



BULKY DOCUMENTS

(Exceeds 100 pages)

Proceeding/Serial No: **91179480**

Filed: 11/04/2010

Title: *OPPOSER'S MOTION FOR SUMMARY
JUDGMENT, AND EXHIBITS A-P*

Part **2** of **2**

91179480

EXHIBIT G

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Brown

Mailed: June 30, 2008

Opposition No. 91179480

Opposition No. 91179482

Plasti-Fab Ltd.

v.

Kobelco Construction
Machinery Co., Ltd.

(as consolidated)

Brian D. Brown, Interlocutory Attorney:

This case now comes before the Board for consideration of opposer's motion to extend the discovery and trial dates in this proceeding. Opposer's motion is contested. For the reasons set forth below, proceedings herein are consolidated and the motion to extend is granted.

I. Consolidation

First, when cases involving common questions of law or facts are pending before the Board, the Board may, upon its own initiative or upon motion, order the consolidation of the cases. See Fed. R. Civ. P. 42(a) and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 511 and authorities cited therein (2d ed. rev. 2004).

Here, the parties in both cases are the same, our review of the pleadings in the two proceedings indicates

Opposition No. 91179480 and Opposition No 91179482

that the cases involve common questions of law and fact, and the Board's ruling in one proceeding will likely have a bearing on the other proceeding. As a result, these proceedings may be presented on the same record and briefs without appreciable inconvenience or confusion. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

Moreover, consolidation would be equally advantageous to both parties by avoiding the extra expense involved in conducting the proceedings individually as well as the duplication of effort. Since consolidation would contribute to the orderly and timely administration of these two pending cases, the Board finds consolidation is appropriate.

Therefore, Opposition No. 91179480 and Opposition No. 91179482 are hereby consolidated. Consequently, the parties' future submissions should be captioned as in this order. The Board file will be maintained in Opposition No. 91179480 as the "parent" case. As a general rule, only a single copy of any paper or motion should be filed in the parent case file.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues

Opposition No. 91179480 and Opposition No 91179482

raised by the respective pleadings. The parties are further advised that they are to inform the Board of any other proceedings which involve the same parties and the same or related issues.

II. Opposer's Motion to Extend Discovery

Turning to opposer's motion to extend, the appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." See Fed. R. Civ. P. 6(b) and TBMP § 509 (2d ed. rev. 2004) and cases cited therein. Generally, the Board is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.

Here, the Board recognizes that this is opposer's first unconsented request to extend any deadline in the proceeding and that the extension privilege has not been abused in this case. There is also no evidence of bad faith on the part of opposers in requesting the extension. After considering the entire record and the parties' arguments therefore, the Board finds that opposer has made the minimum showing necessary to establish good cause to support an extension of the discovery period for sixty days.

In support of its motion, opposer primarily argues that the parties have been exploring settlement and that they

Opposition No. 91179480 and Opposition No 91179482

need "additional time in which to determine whether settlement is possible." In that regard, the record suggests that applicant, by both word and action, assured opposer that it would at least consider an offer of settlement. Consistent therewith, on March 28, 2008, the parties submitted a consented motion to extend discovery because they were "engaged in settlement discussions." Moreover, in response to opposer's letter outlining its proposed terms for settlement, applicant stated in a letter dated April 3, 2008 and attached as applicant's "Exhibit B" that it remained "interested in settlement" and was "willing to consider any other proposals aimed at allowing the marks to peacefully co-exist."

While applicant may no longer be interested in settlement and was opposed to some of the terms in opposer's initial proposal, opposer could have reasonably concluded that settlement or even legitimate talk of settlement was likely as late as of April 2008 and the parties need not move forward and serve requests for discovery. See *Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 USPQ2d 1925 (TTAB 1999).

In addition, the Board finds that the request in this case is not unreasonable and will not result in any interminable delay. Likewise, there is nothing in the

Opposition No. 91179480 and Opposition No 91179482

record to suggest that such an extension will have an adverse impact on these proceedings.

Accordingly and given the Board's liberal nature in granting extensions, opposer's sixty-day extension request of the discovery and trial period is hereby granted. With proceedings herein consolidated, discovery and trial dates are reset as follows:¹

DISCOVERY PERIOD TO CLOSE: **August 30, 2008**

30-day testimony period for party in position of plaintiff to close: **November 28, 2008**

30-day testimony period for party in position of defendant to close: **January 27, 2009**

15-day rebuttal testimony period for plaintiff to close: **March 13, 2009**

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b).

¹ Upon consolidation, the Board typically resets trial dates for the consolidated proceeding, usually adopting the trial dates as set in the most recently instituted of the cases being consolidated. However, as both proceedings were filed on the same day in close proximity to each another, the trial dates in both proceedings were the same.

Opposition No. 91179480 and Opposition No 91179482

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

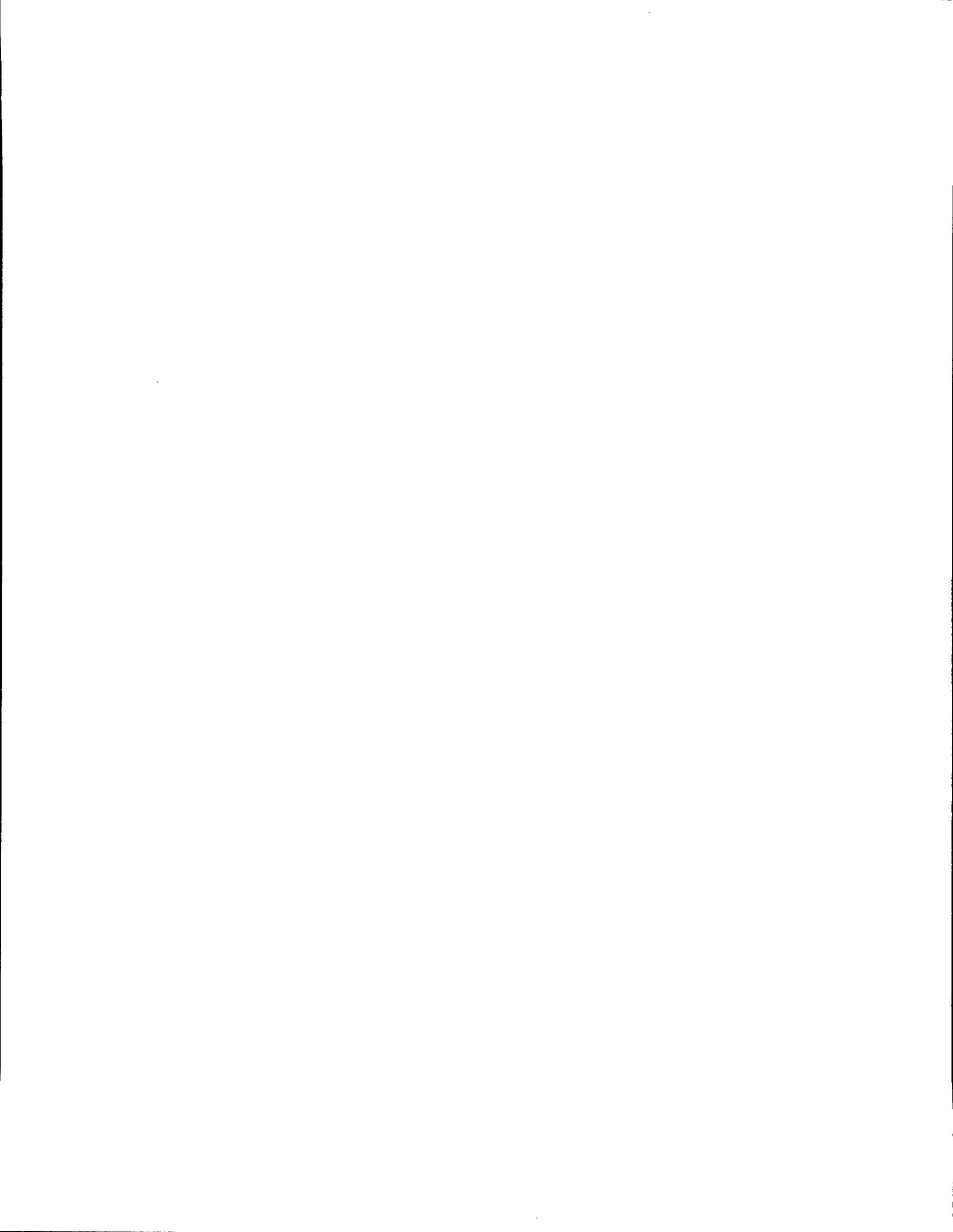


EXHIBIT H

ESTTA Tracking number: **ESTTA241125**

Filing date: **10/07/2008**

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

Proceeding	91179480
Party	Defendant Kobelco Construction Machinery Co., Ltd.
Correspondence Address	Bassam Ibrahim Buchanan Ingersoll & Rooney PC 1737 King Street, Suite 500 Alexandria, VA 22314-2727 UNITED STATES bassam.ibrahim@bipc.com
Submission	Motion to Extend
Filer's Name	Bassam N. Ibrahim
Filer's e-mail	bassam.ibrahim@bipc.com
Signature	/bni/
Date	10/07/2008
Attachments	1033715-000025 - Motion.pdf (2 pages)(70190 bytes)

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

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

**MOTION FOR 30 DAY EXTENSION OF TIME TO RESPOND TO DISCOVERY
WITHOUT CONSENT**

Applicant, Kobelco Construction Machinery Ltd. ("Kobelco") respectfully requests a 30 day extension to respond to Petitioner's Interrogatories and Document Requests. Applicant's responses are currently due October 7, 2008. Applicant requests a 30 day extension of this due date until **November 6, 2008**.

Applicant has made no previous extension requests and this Motion is being made in good faith to allow counsel time to gather the requested information to fully respond to the discovery requests. Thus, Applicant's request should be granted by the Board. See TBMP §403.04. In the event that the Board denies Applicant's Motion, Applicant requests that the board set a due date giving Applicant a reasonable time thereafter to prepare its responses.

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By


Bassam N. Ibrahim
Bryce J. Maynard
Attorneys for Applicant

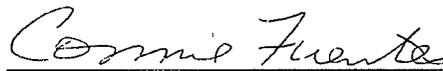
Date: October 7, 2008

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 MOTION FOR 30 DAY EXTENSION OF TIME TO RESPOND TO DISCOVERY WITHOUT CONSENT was served this 7th day of October, 2008, 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

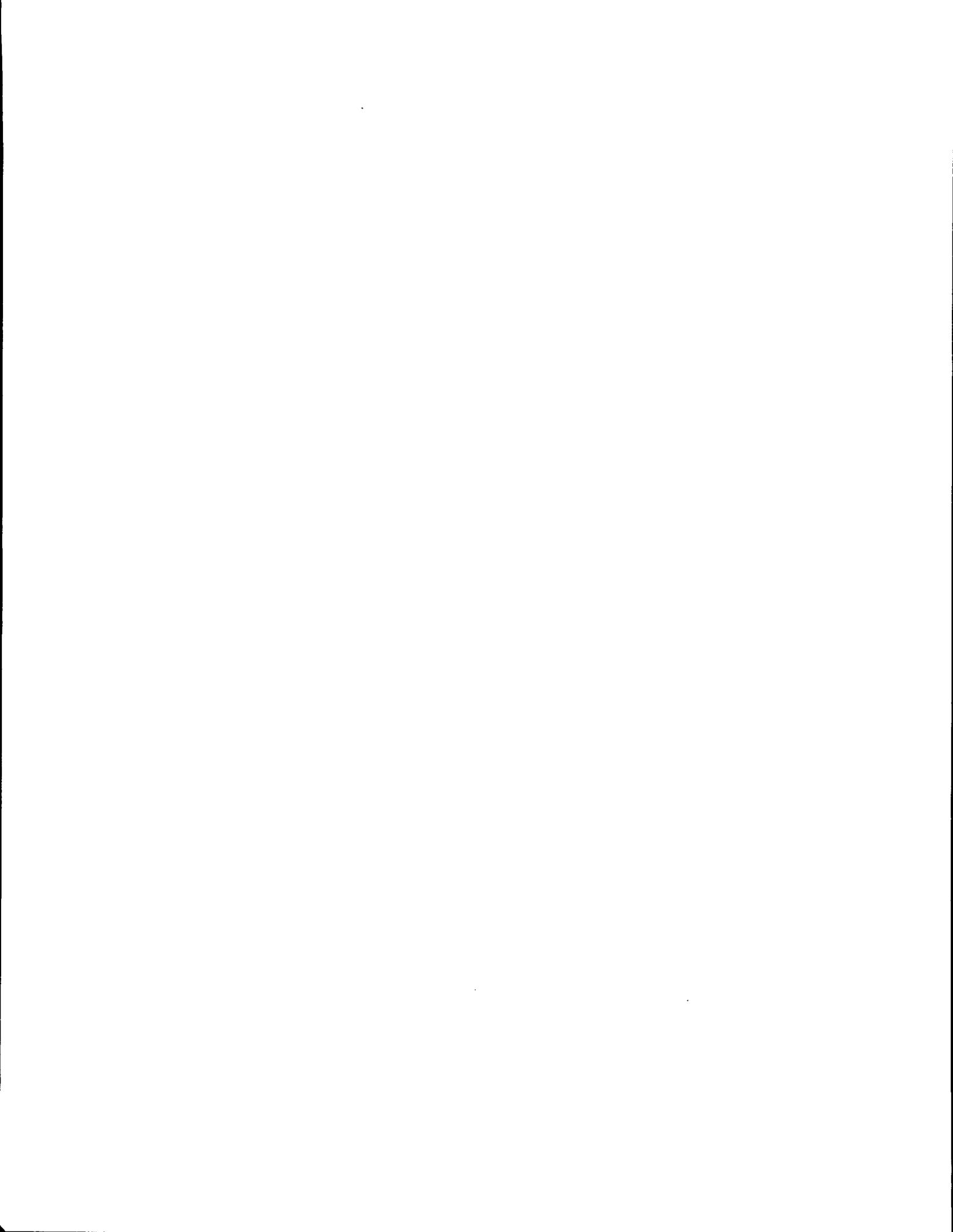


EXHIBIT I

ESTTA Tracking number: **ESTTA245481**

Filing date: **10/28/2008**

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 1200 17th Street, Suite 2700 Denver, CO 80202 UNITED STATES denverteas@townsend.com
Submission	Motion to Compel Discovery
Filer's Name	Amanda L. Swaim
Filer's e-mail	alswaim@townsend.com, denverteas@townsend.com
Signature	/als/
Date	10/28/2008
Attachments	TTAB Motion to Compel.pdf (36 pages)(935117 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
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: **GEOSPEC and ACERA GEOSPEC (and design)**
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD.,

Applicant.

Consolidated Opposition Nos.
91179480 (parent) and 91179842

OPPOSER'S MOTION TO COMPEL

Opposer Plasti-Fab Ltd. ("Opposer") hereby submits the following Motion to Compel production of documents responsive to Request for Production Nos. 1-28, answers to Interrogatory Nos. 1-29 and answers to Requests for Admission Nos. 1-20 against Applicant Kobelco Construction Machinery Co., Ltd. ("Kobelco").

Opposer served its First Set of Requests for Admission, Requests for Production of Documents and Interrogatories on September 2, 2008. Copies of Opposer's discovery requests are attached as Exhibits A-C. 37 C.F.R. § 2.120(e); Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.") § 523.02. On October 7, 2008, Kobelco filed a motion for a 30-day extension to respond to Opposer's discovery requests. If the TTAB grants this motion, Kobelco's discovery responses will be due November 6, 2008. Kobelco did not consent with

Opposer prior to filing its motion, and if Kobelco had, Opposer would have worked with Kobelco to provide an appropriate extension of time to respond to Opposer's discovery requests. Regardless, Opposer does not object to Kobelco's extension request and expects that the request will be granted.

Opposer's testimony period, however, opens October 29, 2008. As such, Opposer's deadline for filing any motion to compel is October 28, 2008. 37 C.F.R. § 2.120(e) ("[t]he motion must be filed prior to the commencement of the first testimony period."); T.B.M.P. § 523.03. To date, Opposer has received no discovery responses from Kobelco, although Kobelco has shown every intention of responding to Opposer's discovery requests. Given the imminent opening of the testimony period, Opposer files this Motion to Compel in order to protect its rights. Thus, Opposer respectfully moves this Board for an order compelling full responses to all of Opposer's discovery requests. 37 C.F.R. § 2.120(e); T.B.M.P. § 523.01.

Opposer advised Kobelco by e-mail of the foregoing. Attached as Exhibit D is a copy of such e-mail. Opposer will promptly notify the Board if Kobelco complies with its discovery obligations in the interim.

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

Date: October 28, 2008

By: /David E. Sipiora/
David E. Sipiora
Shelley B. Mixon
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2008, I served the foregoing **OPPOSER'S**
MOTION TO COMPEL 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

/Amanda L. Swaim/

EXHIBIT A

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS (1-28)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, requests that Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant") produce for inspection and copying the documents listed below, at the offices of Applicant's counsel, Townsend and Townsend and Crew LLP, 1200 Seventeenth Street, Suite 2700, Denver, Colorado 80202, within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

- A. Opposer hereby incorporates by reference the Instructions and Definitions set forth in Opposer's First Set of Interrogatories (Nos. 1-29).
- B. If Applicant is aware, with respect to any Request, that any responsive document once existed but has been destroyed, Applicant should describe the document, identify who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.
- C. The term "concerning" means referring to, relating to, containing, embodying, mentioning, evidencing, constituting or describing.

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.

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.

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.

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.

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.

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.

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.

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.

REQUEST NO. 9

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

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.

REQUEST NO. 11

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

REQUEST NO. 12

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

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.

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.

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.

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.

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.

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.

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 tradeshow, magazines, and trade journals.

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.

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.

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.

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."

REQUEST NO. 24

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

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.

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.

REQUEST NO. 27

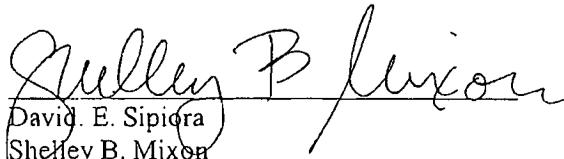
Documents sufficient to show or describe the potential or actual customers or end-users of Applicant's Goods and Services.

REQUEST NO. 28

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

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Sipiora
Shelley B. Mixon

1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-28)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Caruz M. O'Connell

61463003 v3

EXHIBIT B

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)

Opposer Plasti-Fab Ltd. ("Opposer") propounds the following written interrogatories ("Interrogatories") to be fully and separately answered in writing, under oath, by an officer or duly authorized agent of Kobelco Construction Machinery Co., LTD ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These Interrogatories seek answers as of the date on which Applicant responds and, as to those Interrogatories addressed to 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 has acquired additional knowledge or information relating in any way to those interrogatories.

B. Where the interrogatories request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

- a) the identity of the person or persons who prepared it, the sender and recipient, if any;
- b) the title or a description of the general nature of its subject matter;
- c) the date of preparation;
- d) the date and manner of distribution and publication, if any;
- e) the location of each copy and the identity of the present custodian;
- f) the identity of the person or persons who can identify it;
- g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
4. an act or event, state:
- a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. To the extent that Applicant has any objection to answering any of the Interrogatories or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

D. The term "document" encompasses all items subject to discovery within the scope of Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether original, master or copy; whether printed or stored on any medium, including audiotape, videotape, CD-ROM, CD-RW, floppy disk, zip disk, hard disk, memory chip, servers, or via any other electronic or magnetic means of storage, including without limitation: agreements; communications, including intra-company communications and correspondence; electronic mail, voice mail, faxes, cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for radio or television commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, and marginal comments appearing on, any document; and any other information-containing paper, writing or physical thing; letters, notes, memoranda, records, minutes, bills, contracts, agreements, orders, receipts, drawings, sketches, advertising or promotional literature, operating manuals, instruction bulletins, test data, and reports, and each version thereof.

E. "Referring or relating to" means comprising, concerning, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

F. "Communication(s)" when used in these Interrogatories includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise.

G. "And," or "or" or "and/or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

H. "Date" means the exact day, month, and year, if ascertainable and, if not, Applicant's best approximation thereof.

I. "Applicant" means Kobelco Construction Machinery Co., LTD., all predecessors or successors-in-interest, all predecessor or successor owners of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 and/or Applicant's Marks, as defined in paragraph K below, and the officers, employees, attorneys, agents, consultants and representatives of all such entities. Absent contrary express notice, it is understood and anticipated that all answers and responses to these Interrogatories and to Opposer's First Request for Production of Documents will include information and documents from and pertaining to all such predecessor and successor entities.

J. "Person(s)" means both natural persons, living or deceased, and to corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of a corporate or other business entity "person's" directors, officers, members, employees, representatives, agents, and attorneys.

K. "Applicant's Marks" or the "Marks" means the marks which are the subject matter of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 whether used as a trademark, service mark, trade name, or corporate name, either alone or in association with other words or designs.

L. "Opposer's Mark" means the mark which is the subject of U.S. Trademark Registration No. 3,385,301.

M. "Applicant's Goods and Services" means the goods and services identified by Applicant in response to Interrogatory No. 1.

INTERROGATORIES

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."

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.

INTERROGATORY NO. 3

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

INTERROGATORY NO. 4

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

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.

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.

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.

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.

INTERROGATORY NO. 9

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

INTERROGATORY NO. 11

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

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.

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.

INTERROGATORY NO. 14

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

INTERROGATORY NO. 15

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

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.

INTERROGATORY NO. 17

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

INTERROGATORY NO. 28

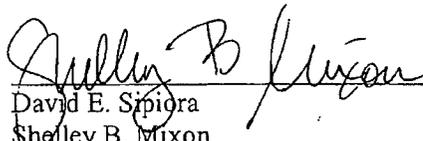
Identify all lawsuits or administrative proceedings, if any, past or present, regarding
Opposer's Marks.

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.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Spidra
Shelley B. Mixon
1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Ann M O'Leary

61462866 v3

EXHIBIT C

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

v.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1- 20)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, propounds the following requests for admission ("RFAs") to be fully and separately answered in writing by an officer or duly authorized agent of Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These RFAs seek answers as of the date on which Applicant responds and, as to those RFAs addressed to 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 has acquired additional knowledge or information relating in any way to those RFAs.

B. Where the RFAs request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

a) the identity of the person or persons who prepared it, the sender and recipient, if any;

b) the title or a description of the general nature of its subject matter;

c) the date of preparation;

d) the date and manner of distribution and publication, if any;

e) the location of each copy and the identity of the present custodian;

f) the identity of the person or persons who can identify it;

g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
4. an act or event, state:
- a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. "Referring or relating to" means comprising, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

D. To the extent that Applicant has any objection to answering any of the RFAs or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

E. If Applicant is aware, with respect to any Interrogatory, or any Request listed in Opposer's First Request for Production of Documents served herewith, or any subsequent Interrogatory or Document Request that may be served on Applicant in this proceeding, that any responsive document once existed but has been destroyed, please identify the document, who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

F. Each matter of which an admission is requested will be deemed admitted pursuant to Federal Rule of Civil Procedure 36(a) unless a written answer or objection is served within 30 days of service of these requests.

G. All objections to individual requests for admission shall specifically state the reasons for the objections.

H. Answers to individual requests for admission shall specifically admit the matter, specifically deny the matter, or set forth in detail the reasons why the matter cannot be truthfully admitted or denied.

I. When good faith requires that you qualify your answer or deny only part of the matter for which an admission is requested, you must specify those portions of the request which you admit, and qualify or deny the remainder.

J. You may not give lack of information or knowledge as a reason for failure to admit or deny a particular request for admission unless you have made reasonable inquiry into the matter which is the subject of the request for admission and unless the information known or readily available to you is insufficient to enable you to admit or deny the matter and your answer so states.

K. If you believe that a matter for which an admission is requested presents a genuine issue for trial, you may not, on that ground alone, object to that request for admission.

L. With respect to each written response to these requests for admission, please restate each request immediately before your written response to that request.

M. Opposer incorporates herein by reference the definitions set forth in *Opposer's First Set of Interrogatories*.

REQUESTS FOR ADMISSION

1. Admit that the term "GEOSPEC" is not found in a dictionary.
2. Admit that Opposer provides construction related goods under Opposer's Mark.
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.
4. Admit that Opposer has used Opposer's Mark for over four years in association with construction related goods.
5. Admit that the term "GEOSPEC" has no common meaning in the English language.
6. Admit that Applicant is providing or intends to provide construction related goods under Applicant's Marks.
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.
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.

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

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

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

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

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.

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

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

16. Admit that Opposer's Mark is distinctive.

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.

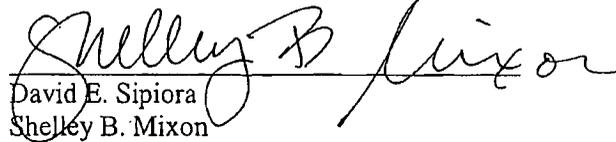
18. Admit that the word portions of all of Applicant's Marks and Opposer's Mark begin with "GEOSPEC."

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.

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

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Sipiora
Shelley B. Mixon

1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Ann M. Oliver

EXHIBIT D

Swaim, Amanda L.

From: Swaim, Amanda L.
Sent: Tuesday, October 28, 2008 7:12 PM
To: 'bryce.maynard@bipc.com'; 'bassam.ibrahim@bipc.com'
Cc: Sipiora, David E.; Weber, Amy L.
Subject: Plasti-Fab v. Kobleco

Dear Mr. Ibrahim,

Opposer Plasti-Fab's testimony period commences tomorrow, October 29, 2008, in Trademark Opposition Nos. 91179480 and 91179842. As such, today is Opposer's final day to file any motion to compel regarding Kobleco's discovery responses. Kobleco filed for an extension request on October 7, 2008, without first contacting Plasti-Fab to ask for consent. If so, Plasti-Fab would have worked with Kobleco to provide an adequate extension. Regardless, assuming Kobleco's 30-day extension request for responding to Plasti-Fab's discovery requests will be granted, Plasti-Fab will not receive Kobleco's responses until after the deadline to file a motion to compel has past.

Although Kobleco shows every intention of responding to Plasti-Fab's discovery requests, Plasti-Fab is filing a motion to compel responses to all outstanding discovery requests today in order to protect Plasti-Fab's rights. Please feel free to contact me if you have any questions. Thank you.

Regards,
Amanda Swaim

Amanda L. Swaim
Litigation Associate
Townsend and Townsend and Crew LLP
Direct: 303.607.3368
alswaim@townsend.com

EXHIBIT J

ESTTA Tracking number: **ESTTA251767**

Filing date: **11/26/2008**

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 1200 17th Street, Suite 2700 Denver, CO 80202 UNITED STATES denverteas@townsend.com
Submission	Motion to Compel Discovery
Filer's Name	David E. Sipiora
Filer's e-mail	denverteas@townsend.com
Signature	/des/
Date	11/26/2008
Attachments	Renewed MTC.pdf (3 pages)(102891 bytes) Renewed MTC_Exhibit A.pdf (9 pages)(261949 bytes) Renewed MTC_Exhibit B.pdf (9 pages)(256895 bytes) Renewed MTC_Exhibit C.pdf (13 pages)(381960 bytes) Renewed MTC_Exhibit D.pdf (37 pages)(886347 bytes)

TRADEMARK

Attorney Docket No. 026694-000500US

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
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: **GEOSPEC and ACERA GEOSPEC (and design)**
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD.

Applicant.

Consolidated Opposition Nos.
91179480 (parent) and 91179842

**OPPOSER'S RENEWED MOTION TO
COMPEL**

Opposer Plasti-Fab Ltd. ("Opposer") hereby submits this Renewed Motion to Compel production of documents responsive to Request for Production Nos. 1-28 and answers to Interrogatory Nos. 1-29 from Applicant Kobelco Construction Machinery Co., Ltd. ("Kobelco"). Due to Kobelco's failure to timely respond, Requests for Admission Nos. 1-20 are now deemed admitted by Kobelco.

Opposer served its First Set of Requests for Admission, Requests for Production of Documents, and Interrogatories on September 2, 2008. Copies of Opposer's discovery requests are attached as Exhibits A-C. By operation of the TBMP, responses and answers to this discovery were due no later than October 2, 2008. On October 7, 2008, Kobelco filed a motion for a 30-day extension to respond to Opposer's discovery requests. If the TTAB had granted the motion, Kobelco's discovery responses would have been due November 6, 2008. Opposer filed its first Motion to Compel on October 28, 2008. A copy of Opposer's original motion to compel

is attached as Exhibit D. To date, Opposer has not received any response to the original Motion to Compel. In addition, to date, Kobelco has provided no responses to any of Opposer's discovery requests.

It should be noted that Opposer does not seek to compel answers to Opposer's Requests for Admission Nos. 1-20, as they are deemed admitted due to Kobelco's failure to timely respond. TBMP § 527.01(d) ("If a party upon which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted (automatically), and may be relied upon by the propounding party pursuant to 37 CFR § 2.120(j)(3)(i)..."). Thus, Opposer respectfully renews its motion to the Board for an order compelling full responses to Opposer's request for production and interrogatories.

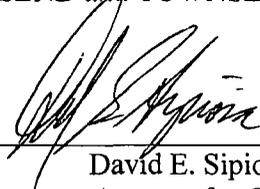
Opposer also requests that the Board confirm suspension of the current proceedings. A motion to compel discovery suspends the proceeding pending resolution of the discovery dispute. TBMP § 523.01. Opposer filed its first Motion to Compel Discovery on October 28, 2008, but has not received a suspension order from the Board. Opposer's testimony period ends on November 28, 2008. As such, Opposer respectfully requests confirmation of the suspension of the proceeding prior to expiration of its testimony period to ensure protection of its rights.

Respectfully submitted,

TOWNSEND *and* TOWNSEND *and* CREW LLP

Date: November 26, 2008

By: _____


David E. Sipiora
Attorney for Opposer

Townsend and Townsend and Crew LLP
1200 Seventeenth Street, Suite 2700
Denver, Colorado 80202
Telephone: (303) 571-4000
Facsimile: (303) 571-4321

EXHIBIT A

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

v.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1- 20)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, propounds the following requests for admission ("RFAs") to be fully and separately answered in writing by an officer or duly authorized agent of Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These RFAs seek answers as of the date on which Applicant responds and, as to those RFAs addressed to 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 has acquired additional knowledge or information relating in any way to those RFAs.

B. Where the RFAs request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

a) the identity of the person or persons who prepared it, the sender and recipient, if any;

b) the title or a description of the general nature of its subject matter;

c) the date of preparation;

d) the date and manner of distribution and publication, if any;

e) the location of each copy and the identity of the present custodian;

f) the identity of the person or persons who can identify it;

g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
4. an act or event, state:
- a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. “Referring or relating to” means comprising, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

D. To the extent that Applicant has any objection to answering any of the RFAs or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

E. If Applicant is aware, with respect to any Interrogatory, or any Request listed in Opposer's First Request for Production of Documents served herewith, or any subsequent Interrogatory or Document Request that may be served on Applicant in this proceeding, that any responsive document once existed but has been destroyed, please identify the document, who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

F. Each matter of which an admission is requested will be deemed admitted pursuant to Federal Rule of Civil Procedure 36(a) unless a written answer or objection is served within 30 days of service of these requests.

G. All objections to individual requests for admission shall specifically state the reasons for the objections.

H. Answers to individual requests for admission shall specifically admit the matter, specifically deny the matter, or set forth in detail the reasons why the matter cannot be truthfully admitted or denied.

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J. You may not give lack of information or knowledge as a reason for failure to admit or deny a particular request for admission unless you have made reasonable inquiry into the matter which is the subject of the request for admission and unless the information known or readily available to you is insufficient to enable you to admit or deny the matter and your answer so states.

K. If you believe that a matter for which an admission is requested presents a genuine issue for trial, you may not, on that ground alone, object to that request for admission.

L. With respect to each written response to these requests for admission, please restate each request immediately before your written response to that request.

M. Opposer incorporates herein by reference the definitions set forth in *Opposer's First Set of Interrogatories*.

REQUESTS FOR ADMISSION

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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.
4. Admit that Opposer has used Opposer's Mark for over four years in association with construction related goods.
5. Admit that the term "GEOSPEC" has no common meaning in the English language.
6. Admit that Applicant is providing or intends to provide construction related goods under Applicant's Marks.
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.
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.

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

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

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

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

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.

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

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

16. Admit that Opposer's Mark is distinctive.

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.

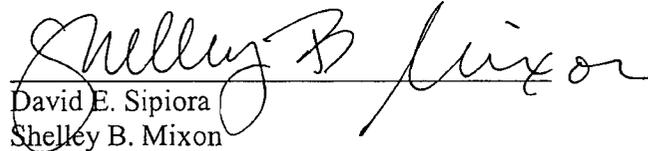
18. Admit that the word portions of all of Applicant's Marks and Opposer's Mark begin with "GEOSPEC."

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.

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

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

A handwritten signature in cursive script that reads "Shelley B. Mixon". The signature is written in black ink and is positioned above a horizontal line.

David E. Sipiora
Shelley B. Mixon

1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

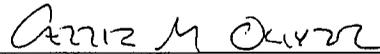


EXHIBIT B

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS (1-28)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, requests that Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant") produce for inspection and copying the documents listed below, at the offices of Applicant's counsel, Townsend and Townsend and Crew LLP, 1200 Seventeenth Street, Suite 2700, Denver, Colorado 80202, within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. Opposer hereby incorporates by reference the Instructions and Definitions set forth in Opposer's First Set of Interrogatories (Nos. 1-29).

B. If Applicant is aware, with respect to any Request, that any responsive document once existed but has been destroyed, Applicant should describe the document, identify who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

C. The term "concerning" means referring to, relating to, containing, embodying, mentioning, evidencing, constituting or describing.

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.

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.

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.

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.

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.

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.

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.

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.

REQUEST NO. 9

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

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.

REQUEST NO. 11

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

REQUEST NO. 12

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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."

REQUEST NO. 24

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

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.

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.

REQUEST NO. 27

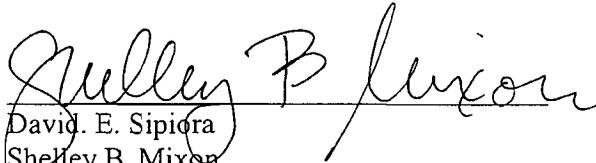
Documents sufficient to show or describe the potential or actual customers or end-users of Applicant's Goods and Services.

REQUEST NO. 28

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

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Sipiora

Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-28)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Caruz M. Oluza

61463003 v3

EXHIBIT C

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
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Filed: March 30, 2006

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Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)

Opposer Plasti-Fab Ltd. ("Opposer") propounds the following written interrogatories ("Interrogatories") to be fully and separately answered in writing, under oath, by an officer or duly authorized agent of Kobelco Construction Machinery Co., LTD ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These Interrogatories seek answers as of the date on which Applicant responds and, as to those Interrogatories addressed to 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 has acquired additional knowledge or information relating in any way to those interrogatories.

B. Where the interrogatories request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

- a) the identity of the person or persons who prepared it, the sender and recipient, if any;
- b) the title or a description of the general nature of its subject matter;
- c) the date of preparation;
- d) the date and manner of distribution and publication, if any;
- e) the location of each copy and the identity of the present custodian;
- f) the identity of the person or persons who can identify it;
- g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
- 4. an act or event, state:
 - a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. To the extent that Applicant has any objection to answering any of the Interrogatories or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

D. The term “document” encompasses all items subject to discovery within the scope of Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether original, master or copy; whether printed or stored on any medium, including audiotape, videotape, CD-ROM, CD-RW, floppy disk, zip disk, hard disk, memory chip, servers, or via any other electronic or magnetic means of storage, including without limitation: agreements; communications, including intra-company communications and correspondence; electronic mail, voice mail, faxes, cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for radio or television commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, and marginal comments appearing on, any document; and any other information-containing paper, writing or physical thing; letters, notes, memoranda, records, minutes, bills, contracts, agreements, orders, receipts, drawings, sketches, advertising or promotional literature, operating manuals, instruction bulletins, test data, and reports, and each version thereof.

E. "Referring or relating to" means comprising, concerning, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

F. "Communication(s)" when used in these Interrogatories includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise.

G. "And," or "or" or "and/or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

H. "Date" means the exact day, month, and year, if ascertainable and, if not, Applicant's best approximation thereof.

I. "Applicant" means Kobelco Construction Machinery Co., LTD., all predecessors or successors-in-interest, all predecessor or successor owners of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 and/or Applicant's Marks, as defined in paragraph K below, and the officers, employees, attorneys, agents, consultants and representatives of all such entities. Absent contrary express notice, it is understood and anticipated that all answers and responses to these Interrogatories and to Opposer's First Request for Production of Documents will include information and documents from and pertaining to all such predecessor and successor entities.

J. "Person(s)" means both natural persons, living or deceased, and to corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of a corporate or other business entity "person's" directors, officers, members, employees, representatives, agents, and attorneys.

K. "Applicant's Marks" or the "Marks" means the marks which are the subject matter of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 whether used as a trademark, service mark, trade name, or corporate name, either alone or in association with other words or designs.

L. "Opposer's Mark" means the mark which is the subject of U.S. Trademark Registration No. 3,385,301.

M. "Applicant's Goods and Services" means the goods and services identified by Applicant in response to Interrogatory No. 1.

INTERROGATORIES

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."

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.

INTERROGATORY NO. 3

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

INTERROGATORY NO. 4

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

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.

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.

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.

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.

INTERROGATORY NO. 9

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

INTERROGATORY NO. 11

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

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.

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.

INTERROGATORY NO. 14

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

INTERROGATORY NO. 15

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

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.

INTERROGATORY NO. 17

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

INTERROGATORY NO. 28

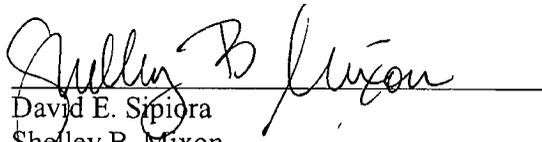
Identify all lawsuits or administrative proceedings, if any, past or present, regarding Opposer's Marks.

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.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP

A handwritten signature in cursive script, appearing to read "Shelley B. Mixon", is written over a horizontal line.

David E. Sipiora

Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Ann M O'Leary

61462866 v3

EXHIBIT D

**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
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: **GEOSPEC and ACERA GEOSPEC (and design)**
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD.,

Applicant.

Consolidated Opposition Nos.
91179480 (parent) and 91179842

OPPOSER'S MOTION TO COMPEL

Opposer Plasti-Fab Ltd. ("Opposer") hereby submits the following Motion to Compel production of documents responsive to Request for Production Nos. 1-28, answers to Interrogatory Nos. 1-29 and answers to Requests for Admission Nos. 1-20 against Applicant Kobelco Construction Machinery Co., Ltd. ("Kobelco").

Opposer served its First Set of Requests for Admission, Requests for Production of Documents and Interrogatories on September 2, 2008. Copies of Opposer's discovery requests are attached as Exhibits A-C. 37 C.F.R. § 2.120(e); Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.") § 523.02. On October 7, 2008, Kobelco filed a motion for a 30-day extension to respond to Opposer's discovery requests. If the TTAB grants this motion, Kobelco's discovery responses will be due November 6, 2008. Kobelco did not consent with

Opposer prior to filing its motion, and if Kobelco had, Opposer would have worked with Kobelco to provide an appropriate extension of time to respond to Opposer's discovery requests. Regardless, Opposer does not object to Kobelco's extension request and expects that the request will be granted.

Opposer's testimony period, however, opens October 29, 2008. As such, Opposer's deadline for filing any motion to compel is October 28, 2008. 37 C.F.R. § 2.120(e) ("[t]he motion must be filed prior to the commencement of the first testimony period."); T.B.M.P. § 523.03. To date, Opposer has received no discovery responses from Kobelco, although Kobelco has shown every intention of responding to Opposer's discovery requests. Given the imminent opening of the testimony period, Opposer files this Motion to Compel in order to protect its rights. Thus, Opposer respectfully moves this Board for an order compelling full responses to all of Opposer's discovery requests. 37 C.F.R. § 2.120(e); T.B.M.P. § 523.01.

Opposer advised Kobelco by e-mail of the foregoing. Attached as Exhibit D is a copy of such e-mail. Opposer will promptly notify the Board if Kobelco complies with its discovery obligations in the interim.

Respectfully submitted,

TOWNSEND AND TOWNSEND AND CREW LLP

Date: October 28, 2008

By: /David E. Sipiora/
David E. Sipiora
Shelley B. Mixon
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2008, I served the foregoing **OPPOSER'S**
MOTION TO COMPEL 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

/Amanda L. Swaim/

EXHIBIT A

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
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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.

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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.

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All documents concerning any searches, studies, distinctiveness surveys, likelihood of confusion surveys, market studies, focus group studies or other surveys or studies performed by

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

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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.

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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.

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.

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.

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.

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.

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.

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.

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.

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.

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."

REQUEST NO. 24

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

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.

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.

REQUEST NO. 27

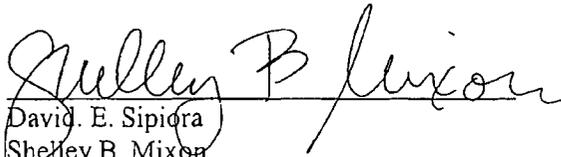
Documents sufficient to show or describe the potential or actual customers or end-users of Applicant's Goods and Services.

REQUEST NO. 28

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

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Sipiora
Shelley B. Mixon

1200 Seventeenth Street, Suite 2700
Denver, CO 80202
(303) 571-4000
(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (1-28)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Caru M. O'Connell

61463003 v3

EXHIBIT B

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

vs.

KOBELCO CONSTRUCTION
MACHINERY CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)

Opposer Plasti-Fab Ltd. ("Opposer") propounds the following written interrogatories ("Interrogatories") to be fully and separately answered in writing, under oath, by an officer or duly authorized agent of Kobelco Construction Machinery Co., LTD ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These Interrogatories seek answers as of the date on which Applicant responds and, as to those Interrogatories addressed to 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 has acquired additional knowledge or information relating in any way to those interrogatories.

B. Where the interrogatories request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

- a) the identity of the person or persons who prepared it, the sender and recipient, if any;
- b) the title or a description of the general nature of its subject matter;
- c) the date of preparation;
- d) the date and manner of distribution and publication, if any;
- e) the location of each copy and the identity of the present custodian;
- f) the identity of the person or persons who can identify it;
- g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
4. an act or event, state:
- a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. To the extent that Applicant has any objection to answering any of the Interrogatories or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

D. The term "document" encompasses all items subject to discovery within the scope of Rule 34 of the Federal Rules of Civil Procedure and includes, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether original, master or copy; whether printed or stored on any medium, including audiotape, videotape, CD-ROM, CD-RW, floppy disk, zip disk, hard disk, memory chip, servers, or via any other electronic or magnetic means of storage, including without limitation: agreements; communications, including intra-company communications and correspondence; electronic mail, voice mail, faxes, cablegrams, radio-grams and telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for radio or television commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, and marginal comments appearing on, any document; and any other information-containing paper, writing or physical thing; letters, notes, memoranda, records, minutes, bills, contracts, agreements, orders, receipts, drawings, sketches, advertising or promotional literature, operating manuals, instruction bulletins, test data, and reports, and each version thereof.

E. "Referring or relating to" means comprising, concerning, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

F. "Communication(s)" when used in these Interrogatories includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise.

G. "And," or "or" or "and/or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

H. "Date" means the exact day, month, and year, if ascertainable and, if not, Applicant's best approximation thereof.

I. "Applicant" means Kobelco Construction Machinery Co., LTD., all predecessors or successors-in-interest, all predecessor or successor owners of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 and/or Applicant's Marks, as defined in paragraph K below, and the officers, employees, attorneys, agents, consultants and representatives of all such entities. Absent contrary express notice, it is understood and anticipated that all answers and responses to these Interrogatories and to Opposer's First Request for Production of Documents will include information and documents from and pertaining to all such predecessor and successor entities.

J. "Person(s)" means both natural persons, living or deceased, and to corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of a corporate or other business entity "person's" directors, officers, members, employees, representatives, agents, and attorneys.

K. "Applicant's Marks" or the "Marks" means the marks which are the subject matter of U.S. Trademark Application Serial Nos. 79/023,935 and 79/023,934 whether used as a trademark, service mark, trade name, or corporate name, either alone or in association with other words or designs.

L. "Opposer's Mark" means the mark which is the subject of U.S. Trademark Registration No. 3,385,301.

M. "Applicant's Goods and Services" means the goods and services identified by Applicant in response to Interrogatory No. 1.

INTERROGATORIES

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."

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.

INTERROGATORY NO. 3

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

INTERROGATORY NO. 4

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

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.

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.

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.

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.

INTERROGATORY NO. 9

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

INTERROGATORY NO. 11

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

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.

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.

INTERROGATORY NO. 14

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

INTERROGATORY NO. 15

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

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.

INTERROGATORY NO. 17

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

INTERROGATORY NO. 28

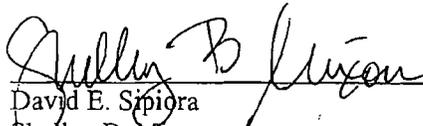
Identify all lawsuits or administrative proceedings, if any, past or present, regarding Opposer's Marks.

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.

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Sipiora

Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES (Nos. 1-29)** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Ann M. O'Leary

61462866 v3

EXHIBIT C

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

In re Application Serial Nos. 79/023,935 and 79/023,934
Published: August 7, 2007
Applicant: Kobelco Construction Machinery Co., Ltd.
Mark: GEOSPEC and ACERA GEOSPEC (and design)
Filed: March 30, 2006

PLASTI-FAB LTD.,

Opposer,

v.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD,

Applicant.

Opposition No. 91179480 (parent)
Opposition No. 91179482

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION (NOS. 1- 20)

Opposer Plasti-Fab Ltd. ("Opposer"), by counsel, propounds the following requests for admission ("RFAs") to be fully and separately answered in writing by an officer or duly authorized agent of Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant"), within thirty (30) days of the date of service hereof, or at such other time and place as may be mutually agreed upon by the parties, in accordance with Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 36 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. These RFAs seek answers as of the date on which Applicant responds and, as to those RFAs addressed to 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 has acquired additional knowledge or information relating in any way to those RFAs.

B. Where the RFAs request the identity of:

1. a person, state the name and current or last known address of each person, employer or business affiliation, and occupation and business position held;

2. a company, state the name, place of incorporation or organization, principal place of business, and the identity of the persons having knowledge of the matter with respect to which the company is named;

3. a document, state:

a) the identity of the person or persons who prepared it, the sender and recipient, if any;

b) the title or a description of the general nature of its subject matter;

c) the date of preparation;

d) the date and manner of distribution and publication, if any;

e) the location of each copy and the identity of the present custodian;

f) the identity of the person or persons who can identify it;

g) the contents of the document verbatim (or, in lieu thereof, a copy of the document); and

- h) if privilege is claimed, the specific basis for the claim;
4. an act or event, state:
- a) a description of the act or event;
 - b) when it occurred;
 - c) where it occurred;
 - d) the identity of the person or persons performing said act (or, in case of an omission, the identity of the person or persons failing to act) or involved in said event;
 - e) the identity of all persons who have knowledge, information or belief about the act;
 - f) when the act, event or omission first became known; and
 - g) the circumstances and manner in which such knowledge was first obtained.

C. "Referring or relating to" means comprising, relating to, pertaining to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

D. To the extent that Applicant has any objection to answering any of the RFAs or producing responsive documents on the basis that the requested information or responsive documents are privileged or otherwise protected by the attorney-client privilege or work-product immunity, Applicant is requested to identify the subject matter and date of the information or document; identify the person who authored the information or documents; identify each person who ever received or had access to the information or document, or a copy thereof; identify the person or persons who presently have custody of the information or document; and state the basis of the alleged privilege or work-product immunity.

E. If Applicant is aware, with respect to any Interrogatory, or any Request listed in Opposer's First Request for Production of Documents served herewith, or any subsequent Interrogatory or Document Request that may be served on Applicant in this proceeding, that any responsive document once existed but has been destroyed, please identify the document, who destroyed it, why it was destroyed, and the date and circumstances under which it was destroyed.

F. Each matter of which an admission is requested will be deemed admitted pursuant to Federal Rule of Civil Procedure 36(a) unless a written answer or objection is served within 30 days of service of these requests.

G. All objections to individual requests for admission shall specifically state the reasons for the objections.

H. Answers to individual requests for admission shall specifically admit the matter, specifically deny the matter, or set forth in detail the reasons why the matter cannot be truthfully admitted or denied.

I. When good faith requires that you qualify your answer or deny only part of the matter for which an admission is requested, you must specify those portions of the request which you admit, and qualify or deny the remainder.

J. You may not give lack of information or knowledge as a reason for failure to admit or deny a particular request for admission unless you have made reasonable inquiry into the matter which is the subject of the request for admission and unless the information known or readily available to you is insufficient to enable you to admit or deny the matter and your answer so states.

K. If you believe that a matter for which an admission is requested presents a genuine issue for trial, you may not, on that ground alone, object to that request for admission.

L. With respect to each written response to these requests for admission, please restate each request immediately before your written response to that request.

M. Opposer incorporates herein by reference the definitions set forth in *Opposer's First Set of Interrogatories*.

REQUESTS FOR ADMISSION

1. Admit that the term "GEOSPEC" is not found in a dictionary.
2. Admit that Opposer provides construction related goods under Opposer's Mark.
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.
4. Admit that Opposer has used Opposer's Mark for over four years in association with construction related goods.
5. Admit that the term "GEOSPEC" has no common meaning in the English language.
6. Admit that Applicant is providing or intends to provide construction related goods under Applicant's Marks.
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.
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.

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

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

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

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

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.

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

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

16. Admit that Opposer's Mark is distinctive.

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.

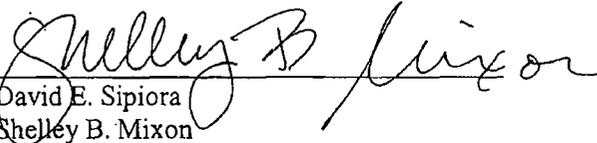
18. Admit that the word portions of all of Applicant's Marks and Opposer's Mark begin with "GEOSPEC."

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.

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

Dated: September 2, 2008

TOWNSEND AND TOWNSEND AND CREW LLP



David E. Sipiora
Shelley B. Mixon

1200 Seventeenth Street, Suite 2700

Denver, CO 80202

(303) 571-4000

(303) 571-4321 (fax)

Attorneys for Opposer Plasti-Fab Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September 2008, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION** was served by placing the same in the United States mail, postage prepaid and addressed to the following:

Bassam N. Ibrahim
Bryce J. Maynard
Buchanan Ingersoll PC
1737 King Street
Suite 500
Alexandria, VA 22314-2727

Attorneys for Applicant Kobelco Construction Machinery Co., Ltd.

Ann M. Oliver

EXHIBIT D

Swaim, Amanda L.

From: Swaim, Amanda L.
Sent: Tuesday, October 28, 2008 7:12 PM
To: 'bryce.maynard@bipc.com'; 'bassam.ibrahim@bipc.com'
Cc: Sipiora, David E.; Weber, Amy L.
Subject: Plasti-Fab v. Kobleco

Dear Mr. Ibrahim,

Opposer Plasti-Fab's testimony period commences tomorrow, October 29, 2008, in Trademark Opposition Nos. 91179480 and 91179842. As such, today is Opposer's final day to file any motion to compel regarding Kobleco's discovery responses. Kobleco filed for an extension request on October 7, 2008, without first contacting Plasti-Fab to ask for consent. If so, Plasti-Fab would have worked with Kobleco to provide an adequate extension. Regardless, assuming Kobleco's 30-day extension request for responding to Plasti-Fab's discovery requests will be granted, Plasti-Fab will not receive Kobleco's responses until after the deadline to file a motion to compel has past.

Although Kobleco shows every intention of responding to Plasti-Fab's discovery requests, Plasti-Fab is filing a motion to compel responses to all outstanding discovery requests today in order to protect Plasti-Fab's rights. Please feel free to contact me if you have any questions. Thank you.

Regards,
Amanda Swaim

Amanda L. Swaim
Litigation Associate
Townsend and Townsend and Crew LLP
Direct: 303.607.3368
alswaim@townsend.com

EXHIBIT K

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 27, 2009

Opposition No. 91179480
91179842

Plasti-Fab Ltd.

v.

Kobelco Construction Machinery
Co., Ltd.

Linda Skoro, Interlocutory Attorney

This case comes up on opposer's renewed motion to compel discovery responses, filed November 26, 2008. The motion is unopposed.

The substance of opposer's motion to compel is that discovery was timely served on applicant on September 2, 2008, consisting of the first set of interrogatories and request for production of documents. As of the date of filing of this motion, applicant has not provided responses or requested a further extension of time to serve responses.¹

¹ It is noted that having received no response, opposer's counsel indicates that applicant "has shown every intention of responding" and that applicant filed an extension request, which it retroactively consented to. Opposer further states that because its testimony period was about to open, it filed its motion to compel. However, there is no allegation of any good

In that applicant did not oppose this motion, it is granted. Trademark Rule 2.127(a). Applicant shall respond to opposer's interrogatories and request for production without objection. Applicant has **thirty** days from the date hereof to fully answer the outstanding discovery. Any unanswered requests for admissions are hereby deemed admitted. If applicant fails to comply with this order, opposer is free to file a motion for the entry of default judgment under Trademark Rule 2.120(g)(1).

Proceedings herein will remain suspended pending a response by applicant to this order. Should opposer receive discovery responses, it should advise the Board and request a resetting of the trial dates.

faith effort made to obtain applicant's discovery responses. While this is usually fatal to a motion to compel, because the motion is uncontested, the motion is being granted.

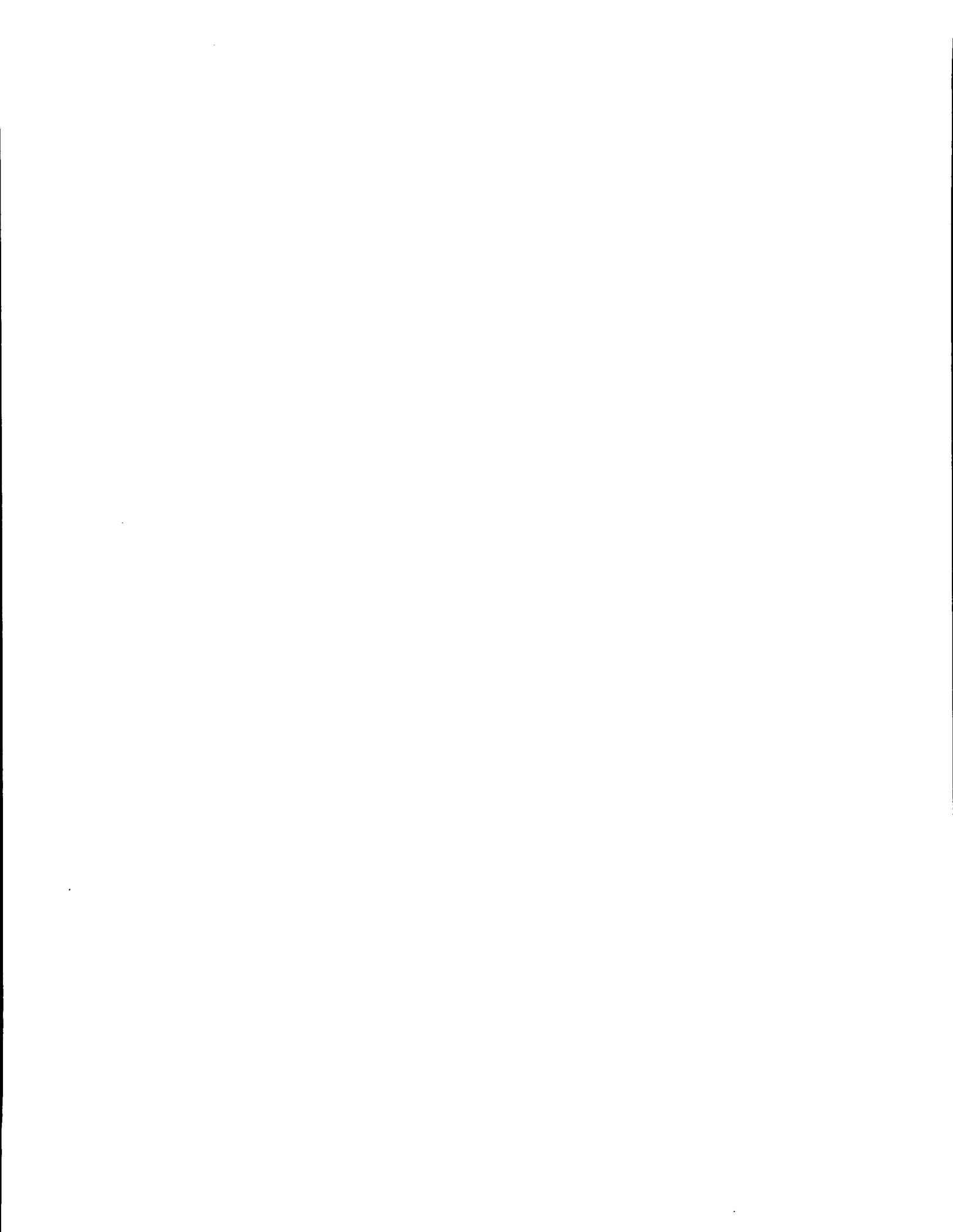


EXHIBIT L

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

vb

Mailed: March 9, 2009

Opposition No. 91179480

Opposition No. 91179482

Plasti-Fab Ltd.

v.

Kobelco Construction
Machinery Co., Ltd.

Linda Skoro, Interlocutory Attorney

This case comes up on opposer's motion to compel discovery responses, filed November 26, 2008. The motion is unopposed.

The substance of opposer's motion to compel is that discovery was timely served on applicant on September 2, 2008, consisting of the first set of interrogatories, request for production of documents, and requests for admissions; that having received no response other than an unconsented request to extend the time to answer, opposer's counsel notified applicant by email that its testimony

period was about to open¹ and it needed to file this motion to compel. As of the date of filing of this motion, applicant has not provided responses or requested a further extension of time to serve responses.

In that applicant did not oppose this motion, it is granted. Trademark Rule 2.127(a). Applicant shall respond to opposer's interrogatories and request for production without objection. Applicant has **thirty** days from the date hereof to fully answer the outstanding discovery. Any unanswered requests for admissions are deemed admitted. If applicant fails to comply with this order, opposer is free to file a motion for the entry of default judgment under Trademark Rule 2.120(g)(1).

Accordingly, discovery is closed, and trial dates are reset as follows:

30-day testimony period for party in position of plaintiff to close:	May 8, 2009
30-day testimony period for party in position of defendant to close:	July 7, 2009
15-day rebuttal testimony period for plaintiff to close:	August 21, 2009

¹The better practice is for counsel to contact the other party and make a good faith effort to resolve the dispute or extend the trial dates to allow more time to resolve the dispute before coming to the Board.

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

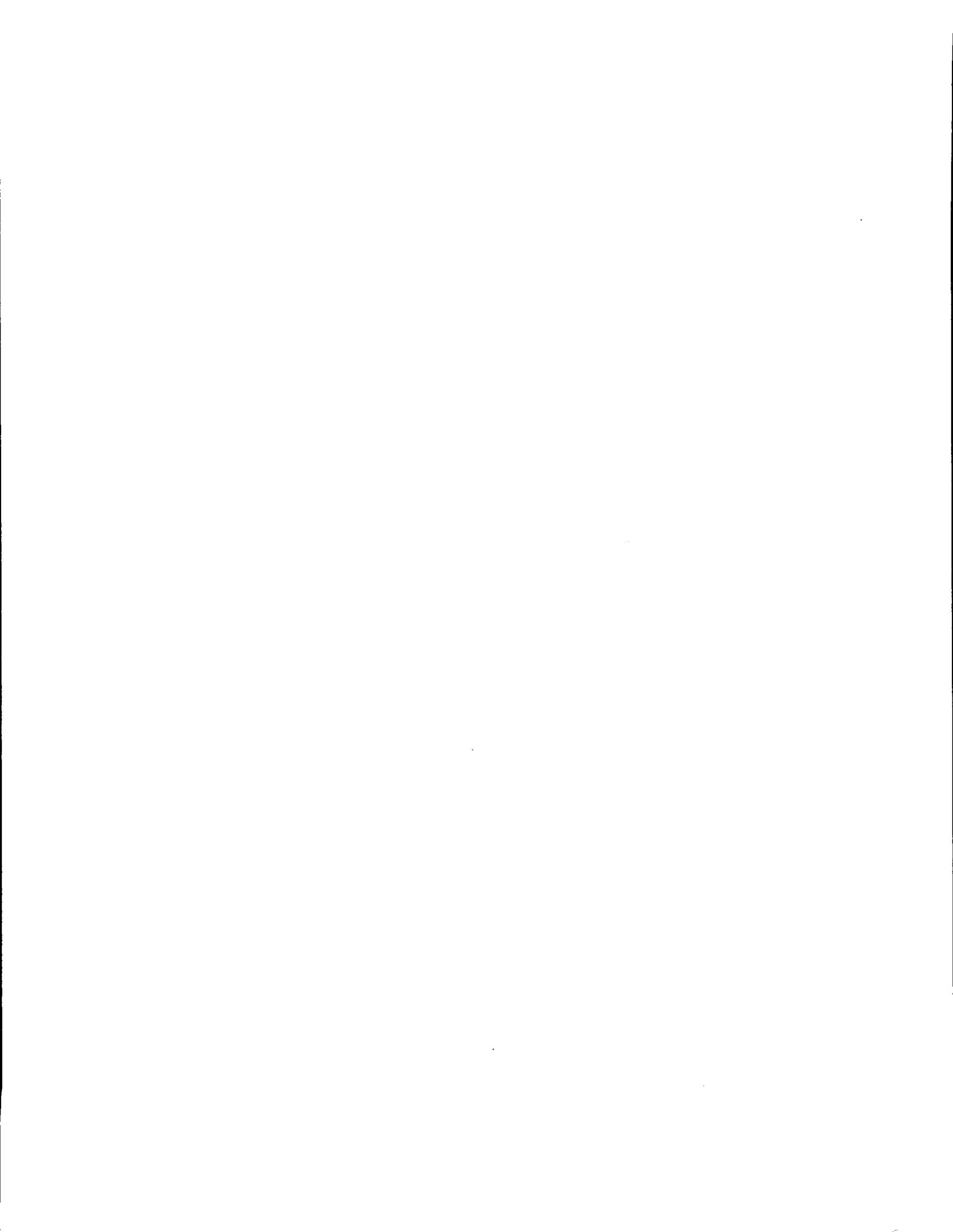


EXHIBIT M

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
Filer's Name	Shelley B. Mixon
Filer's e-mail	denverteas@townsend.com
Signature	/sbm/
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

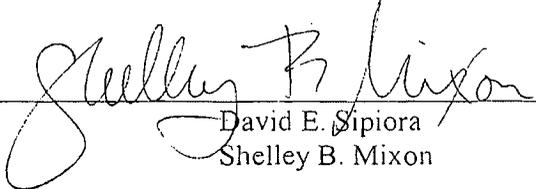
In light of the foregoing, Plasti-Fab respectfully requests that the Board enter judgment by default against Applicant, pursuant to 37 CFR § 2.120(g)(1). In the alternative, Plasti-Fab seeks permission to file a motion for summary judgment outside of the discovery period. Plasti-Fab also respectfully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



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

EXHIBIT A

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

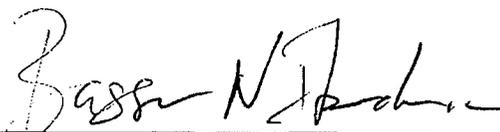
Identify all facts that Applicant believes supports Applicant's contention in paragraph 1 of the "Affirmative Defenses" section of Applicant's answers to Opposer's Notice of Opposition that there is no likelihood of confusion between Opposer's Mark and Applicant's Marks.

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: 11/8/09

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

EXHIBIT B

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 tradeshow, 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

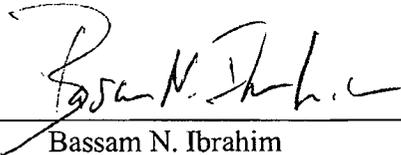
Documents sufficient to show the channels of distribution of Applicant's Goods or Services.

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

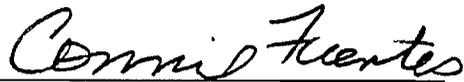

Connie Fuentes
Connie Fuentes

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.

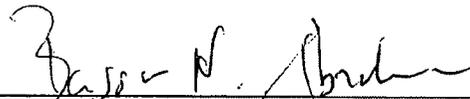
20. Admit that Applicant provides or intends to provide construction related goods under Applicant's Marks.

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

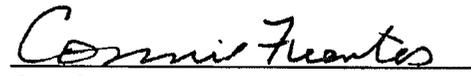
Date: 4/9/09

BUCHANAN INGERSOLL & ROONEY PC
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 REQUESTS FOR ADMISSIONS (NOS. 1-20)** 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

EXHIBIT N

ESTTA Tracking number: **ESTTA283054**

Filing date: **05/11/2009**

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

Proceeding	91179480
Party	Defendant Kobelco Construction Machinery Co., Ltd.
Correspondence Address	Bassam Ibrahim Buchanan Ingersoll & Rooney PC 1737 King Street, Suite 500 Alexandria, VA 22314-2727 UNITED STATES bassam.ibrahim@bipc.com
Submission	Opposition/Response to Motion
Filer's Name	S. Lloyd Smith
Filer's e-mail	lloyd.smith@bipc.com
Signature	/SLS/
Date	05/11/2009
Attachments	91179480 1033715-025.pdf (28 pages)(2785593 bytes)

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

PLASTI-FAB LTD.,

Opposer,

v.

KOBELCO CONSTRUCTION MACHINERY
CO., LTD.,

Applicant.

Opposition No. 91179480

Opposition No. 91179482

**APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR DEFAULT
JUDGMENT AND PERMISSION TO FILE FOR SUMMARY JUDGMENT
OUTSIDE THE DISCOVERY PERIOD**

Applicant Kobelco Construction Machinery Co., Ltd. ("Applicant") hereby opposes Opposer Plasti-Fab Ltd.'s ("Opposer") April 20, 2009 Motion for Default Judgment, and, In The Alternative, For Permission to File Motion for Summary Judgment Outside of the Discovery Period ("Opposer's Motion"), for the reasons stated below.

I. Background

As stated in Opposer's Motion, Applicant did serve objections and responses on April 8, 2009. There is no dispute that in doing so Applicant complied with the deadline in the Board's March 9, 2009 Order. The substance of Opposer's argument appears to be that Opposer is dissatisfied with the Applicant's responses. In advancing its arguments, Opposer has misrepresented the record by asserting that "Applicant failed to provide substantive responses to *any* of the discovery requests." Opposer's

Motion at 2. Opposer's statement is untrue. First, Applicant has admitted or denied all of Opposer's Requests for Admissions in compliance with Federal Rule 36. *See* Opposer's Motion Ex. C. Second, Applicant has provided substantive responses to some interrogatories and objected to disclosure of confidential information prior to entry of a protective order for many interrogatories and document requests. *See* Opposer's Motion Exs. A and B. Even after a protective order is entered, Applicants will have little discovery to provide Opposer because Applicant has applied for U.S. Application Serial Nos. 79/023,934 and 79/023,935 on the basis of Section (a) and has no current sales in the United States other than a shipment of five (5) used machines which have not been sold. Applicant has served supplemental interrogatory responses concurrently with this opposition brief in order to make these facts clear. Ex. 1. Applicant has further produced documents pertaining to the shipment of five (5) machines into the United States. Ex. 2.

In sum, there is no basis for the Default Judgment Opposer seeks.

II. Argument

"Default judgment is a harsh remedy" (TBMP, § 527.01) which is not an appropriate remedy in this instance. As established above, Applicant has not disregarded a Board Order and is not refusing to provide discovery. Even to the extent the Board disagrees with Applicant's objections, other remedies are available. TBMP, § 527.01. As the Board has previously stated, "While we strongly disapprove of defendant's improper assertion of objections, entry of judgment is inappropriate." *Electronic Indus. Assoc. v. Potega*, 50 USPQ2d 1775, 1778 (TTAB 1999). This matter should be resolved on the merits, not on default.

Opposer's request for permission to move for summary judgment is just an alternate attempt to avoid resolving this case on the merits. The Board has not ordered that Opposer's requests for admissions stand admitted. Applicant has responded to the Requests for Admissions by the deadline set in the Board's March 9, 2009 Order. To the extent necessary, Opposer moves the Board to accept these responses because presentation of the merits will be subserved thereby. Fed. R. Civ. P. 36(b); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1721 (TTAB 1989) (granting motion to be relieved of admission where merits will be subserved thereby). Further, Opposer has not established, or even alleged, any insufficiency in Applicant's responses. Thus, Opposer's Requests for Admissions should not be deemed admitted and Opposer's Motion to move for summary judgment should be denied.

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By _____

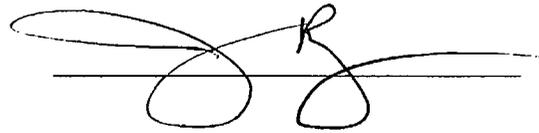
Bassam N. Ibrahim
S. Lloyd Smith
Bryce J. Maynard
Attorneys for Applicant

Date: May 11, 2009
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 **APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR DEFAULT JUDGMENT AND PERMISSION TO FILE FOR SUMMARY JUDGMENT OUTSIDE THE DISCOVERY PERIOD** was served this 11th day of May, 2009, by first-class mail, postage prepaid, on:

David E. Sipiora
Shelley B. Mixon
TOWNSEND AND TOWNSEND AND CREW LLP
1400 Wewatta Street
Suite 600
Denver, CO 80202

A handwritten signature in black ink, appearing to read 'DS', is written over a horizontal line.

**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.’S SUPPLEMENTAL
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 the 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 the entry of a Protective Order. Subject to the foregoing objection, Applicant became aware of Opposer's Mark during prosecution of Applicant's Mark.

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 the entry of a Protective Order. Subject to the foregoing objection, Applicant states that the "GEO" in GEOSPEC represents Applicant's deep respect for the planet Earth and for the solid ground where excavators are in their element. The "SPEC" refers to the performance specifications needed to get the job done efficiently.

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 the 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

None.

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 this request as not reasonably calculated to lead to the discovery of admissible evidence. Applicant's priority date in the United States arises out of its U.S. Application Nos. 79/023,934 and 79/023,935 on the basis of Section 66(a).

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. Application Nos. 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 the entry of a Protective Order.

INTERROGATORY NO. 10

Omitted by Opposer.

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

None.

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

None.

INTERROGATORY NO. 14

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

RESPONSE TO INTERROGATORY NO. 14

None.

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 identifies its website at www.kobelco.com which may be accessed by U.S. consumers.

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 the entry of a Protective Order.

Subject to the foregoing objection, Applicant states that five (5) used excavators have been shipped to the United States but have not been sold. Pursuant to Rule 33(d), Applicant will produce documents concerning this shipment. No other U.S. sales or shipments have been made.

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 the entry of a Protective Order. Subject to this objection, Applicant incorporates its response to Interrogatory No. 16.

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 the entry of a Protective Order.

Subject to the foregoing, Applicant has no current U.S. customers.

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

None.

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. No such objections have been received.

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 the 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 this request as vague and ambiguous.

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

None.

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

None.

INTERROGATORY NO. 28

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

RESPONSE TO INTERROGATORY NO. 28

None.

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.

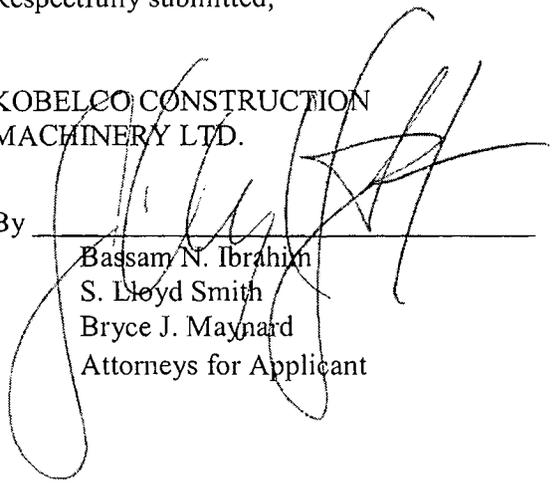
RESPONSE TO INTERROGATORY NO. 29

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

Respectfully submitted,

KOBELCO CONSTRUCTION
MACHINERY LTD.

By



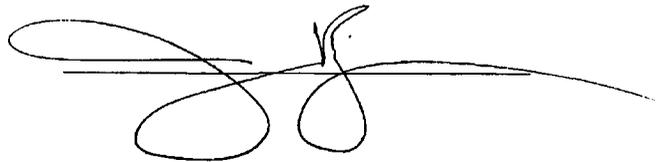
Bassam N. Ibrahim
S. Lloyd Smith
Bryce J. Maynard
Attorneys for Applicant

Date: May 11, 2009
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.'S SUPPLEMENTAL RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES (NOS. 1-29)** was served this 11th day of May, 2009, by first-class mail, postage prepaid, on:

David E. Sipiora
Shelley B. Mixon
TOWNSEND AND TOWNSEND AND CREW LLP
1400 Wewatta Street
Suite 600
Denver, CO 80202

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

P.O. Box 1404
Alexandria, VA 22313-1404

1737 King Street, Suite 500
Alexandria, VA 22314-2727

T 703 836 6620
F 703 836 2021

www.buchananingersoll.com

S. Lloyd Smith
703 838 6514
lloyd.smith@bipc.com

May 11, 2009

VIA U.S. MAIL

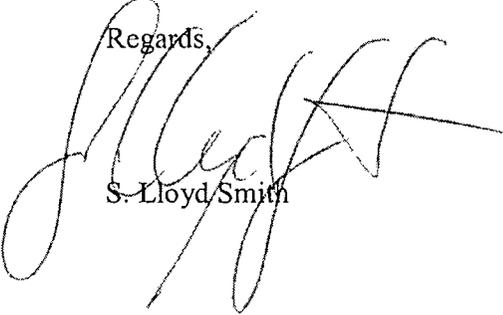
Shelley B. Mixon, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
1400 Wewatta Street
Suite 600
Denver, CO 80202

Re: *Plasti-Fab, Ltd. v. Kobelco Construction Machinery, Ltd.*
Opposition Nos. 91179480 and 91179482

Dear Shelley:

Enclosed please find Applicant's document production KOB001-KOB010. They are marked "Highly Confidential - Outside Counsel's Eyes Only" with the understanding that they will be treated as such until a protective order is entered. If you are unwilling to abide by this understanding, please return the documents to us.

Regards,


S. Lloyd Smith

SLS/lp
Enclosures

KOBELCO

INVOICE

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO., LTD.

Oval Court Ohsaki Mark West Bldg. 17-1, Higashigotanda 2-chome,
Shinagawa-ku, TOKYO, 141-8626 JAPAN Tel: (03)5789-2124 Fax: (03)5789-2135

MESSRS

CNH CAPITAL
ASSET REMARKETING
233 LAKE AVENUE
RACINE, WI 53403, U.S.A.

CONSIGNEE

INVOICE NO. DATE
CK080864 AUG 29, 2008

PURCHASE ORDER NO. OR CONTRACT NO.

L/C NO. DATE

ISSUING BANK OR THROUGH BANK

OTHER PAYMENT TERMS
T. T. REMITTANCE

VESSEL OR ALLIANCE NEW YORK
SAILING ON OR ABOUT AUG 29, 2008 PORT OF LOADING KOBE, JAPAN
PORT OF DISCHARGE GALVESTON, U.S.A. FINAL DESTINATION

MARKS AND NOS. DESCRIPTION & QUANTITY UNIT PRICE AMOUNT

CNH CAPITAL
GALVESTON
MODEL: SK200-8
S/NO.: **
CASE NO. 1
MADE IN JAPAN

USED KOBELCO HYDRAULIC EXCAVATOR
MODEL : SK200-8
S/NO. : YN11-47122
YN11-47366
YN11-47245
YN11-47177
YN11-47207

**
YN11-47122
YN11-47366
YN11-47245
YN11-47177
YN11-47207

QUANTITY : 5 UNITS

TOTAL : 5 BARES - DETAILS ARE AS PER ATTACHED SHEET -
N / W : 97,000.0 KGS
G / W : 97,000.0 KGS
M'MENT: 386.000 M3

=====
CIF GALVESTON US\$450,000.00

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO.,LTD.


T. YANAGAWA
EXPORT SHIPPING SECTION
MARKETING & SALES DEPARTMENT

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB001

PARTS NO.	DESCRIPTION	QUANTITY	UNIT PRICE	AMOUNT (US\$)
	USED HYDRAULIC EXCAVATOR MODEL : SK200-8 S/NO. : YN11-47122 YN11-47366	2 UT	90,000.00	180,000.00
	USED HYDRAULIC EXCAVATOR MODEL : SK200-8 S/NO. : YN11-47245 YN11-47177	2 UT	90,000.00	180,000.00
	USED HYDRAULIC EXCAVATOR MODEL : SK200-8 S/NO. : YN11-47207	1 UT	90,000.00	90,000.00
TOTAL QUANTITY		5 UT		
TOTAL AMOUNT		CIF GALVESTON		US\$450,000.00

Shipper:
**KOBELCO CONSTRUCTION MACHINERY
 INTERNATIONAL TRADING CO., LTD.**
 #1#
 PHONE: +81-3-5789-2124 SC. 2382

B/L No.

HOEGU831KBGL1019

Shipper's Ref.

F/Agent's Ref.

**KOBELCO LOGISTICS, LTD.
 Höegh Autoliners AS**

Consignee (if "Order" state Notify Party)
**MR. W. J. (BERNIE) BERNHARD
 CNH CAPITAL
 ASSET REMARKETING
 233 LAKE AVENUE RACINE, WI 53403 U.S.A.**

Oslo - Norway
 Telephone: +47 21 03 90 00
 Telefax: +4721 03 90 12
 Enterprise No.: 933 099 628

Notify Party (Without liability to Carrier)
**SAME AS CONSIGNEE
 ATTN.: MR. W. J. (BERNIE) BERNHARD
 FAX: 262-636-0139
 TEL: 262-636-6088**

ORIGINAL



Local vessel	*From (local port of loading)		
Ocean vessel	31	Port of loading	COBE, JAPAN
Port of discharge	GALVESTON, U.S.A.	*Final destination (if on-carriage)	TOKYO, JAPAN
Marks and Numbers	Number and kind of packages (with units, description of goods) Gross weight Measurement		

CNH CAPITAL
 GALVESTON
 MODEL: SK200-8
 S/NO.: **
 CASE NO. 1
 MADE IN JAPAN

USED KOBELCO HYDRAULIC EXCAVATOR 97,000 KGS
 MODEL : SK200-8
 S/NO. : YN11-47122 386.000 M3
 YN11-47366
 YN11-47245
 YN11-47177
 YN11-47207

**
 YN11-47122
 YN11-47366
 YN11-47245
 YN11-47177
 YN11-47207

5 BARES

of which loaded:

on deck:

under deck:

SAY: FIVE (5) BARES ONLY.-

**FREIGHT PREPAID
 AS ARRANGED**

ABOVE PARTICULARS DECLARED BY SHIPPER

GOODS SHIPPED onboard the Vessel in apparent good order and condition, weight, measure, marks & numbers, quality, contents and value unknown unless specified herein, for carriage to the port of destination or so near thereto as the vessel may safely get and lie always afloat, to be delivered in the like good order and condition at the aforesaid port to Consignees or their Assigns. Freight as per note on the margin plus other charges incurred in accordance with the provisions contained in this Bill of Lading - unless prepaid - to be paid by Consignees or their Assigns. In accepting this Bill of Lading the Merchant expressly accepts and agrees to all its stipulations on both pages, whether written, printed, stamped or otherwise incorporated, as fully as if they were all signed by the Merchant.

One original Bill of Lading must be surrendered duly endorsed in exchange for the goods or delivery order.

FREIGHT PARTICULARS

AS ARRANGED

IN WITNESS whereof the Master of the said Vessel has signed...
 Bills of Lading all of this tenor and date, one of which being accomplished, THREE (3) to stand void.

Limitation of Carriers Liability.

Declared value:

**HIGHLY CONFIDENTIAL
 OUTSIDE COUNSEL'S
 EYES ONLY**

Place and date of issue

COBE, JAPAN AUG. 29, 2008

Declared value charges:
 (See Clause 10)

Signed by

M. Reed
MITSUBISHI LOGISTICS CORP.

FREIGHT PAYABLE CARGO LOST OR NOT LOST

*Applicable only when document used as Through Bill of Lading

As agent for the Carrier

Höegh Autoliners AS

KOB003

KOBELCO

MASTER PACKING LIST

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO., LTD.

Oval Court Ohsaki Mark West Bldg. 17-1, Higashigotanda 2-chome,
Shinagawa-ku, TOKYO, 141-8626 JAPAN Tel: (03)5789-2124 Fax: (03)5789-2135

MESSRS

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233 LAKE AVENUE
RACINE, WI 53403, U.S.A.

CONSIGNEE

VESSEL OR

ALLIANCE NEW YORK

SAILING ON OR ABOUT

AUG 29, 2008

PORT OF DISCHARGE

GALVESTON, U.S.A.

PORT OF LOADING

KOBE, JAPAN

FINAL DESTINATION

INVOICE NO.

CK080864

DATE

AUG 29, 2008

PURCHASE ORDER NO. OR CONTRACT NO.

L/C NO.

DATE

ISSUING BANK OR THROUGH BANK

OTHER PAYMENT TERMS

T. T. REMITTANCE

MARKS AND NOS.

DESCRIPTION & QUANTITY

NET WEIGHT

GROSS WEIGHT

M'MENT

CNH CAPITAL

GALVESTON

MODEL: SK200-8

S/NO.: **

CASE NO. 1

MADE IN JAPAN

USED KOBELCO HYDRAULIC EXCAVATOR

MODEL : SK200-8

S/NO. : YN11-47122

YN11-47366

YN11-47245

YN11-47177

YN11-47207

**

YN11-47122

YN11-47366

YN11-47245

YN11-47177

YN11-47207

QUANTITY : 5 UNITS

5 BARES

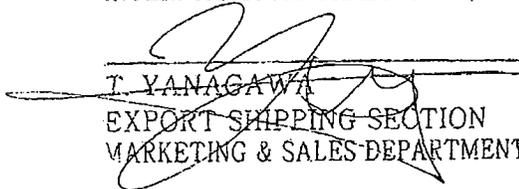
97,000.0 KGS

97,000.0 KGS

386.000 M3

- DETAILS ARE AS PER ATTACHED SHEET -

KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO.,LTD.


T. YANAGAWA
EXPORT SHIPPING SECTION
MARKETING & SALES DEPARTMENT

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

KOB004

PACKING LIST

MARK & NO.

CNH CAPITAL
 GALVESTON
 MODEL : SK200-8
 S/NO. : YN11-47122
 CASE NO. 1
 MADE IN JAPAN

NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p style="text-align: center;">USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</p> <p style="text-align: center;">MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p style="text-align: center;">SERIAL NO. YN11-47122</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13684</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

HIGHLY CONFIDENTIAL
 OUTSIDE COUNSEL'S
 EYES ONLY

- CONCLUDED -

KOB005

PACKING LIST

NO.

MARK & NO.

DATE

CNH CAPITAL
 GALVESTON
 MODEL : SK200-8
 S/NO. : YN11-47366
 CASE NO. 1
 MADE IN JAPAN

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p style="text-align: center;"><u>USED KOBELCO HYDRAULIC EXCAVATOR MODEL : SK200-8</u></p> <p style="text-align: center;">MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p style="text-align: center;">SERIAL NO. YN11-47366</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA14068</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Apr-2007</p>	1 UNIT	19,400	19,400	77.200

- CONCLUDED -

HIGHLY CONFIDENTIAL
 OUTSIDE COUNSEL'S
 EYES ONLY

KOB006

PACKING LIST

MARK & NO.

CNH CAPITAL
 GALVESTON
 MODEL : SK200-8
 S/NO. : YN11-47245
 CASE NO. 1
 MADE IN JAPAN

NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC <u>EXCAVATOR MODEL : SK200-8</u></p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47245</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13853</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

- CONCLUDED -

HIGHLY CONFIDENTIAL
 OUTSIDE COUNSEL'S
 EYES ONLY

KOB007

PACKING LIST

MARK & NO.

CNH CAPITAL
 GALVESTON
 MODEL : SK200-8
 S/NO. : YN11-47177
 CASE NO. 1
 MADE IN JAPAN

NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p>USED KOBELCO HYDRAULIC <u>EXCAVATOR MODEL : SK200-8</u></p> <p>MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p>SERIAL NO. YN11-47177</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13774</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

HIGHLY CONFIDENTIAL
 OUTSIDE COUNSEL'S
 EYES ONLY

KOB008

PACKING LIST

NO.

DATE

O/NO.

FROM

TO

INVOICE NO.

NAME OF VESSEL

MARK & NO.

CNH CAPITAL
 GALVESTON
 MODEL : SK200-8
 S/NO. : YN11-47207
 CASE NO. 1
 MADE IN JAPAN

PACKAGE NO.	PACKAGE STYLE	DESCRIPTION OF ARTICLE	QUANTITY	NET WEIGHT KGS	GROSS WEIGHT KGS	MEASUREMENT M3
NO. 1	BARE	<p style="text-align: center;">USED KOBELCO HYDRAULIC <u>EXCAVATOR MODEL : SK200-8</u></p> <p style="text-align: center;">MAIN MACHINE 9,410 X 2,800 X 2,930</p> <p style="text-align: center;">SERIAL NO. YN11-47207</p> <p>Eng.MFG. : HINO</p> <p>Eng.Model : J05E-TA</p> <p>Eng.Serial : J05ETA13796</p> <p>Rating : Gross horsepower/kilowatt : 114kW at 2000rpm</p> <p>Build Date : Mar-2007</p>	1 UNIT	19,400	19,400	77.200

- CONCLUDED -

HIGHLY CONFIDENTIAL
 OUTSIDE COUNSEL'S
 EYES ONLY

KOB009



Nissay Dowa General Insurance Co., Ltd.

HEAD OFFICE 8-1, AKASHI-CHO, CHUO-KU, TOKYO, JAPAN

ORIGINAL

印紙税申告納
付につき京橋
税務署承認済

Assured(s), etc.

Messrs. **KOBELCO CONSTRUCTION MACHINERY
INTERNATIONAL TRADING CO.,
LTD.**

Code 39891

274818

Policy No. 0108-2239033

Invoice No. CK080864

Amount insured US\$495,000.00

Claim, if any, payable at / in

by GALVESTON, U. S. A.

Conditions :
(Risks Covered) ALL RISKS
CO-INSURANCE CLAUSE.

VERICLAIM, INC.
700S. FLOWER STREET, SUITE 2310
LOS ANGELES, CALIFORNIA 90017, U. S. A.
TEL (1) 213-943-5000/
800-999-0411

Local Vessel or Conveyance	From (Interior port or place of loading)	
	INTERIOR POINT(S) IN JAPAN	
Ship or Vessel called the	at and from	Sailing on or about
ALLIANCE NEW YORK	KOBE, JAPAN	AUG. 29. 2008
arrived at/transhipped at	thence to	
GALVESTON, U. S. A.		

Goods and Merchandises

USED KOBELCO HYDRAULIC EXCAVATOR
MODEL : SK200-8
S/NO. : YN11-47122
YN11-47366
YN11-47245
YN11-47177
YN11-47207

QUANTITY : 5 UNITS

Nissay Dowa General Insurance Co., Ltd. shall act in respect of this co-insurance on behalf of the following co-insurers who, each for itself and not one for the others, are severally and independently liable for their respective subscription hereto as specified below.

CO-INS.	SHARE
10 NISSAY DOWA	45.00
15 NIPPONKOA INS	19.20
09 TOKIO M. NICHIDO	18.30
14 NISSHIN F.	17.50

(A) **Institute Replacement Clause**
In the event of loss or damage to any part or parts of an insured machine caused by a peril covered by the policy the sum recoverable shall not exceed the cost of replacement or repair of such part or parts plus charges for forwarding and refitting, if incurred, but excluding duty unless the full duty is included in the amount insured, in which case loss if any, sustained by payment of additional duty shall also be recoverable.
Provided always that in no case shall the liability of this Company exceed the insured value of the complete machine.

(B) **Special Replacement Clause (Air Freight)**
It is specially understood and agreed that charges for forwarding part or parts for replacement or repair provided for in the Institute Replacement Clause attached hereto shall include those for forwarding by Air.

(C) **Special Replacement Clause (Duty)**
Notwithstanding the provision in the Institute Replacement Clause contained herein, it is specially understood and agreed that this Company shall also be liable to pay for loss, if any, sustained by payment of duty on part or parts for replacement or repair in case the full duty is not included in the amount insured because of the insured machine being free of duty.

In case of the interest hereby insured being packed into container(s) (except open top &/or flat rack container and the like), shipped under deck &/or on deck.

Including risks of War, Strikes, Riots and Civil Commotions.

Abbreviations in the above "Risks Covered" shall be fully read as follows:
 All Risks... All Risks of loss or damage irrespective of percentage.
 W.A. ... With Average, irrespective of percentage.
 F.P.A. ... Free from Particular Average.
 T.P.N.D. ... Including the risks of Theft, Pilferage & Non-Delivery.
 Subject to the following clauses printed on the back of this policy:
 Institute Cargo Clauses, Institute War Clauses (Cargo)
 Institute War Clauses For the insurance of sendings by Post
 Institute Strikes Riots & Civil Commotions Clause
 Institute Replacements Clause (Applying to Machinery)
 Institute Theft, Pilferage & Non-Delivery (Insured Values) Clause
 (Applicable when specifically stated to cover or when All Risks covered)
 Label Clause (Applying to Labelled Goods)
 Parcel Post Clause (Applying to Parcel Post or other Mail only)
 Duty Clause (Applicable when Duty is separately insured under the Policy)
 Cargo ISM Endorsement
 Termination of Transit Clause (Terrorism)
 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical and Electromagnetic Weapons Exclusion Clause

Main and Numbers as per Invoice No. specified above
place and Date signed in

TOKYO AUG. 26. 2008

Valued at the same as Amount insured.

No. of Policies issued
TWO

CD. 40 0 0829 1 681 699 5215: Y88026 2

1. Warranted free of capture, seizure, arrest, restraint or detention, and the consequences thereof or of any attempt thereof; also from the consequences of hostilities or warlike operations, whether there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or, in the case of a collision, any other vessel involved therein, is performing) by a hostile act by or against a belligerent power; and for the purpose of this warranty "power" includes any authority maintaining naval, military or air forces in association with a power.

Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or piracy.

2. Warranted free of loss or damage
 (a) caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions;
 (b) resulting from strikes, lock-outs, labour disturbances, riots or civil commotions.

Grounding or stranding in the Suez, Panama or other canals, harbours or tidal rivers not to be deemed a stranding under the terms of the policy, but to pay any damage or loss which may be proved to have directly resulted therefrom.

This insurance does not cover any loss or damage to the property which at the time of the happening of such loss or damage is insured by or would but for the existence of this Policy be insured by any fire or other insurance policy or policies except in respect of any excess beyond the amount which would have been payable under the fire or other insurance policy or policies had this insurance not been effected.

In the event of loss or damage which may involve a claim under this insurance, no claim shall be paid unless immediate notice of such loss or damage has been given to and a Survey Report obtained from this Company's Office or Agents specified in this Policy.

In case of loss or damage, please refer to the "IMPORTANT" clause printed on the back hereof and act accordingly.

The descriptions to be inserted in the following clauses are shown as above.

As well in his or their own Name, as for and in the Name and Names of all and every other Person or Persons to whom the same doth, may, or shall appertain, in part or in all, doth make insurance, and hereby cause himself or themselves and them and every of them, to be insured, lost or not lost, as and from the port of departure upon Goods and Merchandises, or Treasure, of and in the good Ship or Vessel called the

is Master for this present Voyage the said Vessel, or by whatsoever other Name or Names the said Vessel, or the Master thereof, is or shall be named or called: BEGINNING the Adventure upon the said Goods and Merchandises from the loading thereof on board the said Ship, and so to continue and endure, until the said Goods and Merchandises shall have arrived at And until the same be there discharged and safely loaded. And it shall be lawful for the said Vessel, in this Voyage to proceed and sail to and touch and stay at any Ports or Places whatsoever, (within the limits of the above Voyage) for necessary Provision, Assistance or Repair, without prejudice to this Insurance: the said Goods and Merchandises laden thereon for so much as concerns the Assured are and shall be

Touching the Adventures and Perils which the said Nissay Dowa General Insurance Co., Ltd., themselves are content to bear, and do take upon them in this Voyage: they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Incursions, Letters of Mart and Counter-Mart, Surprizals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and People, of what Nation, Condition, or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses, and Misfortunes that have or shall come to the Hurt, Detriment, or Damage of the said Goods and Merchandises, or any part thereof, and in case of any Loss or Misfortune, it shall be lawful for the Assured, his or their Factors, Servants, or Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, or any part thereof, without prejudice to this Insurance; the Charges whereof the said Company will contribute. It is expressly declared and agreed that no acts of the Insurer or Insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. AND it is agreed that this Writing or Policy of Insurance shall be of as much Force and Virtue as the same Writing or Policy of Insurance made in LONDON: And to the said Nissay Dowa General Insurance Co., Ltd., are contained, and do hereby promise and bind themselves to the Assured, his or their Executors, Administrators, or Assigns, for the due Performance of the Premises: confounding themselves paid the Consideration due unto them for this Insurance, at and after the rate of Per Cent.

Corn, Fish, Salt, Fruit, Flour and Seed are warranted free from Average, unless General, or the Ship be stranded, sunk or burnt; Sugar, Tobacco, Hemp, Wax, Hides and Skins are warranted free from Average under Five per cent, and all other Goods are warranted free from Average under Three per cent, unless General; or the Ship be stranded, sunk or burnt.

This Insurance is understood and agreed to be subject to English law and usage as to liability for and settlement of any and all claims.

In witness whereof, I the Undersigned of Nissay Dowa General Insurance Co., Ltd., on behalf of the said Company, have subscribed my name in Policies of the same tenor and date, one of which being accomplished, the others to be void, as of the date specified as above.

For Nissay Dowa General Insurance Co., Ltd.

AUTHORIZED SIGNATORY

KOB010

HIGHLY CONFIDENTIAL
OUTSIDE COUNSEL'S
EYES ONLY

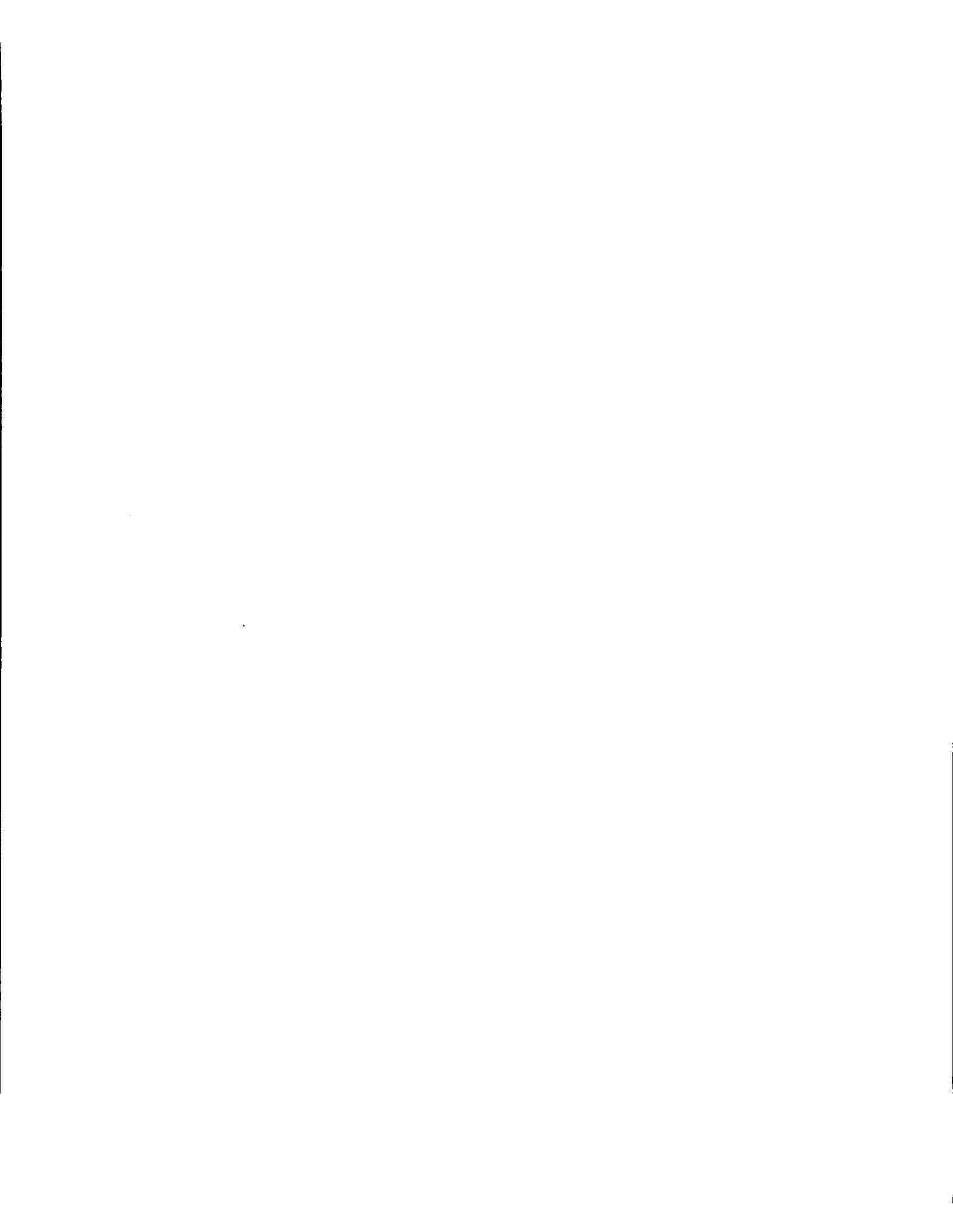


EXHIBIT O

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

RK

Mailed: June 3, 2010

Opposition Nos. 91179480
91179482

Plasti-Fab Ltd.

v.

Kobelco Construction Machinery
Co., Ltd.

**Before Seeherman, Cataldo and Bergsman, Administrative
Trademark Judges.**

By the Board:

This matter comes up on opposer's motion (filed April 20, 2009) for sanctions in the form of judgment and, alternatively, for permission to file a motion for summary judgment outside of the discovery period.¹ The motion has been fully briefed.

A brief overview of the proceedings thus far is instructive. Opposition Nos. 91179480 and 91179482 were instituted on September 6, 2007 and September 10, 2007 respectively. An answer was filed in each opposition on October 23, 2007. The proceedings were consolidated on June 30, 2008. On October 7, 2008, applicant filed an unconsented motion for a thirty-day extension to respond to opposer's

¹ Although opposer characterizes its request in terms of filing a motion for summary judgment after the close of discovery, because a motion for summary judgment may be filed prior to the opening of the first testimony period, but not thereafter, see Trademark Rule 2.127(e)(1), we consider opposer to be requesting permission to file a motion for summary judgment after the commencement of trial.

Opposition Nos. 91179480 and 91179482

discovery requests² that were served on September 2, 2008. Opposer filed a motion to compel discovery on October 28, 2008 and renewed the motion on November 26, 2008 when applicant failed to respond to opposer's discovery requests within the extension of time requested.³ Neither motion was contested by applicant.

On January 27, 2009, the Board granted opposer's motion to compel and ordered applicant to respond to each discovery request without objection within thirty days of the order. The Board further deemed admitted the unanswered requests for admission, and suspended the proceeding pending applicant's response to the order. On March 9, 2009, in the absence of any communication from either party, the Board reiterated its order granting opposer's motion to compel, gave applicant an additional thirty days to answer any outstanding discovery and reset the trial dates. Applicant served its responses on April 8, 2009.⁴

Opposer then filed a motion for sanctions on April 20, 2009, on the grounds that applicant's discovery responses were inadequate and noncompliant with the Board's orders, and further filed on May 8, 2009, the last day of opposer's testimony period, a motion to suspend proceedings.

Opposer's Motion to Suspend

² Opposer's first sets of requests for admission, requests for production of documents, and interrogatories.

³ Applicant's motion to extend time was granted as conceded by the Board on December 8, 2008.

⁴ These responses were supplemented by applicant on May 11, 2009 concurrent with its response to opposer's motion for sanctions.

Opposition Nos. 91179480 and 91179482

Insofar as no response was filed to opposer's motion to suspend proceedings, the motion is **GRANTED AS CONCEDED**.⁵ See Trademark Rule 2.127(a).

Before we reach the question of sanctions, however, we must first consider applicant's responses, or lack thereof, to opposer's several discovery requests.

Opposer's Requests for Admission

We initially address opposer's requests for admission as there appears to be some confusion between the parties as to their status. Under Fed. R. Civ. P. 36(a)(3), "[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney." Where a requested admission is deemed admitted, the responding party may either move to reopen its time to respond to the admission request by demonstrating that its failure to timely respond was due to excusable neglect pursuant to Fed. R. Civ. P. 6(b)(1)(B) or move to withdraw and amend its admission pursuant to Fed. R. Civ. P. 36(b). See *Giersch v. Scripps Networks, Inc.*, 85 USPQ2d 1306 (TTAB 2007). Rule 36(b) states that the Board may allow a party to withdraw and/or amend its admissions "if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the

⁵ We also note that since opposer's motion for sanctions includes a request for judgment, the motion is a potentially dispositive one and further cause for suspension of proceedings pursuant to Trademark Rule 2.127(d).

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requesting party in maintaining or defending the action on the merits."

Here, applicant served its responses on April 8, 2009 to admission requests made by opposer on September 2, 2008, apparently under the impression that it had until April 8, 2009 to serve those responses under the Board's March 9, 2009 order. However, the purpose of the Board's order was not to mitigate the consequences of Fed. R. Civ. P. 36(a)(3) but rather to confirm and inform the parties that the "unanswered requests for admissions are deemed admitted." Since it appears from applicant's response that it seeks to reopen its time to serve its responses or, alternatively, to withdraw the deemed admissions⁶, we consider both in turn.

With respect to reopening its time to serve responses, we first consider whether applicant has demonstrated excusable neglect under Rule 6(b). In its response, applicant, through its counsel, simply states that it "responded to the Requests for Admissions by the deadline set in the Board's March 9, 2009 Order." However, the requests for admission were served on September 2, 2008, and applicant's requested extension of time to respond to discovery expired on November 6, 2008. The Board

⁶ In its reply brief (filed June 1, 2009), opposer argues that applicant's request to have the deemed admissions withdrawn "is insufficient under TBMP §§ 525 and 502.02(a) which require a motion for the withdrawal of admissions." To the extent that opposer is arguing that a formal motion is required before we can consider the withdrawal of deemed admissions, we disagree. In its response, applicant specifically asks that the Board accept its responses to the admission requests under Fed. R. Civ. P. 36(b). This is sufficient and "we are reluctant to assign talismanic significance to the attorney's failure to use the phrase 'I move.'" *Kerry Steel, Inc. v. Paragon Industries, Inc.*, 106 F.3d 147 (6th Cir. 1997).

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specifically stated, in our January 27, 2009 order, that the requests for admission were deemed admitted. Although applicant misconstrued the Board's March 9, 2009 order, applicant's failure to timely respond to opposer's requests for admission, and the Board's deeming the requests to be admitted, occurred long before the March 9, 2009 order. Applicant has provided no explanation for its failure to timely respond to the requests for admission. Nor does applicant's misunderstanding of the Board's March 9, 2009 order constitute excusable neglect. See *Advanced Estimating System, Inc. v. Riney*, 130 F.3d 996, 998 (11th Cir. 1997) (counsel's misunderstanding of rule does not constitute excusable neglect). Accordingly, we will not reopen applicant's time to respond to opposer's admission requests.

Consequently, we turn to the question of whether applicant should be allowed to withdraw or amend its deemed admissions under Fed. R. Civ. P. 36(b). This determination must consider 1) whether the withdrawal or amendment "would promote the presentation of the merits of the action" and 2) whether the party that obtained the admissions would be prejudiced thereby in maintaining or defending the action on the merits. Fed. R. Civ. P. 36(b); see also *Giersch v. Scripps*, 85 USPQ2d at 1308-1309.

Considering that many of the previously deemed admissions have been denied by applicant in its late-filed response to opposer's admission requests, to allow a withdrawal of these admissions would certainly promote the presentation of the

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merits of this case, thereby satisfying the first prong of the inquiry. *See id.*

As to the second prong, the prejudice contemplated under Rule 36(b) is more than "mere inconvenience". *Hadley v. U.S.*, 45 F.3d 1345, 1349 (9th Cir. 1995). Rather, it concerns the "special difficulties a party may face caused by a sudden need to obtain evidence upon withdrawal or amendment of an admission." *American Automobile Association (Incorporated) v. AAA Legal Clinic of Jefferson Crooke, P.C.*, 930 F.2d 1117, 1120 (5th Cir. 1991). In the present matter, applicant's request to withdraw the deemed admissions was filed during opposer's initial testimony period as part of its response to opposer's motion for sanctions. Although we are mindful that a finding of prejudice is more likely "when the motion for withdrawal is made in the middle of trial," *Hadley*, 45 F.3d at 1348, the circumstances here do not warrant such a finding. The proceeding is currently suspended and opposer has not pointed to any particular prejudice it would suffer in allowing the withdrawal of the admissions, and it does not appear that opposer has relied on or presented any trial testimony based on the deemed admissions. Therefore, we **GRANT** applicant's request to withdraw its deemed admissions and to accept its subsequently filed responses. In order to mitigate any potential prejudice to opposer, we are reopening discovery solely for opposer, and extending its testimony period as well. Opposer's Interrogatories and Request for Documents

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As to opposer's interrogatories and requests for production of documents, applicant was ordered to respond to these requests *without objection*. However, applicant's first set of responses are rife with objections, contrary to the specific orders of the Board. Indeed, the majority of the objections appear to be without merit as they are based on applicant's misconception that a protective order is not in place in the current proceeding. Applicant's objection to providing the requested information prior to the entry of a protective order is not well taken since, as of August 31, 2007, the standard Board protective order is effective in all Board proceedings unless the parties stipulate otherwise. See Trademark Rule 2.116(g). Furthermore, it is unclear why a protective order is even necessary for some of opposer's requests, e.g., identify applicant's web sites that display or use the marks (Interrogatory No. 15), identify the geographic areas of use (Interrogatory No. 16), identify applicant's trade channels (Interrogatory No. 17). Also, applicant's supplemental responses providing additional information and documents, filed concurrently with its response to opposer's motion for sanctions, raise questions as to applicant's good faith in responding to opposer's discovery requests.

Sanctions

Where a party fails to comply with an order of the Board compelling discovery, the Board will entertain a motion for sanctions pursuant to Trademark Rule 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2). While dismissal of the proceeding, in whole

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or in part, is a possible remedy, we recognize that it is a severe one and one that is imposed "where no less drastic remedy would be effective, and there is a strong showing of willful evasion." *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000).

Although we frown upon applicant's delay in responding to opposer's discovery requests, we decline to go so far as to grant judgment for opposer as a sanction for such delay. However, that is not to say that some lesser sanction is not warranted, particularly in view of applicant's failure to comply with the Board's orders requiring applicant to respond without objection. To that end and to the extent that any objections still remain following applicant's supplemental responses, those objections will be disregarded and the requests to which they pertain will be construed against applicant. Furthermore, applicant is reminded that it is precluded from introducing and otherwise relying at trial on any information responsive to the discovery requests that were not produced.

Finally, as a further sanction for applicant's delay and disregard of Board orders, we also grant opposer leave to file a motion for summary judgment prior to the opening of its reset testimony period, should it choose to do so. Needless to say, applicant is not granted a similar opportunity.

Proceedings are resumed and dates are reset as follows:

OPPOSER'S DISCOVERY PERIOD TO CLOSE:	7/31/2010
30-day testimony period for opposer to close	10/29/2010

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30-day testimony period for applicant to close

12/28/2010

15-day rebuttal period for opposer to close:

2/11/2011

* * *

EXHIBIT P

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: July 30, 2010

Opposition No. 91179480

Opposition No. 91179482

Plasti-Fab Ltd.

v.

Kobelco Construction Machinery
Co., Ltd.

Nicole M. Thier, Paralegal Specialist:

Plaintiff's consented motion filed July 27, 2010 to extend discovery and trial dates is granted.¹ Trademark Rule 2.127(a).

The discovery and trial dates are reset in accordance with plaintiff's motion.

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

¹ However, no further extensions or suspensions will be granted in the absence of a detailed report reciting what progress the parties have made toward resolving this matter. Such report must include: a recitation of the issues that have been resolved, a recitation of the issues that remain to be resolved and, a firm timetable for resolution. Failing which, any future motions may not be approved, even though agreed to by the parties.

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Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

ESTTA Tracking number: **ESTTA360210**

Filing date: **07/27/2010**

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

Proceeding.	91179480
Applicant	Plaintiff Plasti-Fab Ltd.
Other Party	Defendant Kobelco Construction Machinery Co., Ltd.

Motion for an Extension of Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 07/31/2010. Plasti-Fab Ltd. requests that such date be extended for 30 days, or until 08/30/2010, and that all subsequent dates be reset accordingly.

Discovery Period to Close : 08/30/2010
Thirty-day testimony period for party in position of plaintiff to close : 11/28/2010
Thirty-day testimony period for party in position of defendant to close : 01/27/2011
Fifteen-day rebuttal testimony period to close : 03/13/2011

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*

Plasti-Fab Ltd. has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Plasti-Fab Ltd. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/des/

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07/27/2010