

ESTTA Tracking number: **ESTTA567188**

Filing date: **10/25/2013**

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

Proceeding	91204777
Party	Plaintiff Apple Inc.
Correspondence Address	JOSEPH PETERSEN KILPATRICK TOWNSEND STOCKTON LLP 31 WEST 52ND STREET, 14TH FLOOR NEW YORK, NY 10019 UNITED STATES JPetersen@kiltown.com, AlJones@kiltown.com, ARoach@kiltown.com, agarcia@kiltown.com, NYTrademarks@kiltown.com, tadmin@kiltown.com
Submission	Other Motions/Papers
Filer's Name	Joseph Petersen
Filer's e-mail	JPetersen@kiltown.com, AlJones@kiltown.com, ARoach@kiltown.com, agarcia@kiltown.com, NYTrademarks@kiltown.com, tadmin@kiltown.com
Signature	/Joseph Petersen/
Date	10/25/2013
Attachments	2013-10-25 Declaration of J Petersen ISO Apple_s Motion to Extend Opposer_s Testimony Period for Limited Purpo.pdf(160373 bytes )

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

In the Matter of Application Serial No. **85/379,097**  
For the mark: **CRAPPLE**  
Filed: July 22, 2011  
Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X	:	

**DECLARATION OF JOSEPH PETERSEN IN SUPPORT OF APPLE INC.’S  
MOTION TO EXTEND OPPOSER’S TESTIMONY PERIOD  
FOR LIMITED PURPOSES**

I, Joseph Petersen, make the following Declaration:

1. I am an attorney at the law firm of Kilpatrick Townsend & Stockton LLP, and am one of the attorneys representing Opposer Apple Inc. (“Apple”) in this action against Applicant Ninja Entertainment Holdings, LLC (“Applicant”).
2. On October 2, 2013, prior to filing Apple’s Motion to Extend Opposer’s Testimony Period for Limited Purposes (the “Motion to Extend”), Apple requested Applicant’s counsel’s consent to submission of testimony by affidavit in this proceeding.
3. On October 10, 2013, also prior to filing Apple’s Motion to Extend, Apple sought Applicant’s counsel’s consent to a 30-day extension of Apple’s testimony period.

4. On October 14, 2013, Applicant's counsel refused consent both to Apple's request for consent to submission of testimony by affidavit and Apple's request to extend Apple's testimony period.

5. Apple is preparing to file, prior to the close of its testimony period as currently set, several Notices of Reliance on evidence to support Apple's claims in this proceeding.

6. To complete the evidence Apple intends to present, Apple must take—and obtain and file the transcript of—the testimony deposition of Thomas R. La Perle, Director, Legal, Apple Inc., whom Apple disclosed both in its Initial Disclosures and in its Pretrial Disclosures.

7. Preexisting scheduling conflicts, unavailability, and other pressing litigation matters will require the scheduling of Mr. La Perle's deposition outside Apple's testimony period as currently set, and have necessitated Apple's Motion to Extend its testimony period by 60 days.

8. For instance, I understand that Mr. La Perle was out of the office on vacation from October 16, 2013 – October 23, 2013.

9. Due to other pressing litigation matters in which I am also engaged, during the week following Mr. La Perle's return from vacation I will be preparing for and presenting oral argument at a hearing before the Second Circuit Court of Appeals. A copy of the September 18, 2013 Notice of Hearing Date in that proceeding is attached as **Exhibit A**.

10. I also understand that Apple's offices will be closed the entire week of the Thanksgiving holiday (from November 23, 2013 until December 2, 2013) as well as from Christmas Eve through New Year's Day (from December 24, 2013 until January 2, 2014).

11. In addition to the testimony of Mr. La Perle, Apple intends to file in this proceeding a Notice of Reliance on a certified copy of Apple's 10-K form for the fiscal year ended Sept. 29, 2012 as an official record of the Securities and Exchange Commission ("SEC").

12. On October 8, 2013, we filed on Apple's behalf a request with the SEC for the certified copy of Apple's 10-K form for the fiscal year ended Sept. 29, 2012, in order to receive the document in time to file it under a Notice of Reliance before the close of Apple's testimony period.

13. Also on October 8, 2013, out of an abundance of caution, we called the SEC on Apple's behalf to confirm whether orders for certified documents would continue to be filled during the shutdown of the federal government. We were advised that SEC had a significantly greater backlog of certification requests than usual and that there is no option to expedite a particular request. We were also advised that if the SEC runs out of funds at any time due to the government shutdown, the SEC will cease to fulfill certification requests until further notice.

14. We again contacted the SEC on October 17, 2013 to attempt to confirm that the order we filed on Apple's behalf would be fulfilled and to obtain an estimate of the date on which we would receive the certified document. We were advised that the requested certified copy of Apple's 10-K form is in process, is due to be shipped by October 30, 2013, and that the SEC Office of Records Management Services will make every attempt to complete the request within that timeframe.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: October 25, 2013

/s/ Joseph Petersen  
Joseph Petersen

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

In the Matter of Application Serial No. **85/379,097**  
For the mark: **CRAPPLE**  
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APPLE INC.,	:	
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	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
-----X		

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing DECLARATION OF JOSEPH PETERSEN IN SUPPORT OF APPLE INC.'S MOTION TO EXTEND OPPOSER'S TESTIMONY PERIOD FOR LIMITED PURPOSES has been served on Ninja Entertainment Holdings, LLC by sending a copy via e-mail to Daniel Kelman at [danielkelman@gmail.com](mailto:danielkelman@gmail.com) and depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Daniel Kelman  
1934 Josephine Street  
Pittsburgh, Pennsylvania 15203

This the 25th day of October, 2013.

\_\_\_\_\_  
/s/ Alberto Garcia  
Alberto Garcia

# **EXHIBIT A**

**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**ROBERT A. KATZMANN**  
CHIEF JUDGE

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

Date: September 18, 2013  
Docket #: 12-4547cv  
Short Title: Authors Guild, Inc. v. Hathitrust

DC Docket #: 11-cv-6351  
DC Court: SDNY (NEW YORK CITY)  
DC Judge: Baer

**NOTICE OF HEARING DATE**

**Argument Date/Time:** Wednesday October 30, 2013 at 10:00 a.m.  
**Location:** Thurgood Marshall U.S. Courthouse, 40 Foley Square,  
New York, NY, 10007, 17<sup>th</sup> Floor, Room 1705, Entrance 1703

**Time Allotment:** Authors Guild Inc. Et al (15 mins.)  
Hathitrust, et al (7.5 mins.)  
National Federation of the Blind, et al (7.5 mins.)

Counsel and non-incarcerated pro se litigants presenting oral argument must register with the courtroom deputy 30 minutes before argument.

A motion or stipulation to withdraw with or without prejudice must be filed no later than 3 business days prior to the scheduled date of argument. The Court will consider the motion or stipulation at the time of argument, and counsel's appearance is required with counsel prepared to argue the merits of the case. If a stipulation to withdraw with prejudice is based on a final settlement of the case, the fully-executed settlement must be reported immediately to the Calendar Team, and a copy of it must be attached to the stipulation.

Inquiries regarding this case may be directed to 212-857-8595.

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**Counsel must file the completed form in accordance with Local Rule 25.1 or 25.2. Pro Se parties must submit the form in paper.**

Name of the Attorney/Pro Se presenting argument: Joseph E. Petersen  
Firm Name (if applicable): Kilpatrick Townsend & Stockton LLP  
Current Telephone Number: (212) 775-8751

The above named attorney represents:  
( ) Appellant/Petitioner (X) Appellee-Respondent ( ) Intervenor

Date: 9-18-2013 Signature: Joseph E. Petersen