ESTTA Tracking number: **ESTTA342928**
Filing date: **04/19/2010**

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

Proceeding	91187465
Party	Defendant Liberty Petroleum LLC
Correspondence Address	Thomas W. Cole Roberts Mlotkowski Safran & Cole P.C. PO Box 10064 MC LEAN, VA 22102 UNITED STATES tcole@rmsclaw.com
Submission	Motion to Extend
Filer's Name	Thomas W. Cole
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Signature	/Thomas W. Cole/
Date	04/19/2010
Attachments	Applicant'sMotionForExtensionOfTime.pdf (34 pages)(1136826 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Davis Industries, Inc. OPPOSER v. Liberty Petroleum, LLC APPLICANT	Opposition No.: 91187465 Serial Nos.: 77411015, 77410925, 77410965 AND 7741091 Marks: LIBERTY and LIBERTY + DESIGN

APPLICANT'S MOTION FOR EXTENSION OF TIME TO RESPOND TO DISCOVERY OR ALTERNATIVELY TO REQUIRE OPPOSER TO SERVE TIMELY DISCOVERY

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and 37 C.F.R § 2.120 of the Trademark Rules of Practice, Liberty Petroleum, LLC (hereinafter Applicant) hereby moves the Board for a ruling that (1) the attempted service of discovery requests on Applicant made by Davis Industries, Inc. (hereinafter Opposer) is null and void, having occurred two days after Applicant's filing of the Motion to Compel, and therefore Opposer must re-serve its discovery requests in a timely manner or alternatively, that (2) Applicant be granted a 30 day extension to respond to Opposer's discovery requests in view of the untimely service made after the filing of Applicant's Motion to Compel consistent with 37 CFR §2120(e)(2).

Statement of Facts

On February 17, 2010, Applicant filed a "...Motion to Compel Responses to Discovery against Opposer," as Opposer had not responded to Applicant's discovery requests served on November 30, 2009. See Docket No. 20.

On February 19th, after being duly served a copy of Applicant's motion to compel, Opposer responded by transmitting a set of extensive discovery requests to Applicant (see attached Exhibit 1).

On March 9, 2010, the Board issued an Order suspending proceedings in this opposition "pending disposition of the motion to compel..." Docket No. 23.

On March 26, 2010, the TTAB issued a decision granting Applicant's Motion to Compel (Exhibit 2), as Opposer filed no response to Applicant's Motion. Docket No. 24. This decision further states that

> "Opposer is hereby ordered to serve full and complete responses, without objections, to applicant's first set of interrogatories and first set of document production requests **THIRTY (30) days** from the mailing date of this order."

Legal Analysis

A. Opposer's Service of Discovery Requests On February 19, 2010 is Null And Void

37 CFR §2.120(e)(2) states, in pertinent part

> "After the motion [to compel] is filed and served, no party should file any paper that is not germane to the motion...Nor may **any** party **serve any additional discovery** until the period of suspension is lifted or expires by or under order of the Board." (Emphasis added.)

Contrary to the express provisions of 37 CFR §2.120(e)(2), after being duly served a copy of Applicant's motion to compel, Opposer attempted service and transmitted a set of extensive discovery requests to Applicant (see attached Exhibit 1).

As Opposer's service of discovery requests on February 19, 2010 is directly contrary to the express provisions of 37 CFR §2.120(e)(2), Applicant submits that such service is ineffective and null and void, and that Opposer must re-serve such discovery requests before Applicant is obligated to respond to them.

B. In the Event That Opposer's Untimely Service of Discovery Requests Served On February 19, 2010 (1) Became Effective As Of The Date The Motion To Compel Was

Granted Or (2) Becomes Effective As Of The Board's Decision On This Present Motion, Then Applicant Should Be Granted 30 Days From Such Date to Respond To Opposer's Discovery.

If the Board should deem that Opposer's service of discovery requests is effective (1) the date the motion to compel was granted (i.e. March 26, 2010) or (2) the date the Board decides the present motion, then Applicant should be granted either (1) a 30 day extension from the Board's decision on the motion to compel to respond to Opposer's discovery requests (thereby extending the date for response from April 26 to May 26, 2010) or be granted (2) 30 days from the date of a decision on this motion to respond to Opposer's discovery requests, for the following three reasons:

First, the extensive scope of Opposer's discovery requests will necessitate a large amount of time and effort to compile an appropriate response. See for example the documents requested in Interrogatory 10, ("...each type of advertising and promotional material, document or thing which bears or will bear Applicant's mark,...") Interrogatory 26, ("...every document, correspondence or opinion known to Applicant that supports and/or belie Applicant's responses to the allegations set forth in the Opposition...") and Interrogatory 28 ("...all documents and things promulgated by the Applicant which use, advertise, or tout Applicant's mark from its inception to the current day..."). The requested documents are extensive, and are located in two separate cities (i.e. Charlottesville, Virginia and Bel Air, Maryland) over 250 miles apart. Hence a number of file cabinets and computer records in two different locations will have to be carefully examined to comply with Opposer's request.

Second, if the Applicant is in fact obligated to respond to Opposer's discovery requests 30 days after the granting of the motion to compel then Applicant would be obligated to respond to discovery requests on the **same day** that Opposer has been ordered to respond to discovery requests by virtue of the Board's order granting Applicant's motion to compel. Such an outcome is hardly just, considering that Applicant filed discovery requests **November 30, 2009**, and has thus far received no response from Opposer.

Thirdly, in view of Opposer's passivity in failing to file a response to Applicant's motion to compel, it may well happen that the Opposer will follow the same pattern, and fail to abide by the Board's order compelling full and complete answers to Applicant's discovery. In such a case, Applicant would move for an order of judgment against Opposer. But even if such an order for judgment were granted, Applicant would have **wasted thousands of dollars in legal expenses** responding to discovery requests for no useful purpose. The granting of a 30 day extension of time for Applicant to respond to service effective as of the date the matter came out of suspension or providing Applicant 30 days to respond after a decision of the instant motion would avoid such a judicially uneconomical result.

C. Opposer's Discovery Was Untimely Filed After A Motion To Compel Was Filed And Therefore Opposer Should Serve Its Discovery Anew.

The proper and simple method for curing Opposer's defective attempt at discovery is for Opposer to serve its discovery anew now that the Suspension and black-out period following Applicant's Motion to Compel has ended. Applicant objects to any discovery served during the black-out and suspension period but will respond in accordance to the rules to a properly served and properly timed discovery request.

WHEREFORE Applicant requests that the Board

(1) Rule that Opposer's service of discovery requests on Applicant on February 19, 2010 is null and void and that Applicant is under no obligation to respond to them until such time they are properly re-served; or alternatively

(2) Rule that Opposer's discovery requests are deemed to be properly served as of the date the motion to compel was granted (i.e. March 26, 2010), and that Applicant has a 30 day extension of time by which to respond or 30 days from a decision on the present motion, whichever is longer.

Respectfully submitted,

Date: April 19, 2010

Thomas W. Cole

Thomas W. Cole

Roberts Mlotkowski Safran & Cole P.C.
P.O. Box 10064
McLean, VA 22102
Telephone: (703) 677-3001
Facsimile: (703) 848 2981

Attorneys for Applicant

Certificate of Service

The undersigned hereby certifies that a complete copy of **Applicant's Motion For Extension Of Time To Respond To Discovery Or Alternatively To Require Opposer To Serve Timely Discovery** has been served upon all parties, at their address record both by first class mail, facsimile, and email (by agreement only) to Davis Industries' counsel, Robert J. Carlson, Christensen O'Connor Johnson Kindness PLLC located at 1420 Fifth Avenue, Suite 2800, Seattle, Washington 98101 on this date.

Respectfully submitted,

Date: April 19, 2010

Thomas W. Cole

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EXHIBIT 1

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

DAVIS INDUSTRIES, INC., a Washington corporation, Opposer, v. LIBERTY PETROLEUM, LLC, a Virginia limited liability corporation, Applicant.	No. 91187465 OPPOSER DAVIS INDUSTRIES, INC.'S FIRST SET OF INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120, and Rule 406 of the T.B.M.P., Davis Industries, Inc. ("Opposer") herewith submits its First Set of Interrogatories to Applicant, to be answered under oath and within the time period allowed by rule.

DEFINITIONS

The following definitions apply to all of Opposers' discovery requests:

The terms "Applicant" and "you" refer to Applicant Liberty Petroleum, LLC, its officers, directors, employees, agents, partners, licensees, franchisees, corporate parent, subsidiaries, related companies, and/or affiliates, and/or any predecessor or successor. This definition is not intended to impose a discovery obligation on any person who is not a party to this opposition.

The term "Opposers" refers to Davis Industries, Inc.

The term "person" refers both to any natural person and to any corporate or other business entity, 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 that person's directors, officers, members, employees, representatives, agents and attorneys.

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The term "trademark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

The term "document(s)" has the meaning ascribed to it in Fed. R. Civ. P. 34(a), and includes, but is not limited to, every writing or record of every type and description that is or has been in the possession, control, or custody of Applicant, or of which Applicant has knowledge, including without limitation: originals, masters and every copy of writings, including handwritings, and printed, typed or other graphic or photographic matter including film or microfilm, video and/or audio tapes, video and/or audio recordings (tape, disc or other), correspondence, communications, contracts, agreements, assignments, licenses, purchase orders, bills, invoices, receipts, statements, books, memoranda, notes (in pencil, ink, or typewritten), letters, notebooks, reports, training manuals, training materials, photographs, drawings, tracings, sketches, charts, catalogs, brochures, advertisements, promotional materials, records of communications oral and otherwise, instructions, cables or telegrams, computer databases, computer printouts or other computer-generated matter, computer records of all types (including text files, graphics files, audio and multimedia files and electronic mail messages), studies, surveys, technical reports, laboratory reports, engineering reports, test data, patents, registrations of marks, copyrights, applications for a patent, applications for a mark, applications for a copyright, patent appraisals, infringement searches or studies, patentability searches or studies, validity searches or studies, minutes, reports, calendars, inter-office communications, price lists, bulletins, circulars, statements, manuals, summaries, maps, charts, graphs, invoices, canceled or voided checks, bills or statistical material, insurance policies, pleadings, statements affidavits, depositions, and transcripts. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

The term "data" means any facts, documents or communications, oral or otherwise, of which Applicant has knowledge, information, or belief.

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"Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), regardless of the means utilized.

"Products" refers to both services and goods.

"Applicant's Mark," "Applicant's LIBERTY Mark," and expressions to similar effect, mean the trademark LIBERTY and any trademark composed in whole or in part of the term "LIBERTY", including but not limited to the trademark shown in opposed U.S. Application Serial Nos. 77/410,917, 77/410,925, 77/411,015, 77/410,917 and 77/410,965.

The wording "Applicant's Products", and expressions to similar effect, mean any and all goods and/or services sold, distributed, provided, advertised, marketed, or otherwise offered for sale under or in connection with Applicant's Mark, and/or any goods and/or services intended to be sold, distributed, provided, advertised, marketed, or otherwise offered for sale under or in connection with Applicant's Mark, including but not limited to the goods identified in Applicant's subject. Where applicable, responses should reference each product and service separately.

"Opposer's Mark" refers to Opposers' LIBERTY Mark.

To "identify" a person means to state the person's name and business address and, in the case of a natural person, his home address, employer or business affiliation, and occupation or job title.

To "identify" a document means to provide, a brief description of the document sufficient to support a request for production, including the general nature of the subject matter, the date, identification of the author and recipient if any, and if the document embodies an agreement, the parties to such agreement. In answer to those interrogatories requiring the identification of any document or documents, such document or documents may be produced for inspection and copying by Applicant, together with the answers to these Interrogatories in lieu of identification.

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To "identify" a thing means to provide a brief description of the thing sufficient to support a request for production, including any numbers, markings, or other identifying characteristics.

To "locate" documents or things means to state the present whereabouts of each document or thing, and to identify the person having possession, custody or control thereof.

"Referring or relating to" means constituting, comprising, concerning, regarding, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

All references to Applicant's use, marketing, advertising, and/or promotion of Applicant's Mark shall include use, marketing, advertising, and promotion by related companies, licensees, and/or franchisees. In each instance where a related company, licensee, or franchisee has used, marketed, advertised, and/or promoted Applicant's Mark, Applicant shall identify the related company, licensee, or franchisee and provide the requested information or documents specifically as they relate to the related company, licensee, or franchisee.

The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside its scope.

The use of the singular form of any word shall include within its meaning the plural form of the word and vice versa.

The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

"United States" or "U.S." shall refer to the United States, its territories and possessions.

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"Commerce" means all commerce which may be lawfully regulated by the United States Congress, including but not limited to, interstate commerce or commerce between the United States and a foreign country, territory, or possession.

CLAIMS OF PRIVILEGE

If Applicant contends that it is entitled on the basis of any claim of privilege to withhold any information in its responses to these interrogatories, provide the following with respect to such claim of privilege:

(1) For documents:

(a) the type of document, i.e., whether a letter, memorandum, report, etc. or the nature of the information;

(b) the title or other identifying designation, if any, of the document;

(c) the date of the document;

(d) the subject matter of the document or information;

(e) the identities of all persons who created, sent, received, or have ever had possession of the information or of either of the original or any copy of the document;

(f) the basis of or grounds for the claim of privilege;

(g) the person on whose behalf the claim of privilege is being asserted; and

(h) the interrogatories to which the document or information is responsive.

(2) For oral communications:

(a) the name of the person making the communication, the names of persons present while the communication was made, and the relationship of these persons;

(b) the date and place of communication; and

(c) the general subject matter of the communication.

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INTERROGATORIES

INTERROGATORY NO. 1:

Identify Applicant's officers, directors, managers, shareholders, and/or owners.

INTERROGATORY NO. 2:

Identify all people who participated in Applicant's decision to select, adopt and/or apply to register Applicant's Mark.

INTERROGATORY NO. 3:

Explain in detail the role taken by each and every person who participated in Applicant's decision to select, adopt and/or apply to register Applicant's Mark.

INTERROGATORY NO. 4:

Describe in detail the circumstances surrounding Applicant's selection, clearance, and adoption of Applicant's Mark, including but not limited to the reasons Applicant selected Applicant's Mark, and the date when Applicant selected and cleared Applicant's Mark.

INTERROGATORY NO. 5:

Identify the person(s) most knowledgeable about Applicant's Products, including but not limited to the manufacture, advertising, promotion, and sales of Applicant's Products, from the date of first use of Applicant's Mark to the present, as well as the trade channels and classes of purchasers for Applicant's Products.

INTERROGATORY NO. 6:

Identify all trademark searches and/or investigations conducted by or on behalf of Applicant referring or relating to Applicant's Mark and for each such search or investigation:

(a) State the date on which it was made;

(b) Identify the person who requested it;

(c) State whether any report was made concerning such search or investigation, and if so, set out verbatim the contents of, or in lieu thereof, attach to the answer to this interrogatory, a copy of each said report;

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(d) Identify all written communications and documents concerning the search or investigation.

INTERROGATORY NO. 7:

Identify and describe each of Applicant's Products that have been distributed, sold, and/or offered for sale under or in connection with Applicant's Mark. With respect to each of Applicant's Products identified:

(a) Describe in the detail the manner in which Applicant's Mark has been or will be used;

(b) State the date of first use and the date of first use in commerce (if different than the intended date of first use) of Applicant's Mark on or in connection with each of Applicant's Products;

(c) Identify (by city, county, state and country) the current and/or past geographic area(s) of distribution for Applicant's Products;

(d) Identify (by name and address) intended, current, or past class(es) of consumers of Applicant's Products;

(e) Identify and describe the intended, current, or past ultimate users Applicant's Products;

(f) Describe the channels of trade or intended channels of trade for each of Applicant's Products.

INTERROGATORY NO. 8:

For each and all product(s) identified in answer to Interrogatory No. 7, state the quantity of sales of such product(s) annually, by dollars and by unit, for each year since the date of first use of Applicant's Mark to present.

INTERROGATORY NO. 9:

State Applicant's annual expenditures for advertising and promoting any and all of Applicant's Products for each year from the date of first use of Applicant's Mark to present.

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INTERROGATORY NO. 10:

Identify each type of advertising and promotional material, document or thing which bears or will bear Applicant's Mark, including advertisements, catalogs, circulars, leaflets, brochures, bulletins, fliers, signs, sales displays, posters, promotional materials, coupons, trade materials; Internet materials; and other materials bearing the Applicant's Mark which have been, are currently, or will be distributed or displayed in the United States by or on behalf of Applicant; and:

(a) State the dates on which they were, are, or will be distributed or displayed;

(b) State the manner and/or publication(s) in which they were, are, or will be distributed or displayed;

(c) State the geographic area (by city, county and state) where said items or copies thereof were, are, or will be distributed or displayed by or on behalf of Applicant.

INTERROGATORY NO. 11:

Identify all persons who supply, have supplied, or will supply any of Applicant's Products to Applicant, and identify the manufacturer of each of Applicant's Products.

INTERROGATORY NO. 12:

Describe in detail the circumstances by which Applicant first became aware of Opposer's Mark, including but not limited to the date when and how Applicant first became aware of such mark and the identity of all person(s) involved.

INTERROGATORY NO. 13:

If Applicant or its agents, dealers, affiliates, or licensees is aware of any inquires or communications from customers or prospective customers which either relate to or have related to Opposer's Mark, then state:

(a) The date upon which each such inquiry or communication became known to Applicant;

(b) The source of each such inquiry or communication;

(c) The manner in which such inquiry or communication was made to Applicant;

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(d) The substance of each such inquiry or communication; and

(e) Identify each and every oral inquiry or communication, and each and every written communication relating to, responding to, connected with or arising out of such inquiry or communication and state verbatim the contents of the documents, or in lieu thereof, attach a true and complete copy of the documents as an exhibit to the answers to these interrogatories.

INTERROGATORY NO. 14:

If Applicant or its agents, dealers, affiliates, or licensees is aware of any instance in which a person has been confused, mistaken or deceived as to the source of Applicant's Products or as to any affiliation or connection between Applicant and Opposers, then for each such instance state and/or identify:

(a) Each person who has been confused, mistaken, or deceived;

(b) Each person with knowledge of each instance of such confusion, mistake or deception; and

(c) Each document and/or oral communication relating to said confusion, mistake or deception.

INTERROGATORY NO. 15:

Identify each person and/or entity, including but not limited to any advertising agency, market research firm, or public relations firm, which has rendered, renders, or will render services to Applicant in connection with advertising or promoting goods and/or services bearing Applicant's Mark; and for each such person or entity:

(a) State the nature of the services performed or to be performed;

(b) State the dates on or during which such services were or will be performed; and

(c) Identify each person who participated or will participate in the performance of such services.

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INTERROGATORY NO. 16:

Identify all related companies of Applicant (as the term "related company" is defined in 15 U.S.C. § 1127) that use Applicant's Mark and/or are involved in any way in the manufacture, distribution, sales, offering for sale, and/or marketing of Applicant's Products.

INTERROGATORY NO. 17:

Identify all persons that Applicant has licensed or authorized, or intends to license or authorize, to use Applicant's Mark.

INTERROGATORY NO. 18:

Identify any and all persons other than Applicant, that have been, are, or will be involved in the supply, manufacture, distribution and/or importation into the United States, of Applicant's Products.

INTERROGATORY NO. 19:

Identify, by name and title, each person you expect to call as an expert witness in this opposition and state separately with respect to each such person:

a. the subject matter on which the expert is expected to testify;

b. the substance of the facts and opinions to which the expert is expected to testify; and

c. a summary of the grounds for each such opinion.

INTERROGATORY NO. 20:

Identify each and every person who has participated in responding to these interrogatories, and/or Opposers' First Request for Production of Documents and Things to Applicant and/or Opposers' First Requests for Admission to Applicant. If more than one person participated in answering, state which person(s) is (are) answering each interrogatory.

INTERROGATORY NO. 21:

Explain in detail all facts supporting each "Affirmative Defense" set forth in Applicant's Answer.

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INTERROGATORY NO. 22:

As to any allegation in Opposers' Notice of Opposition that Applicant denies, explain in detail all facts supporting Applicant's denials.

INTERROGATORY NO. 23:

Identify all agreements in which Applicant has entered or intends to enter into referring or relating to Applicant's Mark, including but not limited to license agreements, assignments, coexistence agreements, distribution agreements, settlement agreements, consent agreements, and manufacture agreements.

INTERROGATORY NO. 24:

Identify all third-party marks known to Applicant that are in use in commerce on or in connection with petroleum lubricants or petroleum fuels and that are comprised of or contain the word "liberty."

INTERROGATORY NO. 25:

Identify any communications between Applicant, its employees past and/or current, and Opposer.

INTERROGATORY NO. 26:

Identify each person Applicant plans to call as a witness during the trial period in this proceeding and state the substance of the anticipated testimony of each such witness.

INTERROGATORY NO. 27:

Identify every document, correspondence or opinion known to Applicant that supports and/or belie Applicant's responses to the allegations set forth in the Opposition.

INTERROGATORY NO. 28:

Identify all documents and things promulgated by the Applicant which use, advertise, or tout Applicant's Mark from its inception to the current day.

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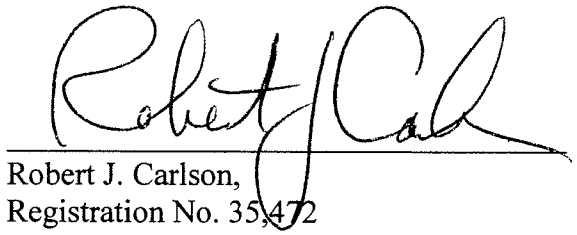
SUBMITTED this 19 day of FEBRUARY, 2010

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS[PLLC]



Robert J. Carlson,
Registration No. 35,472
Attorney for Opposer Davis Industries,
Inc., a Washington corporation

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2010 I served a true and correct copy of **OPPOSER DAVIS INDUSTRIES, INC.'S FIRST SET OF INTERROGATORIES** upon Applicant's Attorney of Record via electronic mail and via U.S. first class mail, postage prepaid, in a sealed envelope, addressed to:

Thomas W. Cole, Esq.
Roberts, Mlotkowski Safran & Cole P.C.
PO Box 10064
McLean, VA 22102
tcole@rmsclaw.com
Applicant's Attorney of Record

Date: February 19, 2010 Kathie E. Milner

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

DAVIS INDUSTRIES, INC., a Washington corporation, Opposer, v. LIBERTY PETROLEUM, LLC, a Virginia limited liability corporation, Applicant.	No. 91187465 OPPOSER DAVIS INDUSTRIES, INC.'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120, and Rule 406 of the T.B.M.P., Davis Industries, Inc. ("Opposer") herewith submits its First Requests for Production of Documents to Applicant, to be responded to as and within the time period provided by rule.

DEFINITIONS

The following definitions apply to all of Opposers' discovery requests:

The terms "Applicant" and "you" refer to Applicant Liberty Petroleum, LLC, its officers, directors, employees, agents, partners, licensees, franchisees, corporate parent, subsidiaries, related companies, and/or affiliates, and/or any predecessor or successor. This definition is not intended to impose a discovery obligation on any person who is not a party to this opposition.

The term "Opposers" refers to Davis Industries, Inc.

The term "person" refers both to any natural person and to any corporate or other business entity, 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 that person's directors, officers, members, employees, representatives, agents and attorneys.

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The term "trademark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

The term "document(s)" has the meaning ascribed to it in Fed. R. Civ. P. 34(a), and includes, but is not limited to, every writing or record of every type and description that is or has been in the possession, control, or custody of Applicant, or of which Applicant has knowledge, including without limitation: originals, masters and every copy of writings, including handwritings, and printed, typed or other graphic or photographic matter including film or microfilm, video and/or audio tapes, video and/or audio recordings (tape, disc or other), correspondence, communications, contracts, agreements, assignments, licenses, purchase orders, bills, invoices, receipts, statements, books, memoranda, notes (in pencil, ink, or typewritten), letters, notebooks, reports, training manuals, training materials, photographs, drawings, tracings, sketches, charts, catalogs, brochures, advertisements, promotional materials, records of communications oral and otherwise, instructions, cables or telegrams, computer databases, computer printouts or other computer-generated matter, computer records of all types (including text files, graphics files, audio and multimedia files and electronic mail messages), studies, surveys, technical reports, laboratory reports, engineering reports, test data, patents, registrations of marks, copyrights, applications for a patent, applications for a mark, applications for a copyright, patent appraisals, infringement searches or studies, patentability searches or studies, validity searches or studies, minutes, reports, calendars, inter-office communications, price lists, bulletins, circulars, statements, manuals, summaries, maps, charts, graphs, invoices, canceled or voided checks, bills or statistical material, insurance policies, pleadings, statements affidavits, depositions, and transcripts. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

The term "data" means any facts, documents or communications, oral or otherwise, of which Applicant has knowledge, information, or belief.

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"Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise), regardless of the means utilized.

"Products" refers to both services and goods.

"Applicant's Mark," "Applicant's LIBERTY Mark," and expressions to similar effect, mean the trademark LIBERTY and any trademark composed in whole or in part of the term "LIBERTY", including but not limited to the trademark shown in opposed U.S. Application Serial Nos. 77/410,917, 77/410,925, 77/411,015, 77/410,917 and 77/410,965.

The wording "Applicant's Products", and expressions to similar effect, mean any and all goods and/or services sold, distributed, provided, advertised, marketed, or otherwise offered for sale under or in connection with Applicant's Mark, and/or any goods and/or services intended to be sold, distributed, provided, advertised, marketed, or otherwise offered for sale under or in connection with Applicant's Mark, including but not limited to the goods identified in Applicant's subject. Where applicable, responses should reference each product and service separately.

"Opposer's Mark" refers to Opposers' LIBERTY Mark.

To "identify" a person means to state the person's name and business address and, in the case of a natural person, his home address, employer or business affiliation, and occupation or job title.

To "identify" a document means to provide, a brief description of the document sufficient to support a request for production, including the general nature of the subject matter, the date, identification of the author and recipient if any, and if the document embodies an agreement, the parties to such agreement. In answer to those interrogatories requiring the identification of any document or documents, such document or documents may be produced for inspection and copying by Applicant, together with the answers to these Interrogatories in lieu of identification.

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To "identify" a thing means to provide a brief description of the thing sufficient to support a request for production, including any numbers, markings, or other identifying characteristics.

To "locate" documents or things means to state the present whereabouts of each document or thing, and to identify the person having possession, custody or control thereof.

"Referring or relating to" means constituting, comprising, concerning, regarding, containing, setting forth, showing, disclosing, describing, explaining, summarizing, evidencing, discussing, either directly or indirectly, in whole or in part, and should be given the broadest possible scope consistent with the Federal Rules of Civil Procedure.

All references to Applicant's use, marketing, advertising, and/or promotion of Applicant's Mark shall include use, marketing, advertising, and promotion by related companies, licensees, and/or franchisees. In each instance where a related company, licensee, or franchisee has used, marketed, advertised, and/or promoted Applicant's Mark, Applicant shall identify the related company, licensee, or franchisee and provide the requested information or documents specifically as they relate to the related company, licensee, or franchisee.

The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside its scope.

The use of the singular form of any word shall include within its meaning the plural form of the word and vice versa.

The use of the masculine form of a pronoun shall include also within its meaning the feminine form of the pronoun so used, and vice versa.

The use of any tense of any verb shall include also within its meaning all other tenses of the verb so used.

"United States" or "U.S." shall refer to the United States, its territories and possessions.

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"Commerce" means all commerce which may be lawfully regulated by the United States Congress, including but not limited to, interstate commerce or commerce between the United States and a foreign country, territory, or possession.

CLAIMS OF PRIVILEGE

If Applicant contends that it is entitled on the basis of any claim of privilege to withhold any information in its responses to these interrogatories, provide the following with respect to such claim of privilege:

(1) For documents:

(a) the type of document, i.e., whether a letter, memorandum, report, etc. or the nature of the information;

(b) the title or other identifying designation, if any, of the document;

(c) the date of the document;

(d) the subject matter of the document or information;

(e) the identities of all persons who created, sent, received, or have ever had possession of the information or of either of the original or any copy of the document;

(f) the basis of or grounds for the claim of privilege;

(g) the person on whose behalf the claim of privilege is being asserted; and

(h) the interrogatories to which the document or information is responsive.

(2) For oral communications:

(a) the name of the person making the communication, the names of persons present while the communication was made, and the relationship of these persons;

(b) the date and place of communication; and

(c) the general subject matter of the communication.

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REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents and things that were or should have been identified in Applicant's response to Opposers' First Set of Interrogatories to Applicant.

REQUEST FOR PRODUCTION NO. 2:

All documents and things referred to, reviewed, and consulted in preparation of Applicant's response to Opposers' First Set of Interrogatories to Applicant.

REQUEST FOR PRODUCTION NO. 3:

All documents and things referring or relating to Applicant's selection, adoption, and clearance of Applicant's Mark, including but not limited to, searches, investigations, research, reports, and opinions.

REQUEST FOR PRODUCTION NO. 4:

All documents and things referring or relating to Applicant's decision to use and file applications to register Applicant's Mark.

REQUEST FOR PRODUCTION NO. 5:

All documents evidencing Applicant's use of Applicant's Mark in commerce in the United States.

REQUEST FOR PRODUCTION NO. 6:

Documents establishing the date of first use anywhere and date of first use in commerce of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 7:

Documents identifying each channel of trade through which Applicant currently markets, offers, and sells; has marketed offered, and sold; and intends to market, offer, and sell Applicant's Products.

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REQUEST FOR PRODUCTION NO. 8:

Representative documents identifying each product and/or service with which Applicant's Mark has been used, is now used, or is intended to be used.

REQUEST FOR PRODUCTION NO. 9:

Documents identifying the nature, identity, and/or characteristics of each class or type of end users or purchasers to whom Applicant's Products are currently marketed, offered, and sold; have been marketed, offered, and sold; and are intended to be marketed, offered, and sold.

REQUEST FOR PRODUCTION NO. 10:

Representative documents referring or relating to Applicant's past, present, and planned marketing, promotion, and advertising of Applicant's Products, including but not limited to marketing, advertising, business, and market research plans and reports.

REQUEST FOR PRODUCTION NO. 11:

All communications to, from, or between any advertising agencies or consultants referring or relating to the use, merchandising, marketing, advertising, and/or promotion of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 12:

Representative samples of advertising and promotional materials in each media utilized (e.g., print, television, radio, Internet, billboards) distributed at any time by or for Applicant, or planned to be distributed by or for Applicant, or created for distribution by or for Applicant that feature, display, depict, mention, or contain Applicant's Mark, from the date of Applicant's first use to the present.

REQUEST FOR PRODUCTION NO. 13:

Documents showing the manner(s) in which Applicant's Mark is, has been, or will be depicted, displayed, or used, from the date of first use of Applicant's Mark to the present.

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REQUEST FOR PRODUCTION NO. 14:

All documents comprising, referring, or relating to trademark searches, reports, research, or investigations concerning Applicant's Mark.

REQUEST FOR PRODUCTION NO. 15:

All documents comprising, referring, or relating to any and all tests, research polls, surveys, or studies Applicant has conducted, or has had conducted on its behalf, referring or relating to Applicant's Mark, including the report itself, all research materials, and all questionnaires.

REQUEST FOR PRODUCTION NO. 16:

All documents evidencing or showing third-party use in commerce of any name or mark comprised of or containing the word "liberty" on or in connection with petroleum fuels or lubricants.

REQUEST FOR PRODUCTION NO. 17:

All documents referring or relating to objections Applicant has made, based in whole or in part on Applicant's Mark, or any name, mark, or designation comprised of or containing the word "liberty" on or in connection with petroleum fuels or lubricants.

REQUEST FOR PRODUCTION NO. 18:

All documents referring or relating to third-party objections to Applicant's use and/or registration of any name, mark, or designation comprised of or containing the word "liberty" on or in connection with petroleum fuels or lubricants.

REQUEST FOR PRODUCTION NO. 19:

Documents consisting of or referring or relating to communications between Applicant and any person regarding the use and/or registration of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 20:

All documents or things concerning any assignment, acquisition, purchase, or other ownership transfer of Applicant's Mark.

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REQUEST FOR PRODUCTION NO. 21:

Documents showing the annual total sales, in both dollars and number of units, of Applicant's Products.

REQUEST FOR PRODUCTION NO. 22:

Documents showing all geographic locations where Applicant's Products have been distributed, sold, and/or offered for sale.

REQUEST FOR PRODUCTION NO. 23:

All documents, including but not limited to internal memoranda prepared by Applicant, referring or relating to: (a) the use of Applicant's Mark; (b) any potential objections by Opposers to Applicant's use or registration of Applicant's Mark; (c) the present Opposition proceeding; and, (d) the actual objections made by Opposers to the registration of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 24:

All documents referring or relating to the circumstances surrounding Applicant's first knowledge of Opposers' Mark.

REQUEST FOR PRODUCTION NO. 25:

For each expert Applicant intends to call to provide testimony in this proceeding: (a) any written report provided by said expert relating to the subject matter of this proceeding; (b) a complete written statement of all opinions to be expressed by the expert in this proceeding and the basis and reasons therefor; (c) all documents reflecting the data or other information considered by the expert in forming his/her opinions; (d) all exhibits to be used by the expert as a summary of or support for his/her opinions; (e) those documents stating the qualifications of the expert, such as would be reflected in a resume, curriculum vitae, biography, summary or otherwise; (f) a written list of all publications authored by the witness within the last ten years; (g) documents reflecting the compensation to be paid for the expert's preparation time and time taken to provide testimony; and, (h) a written list of any other cases

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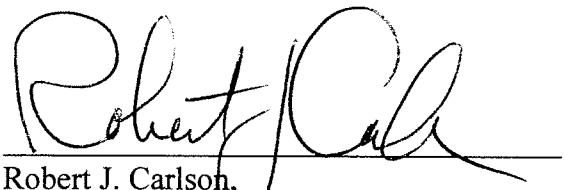
in which the witness has testified as an expert at trial, in an administrative proceeding, or by deposition within the past four (4) years.

REQUEST FOR PRODUCTION NO. 26:

Each and every document not already provided in response to these Requests upon which Applicant will rely in this opposition proceeding.

SUBMITTED this 19 day of FEBRUARY, 2010

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS[PLLC]



Robert J. Carlson,
Registration No. 35,472
Attorney for Opposer Davis Industries, Inc., a Washington corporation

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 2010, I served a true and correct copy of **OPPOSER DAVIS INDUSTRIES, INC.'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS** upon Applicant's Attorney of Record via electronic mail and via U.S. first class mail, postage prepaid, in a sealed envelope, addressed to:

Thomas W. Cole, Esq.
Roberts, Mlotkowski Safran & Cole P.C.
PO Box 10064
McLean, VA 22102
tcole@rmsclaw.com
Applicant's Attorney of Record

Date: February 19, 2010 Kathie E. Milner

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EXHIBIT 2

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

Lykos

Mailed: March 26, 2010

Opposition No. 91187465

Davis Industries, Inc.

v.

Liberty Petroleum LLC

Angela Lykos, Interlocutory Attorney

Applicant's motion to compel (filed February 17, 2010) is hereby granted as conceded. *See* Trademark Rules 2.120(e) and 2.127(a). Opposer is hereby ordered to serve full and complete responses, without objections, to applicant's first set of interrogatories and first set of document production requests **THIRTY (30) days** from the mailing date of this order. In the event opposer fails to comply with the Board's order, applicant may move for sanctions, including the entry of judgment, pursuant to Trademark Rule 2.120(g)(1).

The Board reminds applicant of the good faith effort requirements set forth in Trademark Rule 2.120 and *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986). That is, the parties must cooperate with each other so that the case may proceed in an orderly manner within reasonable

time constraints. The parties are also reminded that the Board's standardized protective order governing the disclosure of confidential information is automatically in place for this case pursuant to Trademark Rule 2.116(g) and available for viewing at:

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

Proceedings are resumed, and remaining dates, including the close of discovery, are reset as follows:

Discovery Closes	**5/26/10**
Plaintiff's Pretrial Disclosures	**7/10/10**
Plaintiff's 30-day Trial Period Ends	**8/24/10**
Defendant's Pretrial Disclosures	**9/8/10**
Defendant's 30-day Trial Period Ends	**10/23/10**
Plaintiff's Rebuttal Disclosures	**11/7/10**
Plaintiff's 15-day Rebuttal Period Ends	**12/7/10**

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 Rules 2.128(a) and (b).

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