

ESTTA Tracking number: **ESTTA298383**

Filing date: **07/30/2009**

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

Proceeding	91188904
Party	Defendant Russ Markhovsky
Correspondence Address	RUSS MARKHOVSKY 2928 EDGEWATER DRIVE EDGEWATER, MD 21037-1305 UNITED STATES rmark@invisitrack.com
Submission	Reply in Support of Motion
Filer's Name	Russ Markhovsky
Filer's e-mail	invisitrack@me.com, rmark@invisitrack.com
Signature	/Russ Markhovsky/
Date	07/30/2009
Attachments	FINALSUPPORTINGDOC.pdf (17 pages)(3452636 bytes)

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

TeleTracking Technologies, Inc.,
Opposer,
v.

Russ Markhovsky
Applicant.

Opposition number 91188904.

**APPLICANT'S SUPPORTING DOCUMENTS IN RESPONSE TO MOTION FOR
SANCTIONS BASED UPON FAILURE TO PARTICPATE IN DISCOVERY
CONFERENCE**

1. Russ Markhovsky (the "Applicant") hereby submits additional evidence in support of the Response to Motion for Sanctions Based Upon Failure to Participate in Discovery Conference ("Response Motion") filed by the Applicant.

2. In Paragraph 2 of the Applicant's Response Motion, the Applicant states that "Applicant never received the voice mail referred to in the Motion on April 9, 2009 or any letter that relates to setting up a time for discovery conference." The Applicant did not state or intend to imply that no communications were received from the Opposer through out the duration of the opposition by the Opposer. The Applicant was simply stating that the Applicant did not receive a call made by the Opposer on April 9 and the letter sent by Opposer on April 9, 2009 that relate to setting up a time for a discovery conference, as described in the Opposer's Motion for Sanctions Based Upon Failure to Participate in Discovery Conference ("Motion for Sanctions").

3. The Applicant received letters from Opposer that were dated December 16, 2008 and February 13, 2009 and the settlement agreement that Opposer describes

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3. The Applicant received letters from Opposer that were dated December 16, 2008 and February 13, 2009 and the settlement agreement that Opposer describes

in the Motion for Sanctions. The Applicant recollects receiving a voicemail from Opposer in and around late February.

4. As stated in paragraph 2, the Applicant has made multiple attempts to contact the Opposer via telephone. Exhibits A, B and C set forth call detail records that evidence the Applicant's attempts to communicate with the Opposer. Exhibit A shows a call being made to the office of the Opposer on February 23, 1:21 PM EST. Exhibit B shows a call being made to the office of the Opposer on March 11, at 1:59 EST. Exhibit C shows a call being made to the office of the Opposer on March 17, 10:33 AM EST.

5. In addition to the calls detailed above, additional phone calls were made using a Verizon Fios unlimited VOIP solution. Verizon's stated policy is that it will, upon a court order or judicial subpoena, release the records to the court for the unlimited VOIP accounts. The Applicant does not recollect the exact time and date of every call made to the Opposer using the FIOS-based phone line. If evidence of additional phone calls is dispositive to this case, the Applicant requests that the court order the phone records in questions (Exhibit D). The phone records for this line will have additional instances of Applicant calling the Opposer from January of 2009 through March of 2009. Applicant, without success, made multiple attempts to have Verizon release the phone records for the months in question.

6. Most of the calls made by the Applicant were answered by Opposer's secretary. The Applicant inquired about Opposer's counsel availability to discuss the opposition. Also, the Applicant's cell phone number was provided as a point of contact in the messages. In one instance, the Applicant requested that the secretary

suggest a specific time that the Opposer's counsel would be available to discuss the Opponent's opposition. A specific time was suggested by the secretary (Applicant recalls it to be 3:00 PM, on a Friday in and around early March). When the Applicant called the Opposer's counsel at the suggested time, the secretary stated that the Counsel of the Opposer was not available (Exhibit E).

7. It is important to note that the Opposer in the Motion for Sanctions states on multiple occasions that Applicant failed to respond to any of Opposer's communications. As evidenced by the phone records, that is simply not true. It is also interesting to note that in an internal e-mail dated 3/30/2009, which was submitted by the Opposer as Exhibit A of the Opposer's Reply Brief in Support of Opposer's Motion for Sanctions, the e-mail contains the Applicant's cell phone number. The number is not listed on Applicant's website. It was left multiple times as a point of contact when the Applicant called the Opposer's counsel.

8. The Applicant denies receiving the letter from the Opposer dated April 9, 2009 and the phone call associated with the letter. Furthermore, as stated in Applicant's Response to Motion for Sanctions, the Applicant never received the notice of service for the Motion for Sanctions submitted on 5/18/2009. The Applicant found out about the Motion for Sanctions from the e-mail notification sent by the USPTO website. Furthermore, no notice of service was received by the applicant for the Motion for Sanction's Reply Brief.

9. Applicant has made multiple good faith efforts to engage Opposer's counsel in the resolution of their opposition. Applicant's multiple attempts to communicate with Opposer never resulted in discussions of the merits of the case, settlement agreement or

discovery conference because Applicant was never able to establish communication with the Opposer. The Applicant did not receive the two communication attempts Opposer allegedly made on April 9th. As such, the Applicant was unaware of any attempts by the Opposer to schedule a discovery conference. Furthermore, additional documents allegedly mailed by the Opposer after the Applicant's Answer were not received by the Applicant. Specifically, the Applicant did not receive the notice of service for the Motion for Sanctions and the Motion for Sanctions Reply Brief. Applicant has and continues to desire to engage Opposer's counsel to resolve their opposition, including participation in the discovery process. The Applicant respectfully requests that the Board dismiss the Motion for Sanctions in Opposition No. 9118890, and, to avoid any further delay and disputes over communications, the Applicant requests the participation of the responsible Board attorney in the discovery conference.

Respectfully Submitted,

By: /Russ Markhovsky/
Russ Markhovsky

Dated: July 30, 2009
Russ Markhovsky
2928 Edgewater Drive
Edgewater, MD 21037
Applicant

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on July 30, 2009 at:

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

and that the forgoing APPLICANT'S SUPPORTING DOCUMENTS IN RESPONSE TO MOTION FOR SANCTIONS BASED UPON FAILURE TO PARTICPATE IN DISCOVERY CONFERENCE is being served by first-class mail, postage pre-paid, to:

Stanley Ference
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, PA 15143
Correspondent for Opposer
this 30th day of July, 2009.

/Russ Markhovsky/
Russ Markhovsky

Exhibit A



[Back to account](#)

Call history

- [« January 2009](#)
- [March 2009 »](#)
- February 2009

Date, time	Item	Type	Rate/min	Duration	Amount*
[REDACTED]	[REDACTED]	Call	\$0.021	00:15	\$0.060
[REDACTED]	[REDACTED] USA	Call	\$0.021	33:26	\$0.756
[REDACTED]	[REDACTED] USA	Call	\$0.021	34:21	\$0.774
Feb 23 13:21	+14127418400, USA	Call	\$0.021	00:12	\$0.060
[REDACTED]	[REDACTED] Canada	Call	\$0.021	37:20	\$0.837
[REDACTED]	[REDACTED] US	Call	\$0.021	39:43	\$0.879
[REDACTED]	[REDACTED]	Call	\$0.021	14:21	\$0.354
[REDACTED]	[REDACTED] Canada	Call	\$0.021	15:49	\$0.375
[REDACTED]	[REDACTED]	Call	\$0.021	00:00	\$0.000
[REDACTED]	[REDACTED] US	Call	\$0.021	55:06	\$1.216

Organise your call reports with the Business Control Panel. [Find out more](#)

* Includes connection fee

Exhibit B



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Call history

- [« February 2009](#)
- [April 2009 »](#)
- **March 2009**

Date, time	Item	Type	Rate/min	Duration	Amount*
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Mar 11 13:59	+14127418400, USA	Call	\$0.021	02:12	\$0.102
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

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* Includes connection fee

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Exhibit C

Exhibit D

To receive call detail records for the Verizon Fios line, please fax the following information to the Verizon Custodian of Records at (325) 949-5128:

Name on Account: [REDACTED] Russ Markhovsky

Phone Number: [REDACTED]

Verizon FIOS Account #: [REDACTED]

Exhibit E

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Declaration of Russ Markhovsky in APPLICANT'S SUPPORTING DOCUMENTS IN RESPONSE TO MOTION FOR SANCTIONS BASED UPON FAILURE TO PARTICPATE IN DISCOVERY CONFERENCE.

I, Russ Markhovsky declare:

1. I did not receive a letter from the Opposer dated April 9, 2009 and the phone call associated with the letter.
2. I never received the notice of service for the Motion for Sanctions submitted on 5/18/2009 and the notice of service for the Reply Brief in Support of Motion for Sanctions submitted on 6/23/2009.
3. I made calls to discuss Opposer's opposition at the following dates and times:
February, 1:21 PM EST, March 11, at 1:59 EST. and on March 17, 10:33 AM EST.
4. Additional calls were made between February and March of 2009. On multiple occasions I have called the Opposer's counsel. At no time, was I able to establish communication with Opposer's counsel. In one instance, I requested that the secretary suggest a specific time for me to call the Opposer's Attorney to discuss the application. The secretary suggested a specific time, I believe that the stated time opposing counsel would be available was 3:00 PM on a Friday in and around

early March. When I called the Opposer's counsel at the suggested time, the secretary stated that the Counsel of the Opposer was not available.

I declare under penalty of perjury under the laws of the State of Maryland that forgoing is true and correct.

This declaration was signed on July 29, 2009 at Edgewater, MD 21037.



Russ Markhovsky