *For Not Obeying a Discovery Order*. If a party or a party's officer, director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following []:
>
> (vi) rendering a default judgment against the disobedient party....

Applicant has failed to participate in discovery in this matter or otherwise to engage in this Opposition. Further, Applicant has disregarded an Order of the Board and has failed to provide or permit discovery. Such behavior should not be tolerated. Accordingly, Plasti-Fab hereby respectfully requests that the Board enter a judgment of default against Applicant, pursuant to 37 C.F.R § 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2)(A)(vi).

III. In the Alternative, Plasti-Fab Should Be Permitted to Move For Summary Judgment Relying Upon the Admissions of Applicant To the Requests for Admission Served by Plasti-Fab.

In the alternative, Plasti-Fab requests an order authorizing the filing of a motion for summary judgment against Applicant outside of the discovery period, which closed on April 8, 2009. The basis for this request is as follows. Applicant's failure to respond to Plasti-Fab's requests for admission has resulted in the admission, as a matter of law, by Applicant of all propounded requests for admission. The effect of these admissions is to eliminate any factual disputes that would prevent entry of judgment in favor of Plasti-Fab. Hence, in the event the Board for whatever reason is not inclined to grant Plasti-Fab's motion for judgment by default, Plasti-Fab asks that the Board issue an Order permitting the filing of a motion for summary judgment, in favor of Plasti-Fab and against Applicant, outside the discovery period.

Plasti-Fab further respectfully requests that the Board stay all outstanding deadlines pending decision on this motion. *See* March 9, 2009 Order.

IV. Conclusion

In light of the foregoing, Plasti-Fab respectfully requests that the Board enter judgment by default against Applicant, pursuant to 37 CFR § 2.120(g)(1). In the alternative, Plasti-Fab seeks permission to file a motion for summary judgment outside of the discovery period. Plasti-Fab also respectfully requests that all deadlines be stayed pending the disposition of this motion.

Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Date: April 20, 2009

By: Shelley B. Mixon

David E. Sipiora
Shelley B. Mixon

Attorneys for OpposerPlasti-Fab Ltd

Townsend and Townsend and Crew LLP
1400 Wewatta Street, Suite 600
Denver, Colorado 80202
Telephone: (303) 571-4000
Facsimile: (303) 571-4321

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2009, I served the foregoing OPPOSER PLASTI-FAB'S MOTION FOR DEFAULT JUDGMENT AND, IN THE ALTERNATIVE, FOR PERMISSION TO FILE MOTION FOR SUMMARY JUDGMENT OUTSIDE OF THE DISCOVERY PERIOD on counsel for Applicant by depositing a true and correct copy of the same with the United States Postal Service, first class mail, postage prepaid, in an envelope addressed to:

Bassam N. Ibrahim
Buchanan, Ingersoll & Rooney PC
1737 King Street, Suite 500
Alexandria, Virginia 22314-2727

Kara E. Fulda

61898932 v4

EXHIBIT A

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

PLASTI-FAB LTD.,	:	
Opposer,	:	
v.	:	Opposition No. 91179480 Opposition No. 91179482
KOBELCO CONSTRUCTION MACHINERY LTD.,	:	
Applicant.	:	

KOBELCO CONSTRUCTION MACHINERY CO., LTD. RESPONSES TO
OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)

Applicant Kobelco Construction Machinery Ltd. ("Applicant"), in accordance with Rule 33 and other applicable rules of the Federal Rules of Civil Procedure and the applicable rules of the Trademark Trial and Appeal Board, hereby responds to Opposer Plasti-Fab Ltd.'s (Opposer's) First Set of Interrogatories (Nos. 1-29) ("Interrogatories").

GENERAL OBJECTIONS

Applicant objects to the production of confidential business information responsive to Opposer's Interrogatories prior to the entry of a Protective Order. Applicant further objects to Opposer's Interrogatories to the extent that they seek information pertaining to the ownership, registration, or use of Applicant's mark outside of the United States or Applicant's activities outside of the United States. Applicant objects to these interrogatories to extent they concern goods and services, or marks, that are not identified on the applications that are the subject of these oppositions. Applicant further objects to Opposer's definitions and instructions to the extent that they seek to impose upon Applicant any obligations beyond those required under the

applicable federal rules and the rules of the Trademark Trial and Appeal Board. Applicant also objects to these requests to the extent they seek information or documents subject to attorney-client privilege and/or the work product doctrine.

INTERROGATORY RESPONSES

INTERROGATORY NO. 1

Identify and describe all of the goods and/or services Applicant has sold, is currently selling, or intends to sell, under Applicant's Marks. The identified goods and services shall hereinafter be referred to as "Applicant's Goods and Services."

RESPONSE TO INTERROGATORY NO. 1

Applicant objects to this interrogatory to the extent it does not concern goods or services identified in the applications that are the subject of these oppositions. Applicant's goods are identified in U.S. Application Nos. 79/023,934 and 79/023,935.

INTERROGATORY NO. 2

Identify all Persons affiliated with Applicant who have any knowledge concerning the following issues:

(a) the adoption of Applicant's Marks;
(b) Applicant's knowledge of Opposer's Mark;
(c) the sale of Applicant's Goods and Services;
(d) the advertising of Applicant's Goods and Services;
(e) the trade channels through which Applicant's Goods and Services travel;
(f) any actual confusion between Applicant's Marks and Opposer's Mark;
(g) the alleged likelihood of confusion between Applicant's Marks and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 2

Applicant objects to this interrogatory as overly broad and unduly burdensome in its inquiry for all persons. Applicant further objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 3

State the date when Applicant first became aware of Opposer's Mark, and identify all facts relating thereto.

RESPONSE TO INTERROGATORY NO. 3

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 4

Describe all facts relating to the adoption of Applicant's Marks by Applicant.

RESPONSE TO INTERROGATORY NO. 4

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 5

To the extent Applicant claims to have acquired any rights in Applicant's Marks through any predecessor-in-interest, describe the facts pertaining to said acquisition.

RESPONSE TO INTERROGATORY NO. 5

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 6

Describe with particularity any searches or surveys performed on Applicant's behalf in connection with the Applicant's Marks or Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 6

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 7

Describe with particularity the date and circumstances of first use of Applicant's Marks in connection with Applicant's Goods and Services (a) in commerce of any sort and (b) in interstate commerce.

RESPONSE TO INTERROGATORY NO. 7

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 8

Identify all federal and state trademark registration(s) or application(s) filed and/or obtained on behalf of Applicant for marks that include "GEOSPEC" and describe in detail the status of each application or registration.

RESPONSE TO INTERROGATORY NO. 8

Applicant objects to this interrogatory as irrelevant to the extent it does not concern applications that are the subject of these consolidated oppositions. Subject to these objections, Applicant identifies U.S. Applications 79/023,934 and 79/023,935.

INTERROGATORY NO. 9

Describe any policy Applicant has regarding the use of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 9

Applicant objects to this interrogatory as vague and ambiguous. Applicant further objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 11

Describe all instances of actual confusion between Applicant's Marks and Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 11

None.

INTERROGATORY NO. 12

Identify, on an annual basis for each year since Applicant's Marks were first used, the amount of revenue received by Applicant for each of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 12

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 13

Identify, on an annual basis for each year since Applicant's Marks were first used, the dollar amount of advertising and promotional expenditures for each of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 13

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 14

Identify all advertising methods used by Applicant in advertising Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 14

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 15

Identify all web sites that are operated on behalf of Applicant that display or use Applicant's Marks in any way.

RESPONSE TO INTERROGATORY NO. 15

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 16

Identify the geographical areas, by city, county, region and state as applicable, in which Applicant's Goods and Services are currently being offered for sale under Applicant's Marks and, for each area, identify all such goods or services and the date on which they were first offered for sale.

RESPONSE TO INTERROGATORY NO. 16

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 17

Describe the channels of trade through which Applicant offers Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 17

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 18

Identify at least ten (10) representative customers to whom Applicant has sold Applicant's Goods and Services, including one or more representatives of each class of customers to whom Applicant markets or offers Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 18

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 19

Describe in detail the facts relating to any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 19

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 20

Identify and explain in detail any formal or informal objections that Applicant has ever received in connection with its use of Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 20

Applicant objects to this interrogatory as vague and ambiguous. Applicant further objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 21

Describe all oral or written agreements entered into by Applicant referring or relating to Applicant's Marks, including without limitation, partnerships, distributorships, marketing agreements, assignments, licenses, security agreements, or agreements settling disputes.

RESPONSE TO INTERROGATORY NO. 21

Applicant objects to this interrogatory as overly broad and unduly burdensome in its inquiry for all persons. Applicant further objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 22

Identify all experts with whom Applicant has consulted or who Applicant intends to call as witnesses in this action and state the subject matter on which each expert is expected to testify.

RESPONSE TO INTERROGATORY NO. 22

None.

INTERROGATORY NO. 23

Identify all fact or percipient witnesses who Applicant may call or will call in this action, and state the subject matter on which each individual is expected to testify.

RESPONSE TO INTERROGATORY NO. 23

Applicant objects to this interrogatory as premature prior to the testimony period.

INTERROGATORY NO. 24

Identify any instances in which Applicant's Goods and Services were offered for sale in the same trade channel as goods and services sold under Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 24

None.

INTERROGATORY NO. 25

Identify all other uses of which Applicant is aware of the term "GEOSPEC" by any third party in relation to goods and services used in the construction industry for the time period from May 6, 2004 to the present.

RESPONSE TO INTERROGATORY NO. 25

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 26

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to result in confusion as to the source of the goods or services offered by that party and any of Applicant's Goods and Services.

RESPONSE TO INTERROGATORY NO. 26

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 27

Identify each instance in which Applicant has asserted that a third party's use of any mark incorporating the element "GEOSPEC" is likely to dilute or has diluted Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 27

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 28

Identify all lawsuits or administrative proceedings, if any, past or present, regarding Opposer's Marks.

RESPONSE TO INTERROGATORY NO. 28

Applicant objects to production of this information prior to entry of a Protective Order.

INTERROGATORY NO. 29

Identify all facts that Applicant believes supports Applicant's contention in paragraph 1 of the "Affirmative Defenses" section of Applicant's answers to Opposer's Notice of Opposition that there is no likelihood of confusion between Opposer's Mark and Applicant's Marks.

RESPONSE TO INTERROGATORY NO. 29

Applicant objects to this interrogatory as premature prior to the testimony period.

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By_____
Bassam N. Ibrahim
Bryce J. Maynard
Attorneys for Opposer

Date: 6/8/09

BUCHANAN INGERSOLL & ROONEY PC
1737 King Street
Alexandria, VA 22314-2727
Telephone: 703/836-6620
Facsimile: 703/836-2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **KOBELCO CONSTRUCTION MACHINERY CO., LTD. RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES (NOS. 1-29)** was served this 8th day of April, 2009, by first-class mail, postage prepaid, on:

David E. Sipiora
Townsend and Townsend and Crew LLP
1200 17th Street, Suite 2700
Denver, CO 80202

Connie Fuentes

Connie Fuentes

EXHIBIT B

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

PLASTI-FAB LTD.,	:	
Opposer,	:	
v.	:	Opposition No. 91179480 Opposition No. 91179482
KOBELCO CONSTRUCTION MACHINERY LTD.,	:	
Applicant.	:	

KOBELCO CONSTRUCTION MACHINERY CO., LTD. RESPONSES TO
OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS (1-28)

Applicant, Kobelco Construction Machinery Ltd. ("Applicant"), in accordance with Fed. R. Civ. P. 34 and the applicable rules of the Trademark Trial and Appeal Board, hereby responds to Opposer's Plasti-Fab Ltd.'s ("Opposer's") First Request for Production of Documents (1-28) ("Requests").

GENERAL OBJECTIONS

Applicant incorporates its general objections in response to Opposer's First Set of Interrogatories.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1

All documents that Applicant was required to identify or did identify in its response to Opposer's First Set of Interrogatories to Applicant.

RESPONSE TO REQUEST NO. 1

Applicant incorporates its responses and objections to Opposer's First Set of Interrogatories.

REQUEST NO. 2

All documents evidencing the transfer, assignment or licensing of Applicant's Marks, or use of Applicant's Marks as security or collateral, from the date of first adoption and use of Applicant's Marks to the present.

RESPONSE TO REQUEST NO. 2

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 3

All documents on which Applicant intends to rely in this Opposition proceeding, including, but not limited to, all exhibits and documents Applicant may use for impeachment.

RESPONSE TO REQUEST NO. 3

Applicant objects to this request as premature.

REQUEST NO. 4

All documents concerning the acquisition, selection, availability, adoption, creation, design, proposal to use or attempt to register Applicant's Marks, including, but not limited to, documents concerning any investigation to determine the availability of Applicant's Marks.

RESPONSE TO REQUEST NO. 4

Applicant objects to production of these documents as premature prior to entry of a

Protective Order. Applicant further objects to this request to the extent it calls for production of attorney client privilege information.

REQUEST NO. 5

Representative documents showing the manner in which Applicant's Marks have been displayed or used, including, but not limited to, advertisements, product packaging, signs, brochures, posters, stationary, business cards, promotional materials, contracts, decals, labels, badges, mail order solicitations, billing and order forms, computer software, pages or sites on the Internet's world wide web, and computer screens or screen printouts.

RESPONSE TO REQUEST NO. 5

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 6

Documents sufficient to show the formation or organizational structure of Applicant's business and any predecessor-in-interest that owned Applicant's Marks, including, but not limited to, articles of incorporation or articles of organization and any amendments thereto, and any written operating agreements and amendments thereto.

RESPONSE TO REQUEST NO. 6

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 7

Documents sufficient to explain or describe Applicant's Goods and Services, including, but not limited to, advertisements, brochures, fliers, sales tools, catalogs, order forms, price lists, training materials, memoranda and bulletins.

RESPONSE TO REQUEST NO. 7

Applicant objects to this request to the extent it concerns Goods or Services not in Applicant's marks.

REQUEST NO. 8

All documents concerning any searches, studies, distinctiveness surveys, likelihood of confusion surveys, market studies, focus group studies or other surveys or studies performed by or for Applicant in connection with the availability, selection, creation, acquisition, evaluation of strength or weakness, valuation, protection or defense of Applicant's Marks.

RESPONSE TO REQUEST NO. 8

Applicant objects to production of these documents as premature prior to entry of a Protective Order. Applicant further objects to this request to the extent it calls for production of attorney client privilege information.

REQUEST NO. 9

Documents sufficient to describe the geographic scope of the use of Applicant's Marks.

RESPONSE TO REQUEST NO. 9

Applicant objects to production of these documents as premature prior to entry of a Protective Order. Applicant further objects to this request to the extent it calls for production of attorney client privilege information.

REQUEST NO. 10

All documents concerning the first use of Applicant's Marks (a) in commerce and (b) in interstate commerce, including, but not limited to, representative documents depicting such use of Applicant's Marks, the date and location of such use, and the identities of all Persons with knowledge of such use.

RESPONSE TO REQUEST NO. 10

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 11

All documents concerning any state or federal trademark registration or application to register Applicant's Marks.

RESPONSE TO REQUEST NO. 11

Applicant objects to production of these documents as premature prior to entry of a Protective Order. Applicant further objects to this request to the extent it calls for production of attorney client privilege information.

REQUEST NO. 12

Representative documents showing any state or county corporate, partnership, company name or assumed name filing by Applicant that incorporates "GEOSPEC."

RESPONSE TO REQUEST NO. 12

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 13

All documents concerning any policy relating to the use, display, or promotion of Applicant's Marks or the goods or services offered under Applicant's Marks.

RESPONSE TO REQUEST NO. 13

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 14

All documents from or to any advertising or other outside agency or service used in developing or placing advertisements for Applicant's Goods or Services.

RESPONSE TO REQUEST NO. 14

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 15

All documents evidencing the ownership or a right to use Applicant's Marks, including without limitation partnership agreements, distributor agreements, marketing agreements, assignments, licenses, security agreements, settlements, consent agreements, or any other form of agreement, whether pertaining to Applicant, any predecessor-in-interest, or any other party.

RESPONSE TO REQUEST NO. 15

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 16

All documents concerning any instance of misdirected (i) mail, (ii) email, (iii) telephone calls or (iv) other communications or inquiries, including via the Internet, or other instances wherein any person may have been confused or mistaken regarding the source of the goods or services associated with the Applicant's Marks, Opposer's Mark, or any mark substantially similar to either.

RESPONSE TO REQUEST NO. 16

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 17

Documents sufficient to show the amount of revenue received by Applicant (a) for all of Applicant's Goods and Services and (b) for each different type of such good or service on an annual basis, for each year since Applicant's Marks were first used.

RESPONSE TO REQUEST NO. 17

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 18

Documents sufficient to show the dollar amount of advertising and promotional expenditures, on an annual basis, for each year since Applicant's Marks were first used, (a) for all of Applicant's Goods and Services and (b) for each particular such good or service, including, but not limited to, construction related products and services.

RESPONSE TO REQUEST NO. 18

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 19

Documents sufficient to show the publication of Applicant's Marks in any media, whether such media is electronic (e.g., Internet) or conventional (e.g., paper), including, but not limited to, publications at tradeshows, magazines, and trade journals.

RESPONSE TO REQUEST NO. 19

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 20

Documents sufficient to show any periods of non-use of Applicant's Marks in connection with any of Applicant's Goods and Services, from the date of first use to the present.

RESPONSE TO REQUEST NO. 20

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 21

Documents sufficient to show any resumption of use of Applicant's Marks that followed any period of nonuse identified in the documents responsive to Request No. 20.

RESPONSE TO REQUEST NO. 21

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 22

Documents sufficient to show any third-party use, application or registration of a trade name, trademark or service mark incorporating "GEOSPEC" or a term similar thereto for the time period from May 6, 2004, to the present.

RESPONSE TO REQUEST NO. 22

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 23

All documents concerning any objection, challenge, proceeding, dispute or litigation between Applicant (or any predecessor-in-interest) and any third party concerning a mark containing the element "GEOSPEC."

RESPONSE TO REQUEST NO. 23

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 24

Documents sufficient to show Applicant's past, present and future marketing plans for Applicant's Goods and Services.

RESPONSE TO REQUEST NO. 24

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 25

All documents concerning Opposer or Opposer's use of Opposer's Mark including, but not limited to, documents reflecting the date or circumstances of Applicant's first awareness of (i) Opposer and (ii) Opposer's Mark.

RESPONSE TO REQUEST NO. 25

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 26

All documents relied upon as a basis for each opinion by all experts whom Applicant intends to call as witnesses in this action, or from whom Applicant has obtained or may obtain any statements, affidavits or declarations relevant to this action.

RESPONSE TO REQUEST NO. 26

Applicant objects to this request as premature prior to the deadline for expert disclosure.

REQUEST NO. 27

Documents sufficient to show or describe the potential or actual customers or end-users of Applicant's Goods and Services.

RESPONSE TO REQUEST NO. 27

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

REQUEST NO. 28

Documents sufficient to show the channels of distribution of Applicant's Goods or Services.

RESPONSE TO REQUEST NO. 28

Applicant objects to production of these documents as premature prior to entry of the Protective Order.

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By_____
Bassam N. Ibrahim
Bryce J. Maynard
Attorneys for Opposer

Date: 4/8/09

BUCHANAN INGERSOLL & ROONEY PC
1737 King Street
Alexandria, VA 22314-2727
Telephone: 703/836-6620
Facsimile: 703/836-2021

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **KOBELCO CONSTRUCTION MACHINERY CO., LTD. RESPONSES TO OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENT S (NOS. 1-28)** was served this 8th day of April, 2009, by first-class mail, postage prepaid, on:

David E. Sipiora
Townsend and Townsend and Crew LLP
1200 17th Street, Suite 2700
Denver, CO 80202

Connie Fuentes

Connie Fuentes

EXHIBIT C

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

PLASTI-FAB LTD., Opposer, v. KOBELCO CONSTRUCTION MACHINERY LTD., Applicant.	Opposition No. 91179480 Opposition No. 91179482

KOBELCO CONSTRUCTION MACHINERY CO., LTD. RESPONSES TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1-20)

Applicant Kobelco Construction Machinery Ltd. ("Applicant"), in accordance with Fed. R. Civ. P. 36 and the applicable rules of the Trademark Trial and Appeal Board, hereby responds to Opposer's Plasti-Fab Ltd.'s ("Opposer") First Set of Requests for Admission (Nos. 1-20) ("Requests") as set forth below.

GENERAL OBJECTIONS

Applicant incorporates its general objections in response to Opposer's First Set of Interrogatories.

RESPONSES TO REQUESTS FOR ADMISSIONS

1. Admit that the term "GEOSPEC" is not found in a dictionary.

RESPONSE TO REQUEST FOR ADMISSION NO. 1

Applicant lacks sufficient information to form a belief as to Request No. 1 and therefore denies the same.

2. Admit that Opposer provides construction related goods under Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 2

Applicant lacks sufficient information to form a belief as to Request No. 2 and therefore denies the same.

3. Admit that you have no knowledge that the mark GEOSPEC is used in association with any good and/or services other than the goods and services provided by Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 3

Denied.

4. Admit that Opposer has used Opposer's Mark for over four years in association with construction related goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 4

Applicant lacks sufficient information to form a belief as to Request No. 4 and therefore denies the same.

5. Admit that the term "GEOSPEC" has no common meaning in the English language.

RESPONSE TO REQUEST FOR ADMISSION NO. 5

Applicant lacks sufficient information to form a belief as to Request No. 5 and therefore denies the same.

6. Admit that Applicant is providing or intends to provide construction related goods under Applicant's Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 6

Applicant admits that it has applied for the mark GEOSPEC for the goods claimed in Applicant's applications that are the subject of these oppositions.

7. Admit that the term "GEOSPEC" has no meaning other than as trademark used by Opposer in association with the goods and services provided by Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 7

Denied.

8. Admit that the filing dates of the federal trademark applications for Opposer's Mark and the registration dates based on those applications predate the filing date of U.S. Trademark Application Serial Nos. 79/023,934 and 79/023,935 for Applicant's Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 8

Admitted that the dates in the applications that are the subject of this request speak for themselves.

9. Admit that Opposer's Mark is used in association with construction related goods in the United States.

RESPONSE TO REQUEST FOR ADMISSION NO. 9

Applicant lacks sufficient information to form a belief as to Request No. 9 and therefore denies the same.

10. Admit that the public has come to associate Opposer's Mark as a source of high quality construction related goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 10

Denied.

11. Admit that you are not aware of anyone other than Opposer who uses the mark "GEOSPEC."

RESPONSE TO REQUEST FOR ADMISSION NO. 11

Denied.

12. Admit that there are no federal trademark registrations for the term "GEOSPEC" other than that owned by Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 12

Applicant lacks sufficient information to form a belief as to Request No. 12 and therefore denies the same.

13. Admit that Opposer has not in any way authorized Applicant's use of Opposer's Mark for the goods set forth in U.S. Trademark Application Serial Nos. 79/023,934 and 79/023,935.

RESPONSE TO REQUEST FOR ADMISSION NO. 13

Applicant lacks sufficient information to form a belief as to Request No. 13 and therefore denies the same.

14. Admit that consumers of Applicant's Goods and Services are consumers of construction related materials.

RESPONSE TO REQUEST FOR ADMISSION NO. 14

Denied.

15. Admit that "GEOSPEC" is a unique word and not a common word.

RESPONSE TO REQUEST FOR ADMISSION NO. 15

Denied.

16. Admit that Opposer's Mark is distinctive.

RESPONSE TO REQUEST FOR ADMISSION NO. 16

Denied.

17. Admit that the construction related goods provided by Opposer and the construction related goods intended to be provided by Applicant will be provided to persons or entities in the same industry.

RESPONSE TO REQUEST FOR ADMISSION NO. 17

Denied.

18. Admit that the word portions of all of Applicant's Marks and Opposer's Mark begin with "GEOSPEC."

RESPONSE TO REQUEST FOR ADMISSION NO. 18

Applicant lacks sufficient information to form a belief as to Request No. 18 and therefore denies the same.

19. Admit that the construction related goods provided by Opposer and the construction related goods provided by, or that are intended to be provided by, Applicant are provided to consumers through the same channels of trade.

RESPONSE TO REQUEST FOR ADMISSION NO. 19

Denied.

20. Admit that Applicant provides or intends to provide construction related goods under Applicant's Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 20

Applicant admits that it has applied for the marks in U.S. Application Nos. 79/023,934 and 79/023,935 for the goods claimed therein.

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By _____
Bassam N. Ibrahim
Bryce J. Maynard
Attorneys for Opposer

Date: 4/9/09

BUCHANAN INGERSOLL & ROONEY PC
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