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Filing date: **04/15/2014**

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

Proceeding	91210772
Party	Plaintiff Intercast Europe S.r.l.
Correspondence Address	Ralph H Cathcart Ladas Parry LLP 1040 Avenue of the Americas New York, NY 10018 3738 UNITED STATES rcathcart@ladas.com,rroa@ladas.com,mmercado@ladas.com
Submission	Motion to Extend
Filer's Name	Ralph H. Cathcart
Filer's e-mail	rcathcart@ladas.com,rroa@ladas.com,mmercado@ladas.com
Signature	/Ralph H. Cathcart/
Date	04/15/2014
Attachments	Opposer's Motion for an Extension of Discovery and Trial Deadlines - THK Photo.pdf(321882 bytes ) Declaration of Ralph H. Cathcart, Esq. - THK Photo.pdf(1092595 bytes )

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

-----X  
INTERCAST EUROPE S.r.l.,  
Opposer,  
v.  
T H K PHOTO PRODUCTS, INC.,  
Applicant.  
-----X

Opposition No. 91/210,772  
Serial No. 85/718,687

**OPPOSER'S MOTION FOR AN EXTENSION  
OF DISCOVERY AND TRIAL DEADLINES**

Opposer hereby moves, pursuant to Fed. R. Civ. P. 6(b)(1) for a ninety (90) day extension of the current discovery and trial deadlines. Currently, Discovery is set to close on May 4, 2014. As per Fed. R. Civ. P. 6(b) and 37 C.F.R. § 2.116(a), this Motion to Extend by Opposer is based on good cause, as explained herein and in the declaration of Ralph H. Cathcart. (“Cathcart Dec’l.) This Motion to Extend is made prior to the expiration of the current discovery period, and Opposer has not requested any previous extensions.

Applicant has refused to consent to an extension of discovery and trial deadlines, after Opposer objected to Applicant’s wholly deficient and evasive discovery responses. Cathcart Dec’l. ¶ 6. To date, Applicant has served absolutely no discovery upon Opposer and can suffer no prejudice at this early stage of discovery. Cathcart Dec’l. ¶ 9.

Fed. R. Civ. P. 6(b)(1) provides that the Board may for good cause extend the time when an act must be done within a specific period with or without motion or notice if the court acts, “or if a request is made, before the original time or its extension

expires”. Here, Opposer seeks an extension of the discovery period (and all other currently set trial periods) by 90 days and has timely made such request before the expiration of the current discovery period.

Thus, Opposer has timely moved and shown in its moving brief and supporting attorney declaration that Opposer has good cause for the requested extension and Opposer respectfully requests that its motion be granted. *See generally*, 1 *Moore’s Federal Practice*, ¶ 6.06[2] at p. 6-40.1 (3<sup>rd</sup> ed. 2005) (“When a party requests an extension before the time period has elapsed, pursuant to Rule 6(b)(1), the district court usually will be liberal in granting the request . . . The court generally will find that cause has been shown and grant the extension unless the moving party has been negligent, shown bad faith or abused the privilege of extensions.”).

#### **Discussion**

After the Board’s Order of December 17, 2013 granting Opposer’s Motion to Strike Applicant’s Affirmative Defenses (except for one “amplification”), Opposer in good faith sent a letter to Applicant’s counsel on January 17, 2014 inquiring whether Applicant was willing to revisit a possible resolution in light of the Board’s decision. Cathcart Dec’l. ¶ 3. Having received no response whatsoever from Applicant for more than two weeks, Opposer served its First Set of Interrogatories and First Request for Production of Documents on Applicant on February 11, 2014.

On March 20, 2014, Opposer received Applicant’s purported Responses to Opposer’s First Set of Interrogatories and First Request for Production of Documents. Cathcart Dec’l. ¶ 5.

Applicant's responses are woefully deficient, evasive, replete with misplaced objections and Applicant has refused to produce even one single document (privileged or non-privileged) as of the date of this Motion. Cathcart Dec'l. ¶ 9.

On April 9, 2014, Opposer sent Applicant a letter noting the significant deficiencies and requested Applicant's consent to a ninety (90) day extension of discovery and trial deadlines. Cathcart Dec'l. ¶ 6, Exhibit A.

On April 10, 2014, Applicant sent Opposer a letter refusing to consent to the requested extension. Cathcart Dec'l. ¶ 7, Exhibit B.

On April 14, 2014, Opposer sent Applicant a letter setting forth with particularity Applicant's deficiencies and, offered as a compromise to resolve the discovery dispute, to accept Applicant's tardy document production and discovery responses, provided they were made "without objection", and on the merits. Cathcart Dec'l. ¶ 8.

Without receiving meaningful responsive documents and answers to Opposer's document requests and interrogatories, Opposer is not in a position to serve follow-up discovery, or Admissions and Opposer has yet to take any depositions given the uncertainty caused by Applicant's evasive discovery noncompliance and the possible need for Opposer to move to compel disclosures.

Finally, Opposer's counsel has just learned that Opposer has been acquired by another entity as of March 31, 2014 and therefore there are many issues in flux, including expected client contacts, instructions, witnesses may change and other considerations to evaluate given new ownership. Cathcart Dec'l. ¶ 12.

Opposer has made no prior request for the extension of the discovery and trial deadlines and merely seeks its opportunity to lay bare its proofs in support of this Opposition proceeding.

For all of the foregoing reasons, Opposer respectfully requests that the Board extend the current discovery and trial deadlines by ninety (90) days so that Opposer might resolve its current discovery dispute with Applicant and conclude follow-up discovery, Requests for Admissions and depositions.

Respectfully submitted,

LADAS & PARRY LLP  
Attorneys for Opposer

Dated: April 15, 2014

By:   
Ralph H. Cathcart  
1040 Avenue of the Americas  
New York, NY 10018  
Tel: (212) 708-1920  
(Our Ref: C13650025)

**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **OPPOSER'S MOTION FOR AN EXTENSION OF DISCOVERY AND TRIAL DEADLINES** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: April 15, 2014

  
Reinaldo M. Roa

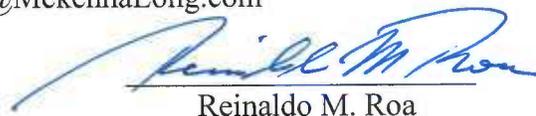
**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **OPPOSER'S MOTION FOR AN EXTENSION OF DISCOVERY AND TRIAL DEADLINES** was served by first-class mail, postage prepaid, to the following persons:

Katherine M. Hoffman, Esq.  
McKenna Long & Aldridge LLP  
4435 Eastgate Mall, Suite 400  
San Diego, CA 92121-1980

Tel: (619) 533-7392  
E-mail: KHoffman@MckennaLong.com

Dated: April 15, 2014

  
Reinaldo M. Roa

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

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INTERCAST EUROPE S.r.l., :  
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Opposer, : Opposition No. 91/210,772  
:  
v. : Serial No. 85/718,687  
:  
T H K PHOTO PRODUCTS, INC., :  
:  
Applicant. :  
:  
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**DECLARATION OF RALPH H. CATHCART, ESQ.**

I, Ralph H. Cathcart, declare that the following is true and correct pursuant to 28 U.S.C. § 1746:

1. I am a partner at the law firm of Ladas & Parry LLP, attorneys for Opposer Intercast Europe S.r.l. and respectfully submit this declaration in support of Opposer's Motion to Extend Discovery and Trial Deadlines.
2. On or about December 17, 2013, the Board granted Opposer's Motion to Strike Applicant's unfounded Affirmative Defenses (except for one deemed an "amplification") and reset discovery and trial deadlines.
3. On or about January 17, 2014, declarant wrote to Applicant's counsel, inquiring in good faith about the possibility of a resolution to conclude this Opposition proceeding.<sup>1</sup>
4. Having received no reply from Applicant's counsel for more than two weeks, on or about February 11, 2014, declarant caused Applicant to be served with Opposer's First Set of Interrogatories and First Request for Production of Documents.

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<sup>1</sup> Declarant's counsel was away from the office from December 22, 2013 to January 2, 2014. Upon return, declarant promptly obtained instructions from Opposer and communicated with Applicant.

5. On or about March 20, 2014, Ladas & Parry received Applicant's purported Responses to Opposer's First Set of Interrogatories and First Request for Production of Documents.

6. After reviewing Applicant's objections and discovery responses, declarant wrote to Applicant's counsel on April 9, 2014, noting the deficient nature of its discovery responses and promised to send a more detailed letter setting forth Opposer's extensive objections in the near future. Declarant requested an extension of discovery and trial deadlines "so that the parties could resolve the outstanding discovery issues and complete any follow-up discovery and/or depositions as needed". A true and correct copy of Opposer's April 9, 2014 letter is attached hereto as Exhibit A.

7. On April 10, 2014, Applicant inexplicably refused to consent to an extension of discovery and trial deadlines. A true and correct copy of Applicant's letter is annexed hereto as Exhibit B.

8. On April 14, 2014, Opposer sent Applicant detailed objections to Applicant's discovery non-compliance, with citations, in order to try to resolve the discovery dispute and offered to accept tardy discovery responses, provided Applicant produced same "on the merits" and "without objection".

9. To date, Opposer has not received one single page of responsive documents (they were due March 18, 2014) and Applicant has not served any discovery whatsoever on Opposer. Opposer suspects that Applicant will wait until just prior to the close of the Discovery Period to serve Opposer with Discovery Requests, in an effort to thwart meaningful discovery compliance on its part and to seek to gain an advantage.

10. Applicant now proposes that the Standard Protective Order be used in this

proceeding. During the mandatory Discovery/Settlement Conference Opposer had proposed a modified Protective Order wherein disclosures made thereunder be limited for use in this proceeding and any appeal thereof and whereby both parties and their respective counsel were to sign and be contractually bound.

11. Aside from Applicant's failure to produce even one page of responsive documents, this shows that Applicant is engaging in dilatory tactics, as its serial objections to productions based on the purported need for a Protective Order are moot if Applicant seeks only to have Opposer sign the Standard Protective Order which by operation of law was already automatically in place.

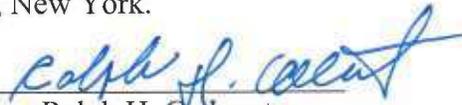
12. Opposer's counsel learned only a few days ago that Opposer has been wholly acquired by another company as of March 31, 2014.

13. Opposer has attempted in good faith to reach a resolution, has earnestly engaged in discovery and is not making this Motion for delay.

14. The additional time is needed so that meaningful discovery can truly take place and so the parties can lay bare their proofs and so that justice may be served.

I declare that the foregoing is true and correct under penalties of perjury.

Executed on April 15, 2014 in New York, New York.

  
\_\_\_\_\_  
Ralph H. Cathcart

**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **DECLARATION OF RALPH H. CATHCART, ESQ.** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: April 15, 2014

  
Reinaldo M. Roa

**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **DECLARATION OF RALPH H. CATHCART, ESQ.** was served on the persons listed below by First-Class Mail, postage prepaid, on the date indicated below:

Katherine M. Hoffman, Esq.  
James C. Danaher, Esq.  
McKenna Long & Aldridge LLP  
4435 Eastgate Mall, Suite 400  
San Diego, CA 92121-1980

Tel: (619) 533-7392  
E-mail: KHoffman@MckennaLong.com  
E-mail: jdanaher@mckennalong.com

Dated: April 15, 2014

  
Reinaldo M. Roa

**EXHIBIT A**

**LADAS & PARRY LLP**  
INTELLECTUAL PROPERTY LAW

Ralph H. Cathcart



rcathcart@ladas.com

212.708.1920

1040 Avenue of the Americas • New York, New York 10018-3738  
P 212.708.1800 • F 212.246.8959 • F 212.246.8925 • nymail@ladas.com • www.ladas.com

April 9, 2014

**For Settlement Purposes  
Only – Without Prejudice**

**VIA E-MAIL**

Katherine M. Hoffman, Esq.  
James C. Danaher, Esq.  
McKenna Long & Aldridge LLP  
4435 Eastgate Mall, Suite 400  
San Diego, CA 921101-3372

E-mail: KHoffman@MckennaLong.com

E-mail: jdanaher@mckennalong.com

Re: Intercast Europe S.r.l. v. T H K Photo Products, Inc. - Opposition No.  
91/210,772 (Our Ref: C13650025)

Dear Ms. Hoffman and Mr. Danaher:

We are in receipt of your client's purported responses to Opposer's First Set of Interrogatories and First Request for Production of Documents.

As you know, your client has failed to produce a significant amount of discovery based on its position that a Protective Order is not in place. Leaving aside the merits of that position (we shall be sending to you under separate cover our detailed objections to your client's discovery responses), we note that Discovery is currently set to close on May 5, 2014.

Accordingly, we request your consent for a 90-day extension of discovery and trial deadlines so that the parties can resolve the outstanding discovery issues and complete any follow-up discovery and/or depositions as needed.

Kindly confirm that we have your approval to file the consented motion.

Very truly yours,

Ralph H. Cathcart

RHC/rmr

**EXHIBIT B**

Albany  
Atlanta  
Brussels  
Denver  
Los Angeles  
Miami  
New York

# McKenna Long & Aldridge<sup>LLP</sup>

4435 Eastgate Mall • Suite 400  
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Northern Virginia  
Orange County  
Rancho Santa Fe  
San Diego  
San Francisco  
Seoul  
Washington, DC

JAMES C. DANAHER  
619.699.2440

EMAIL ADDRESS  
jdanaher@mckennalong.com

April 10, 2014

129004-4

**VIA EMAIL & U.S. MAIL**  
**(rcathcart@ladas.com)**

Ralph H. Cathcart  
Ladas & Parry LLP  
1040 Avenue of the Americas  
New York, NY 10018

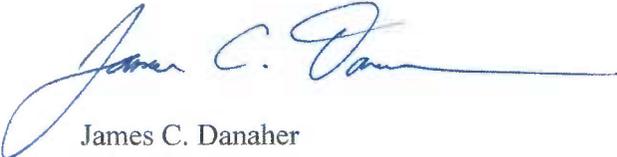
Re: **Intercast Europe S.r.l. v. THK Photo Products, Inc. (Kenko Tokina)**  
TTAB Proceeding No. 90210772

Dear Mr. Cathcart:

We have received your letter dated April 9, 2014, in which you requested our client's consent for a 90-day extension of discovery. At this time, we do not believe any extension of the discovery period is necessary and therefore do not consent.

We are prepared to serve our documents as soon as a protective order is in place. To that end, we attach two (2) signed duplicate originals of the protective order. Please sign and date both copies and return one to our office in the provided self-addressed stamped envelope. The protective order we are proposing comes from the standard template provided on the TTAB website. As soon as we received an executed copy of the order from you, we anticipate this matter will proceed expeditiously through the remainder of discovery.

Sincerely,



James C. Danaher

JCD/ccl  
Enclosure

**Plaintiff Intercast Europe S.r.l.**

v.

Cancellation No. 91210772

**Defendant Kenko Tokina USA, Inc. (formerly known as T H K Photo Products, Inc.)**

**PROVISIONS FOR PROTECTING CONFIDENTIALITY OF  
INFORMATION REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, **either** the parties have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, **or** the Board has ordered that the parties be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

**TERMS OF ORDER**

**1) Classes of Protected Information.**

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

**Confidential** - Material to be shielded by the Board from public access.

**Highly Confidential** - Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

**Trade Secret/Commercially Sensitive** - Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of Paragraphs 4 and 5, by independent experts or consultants for the parties.

**2) Information Not to Be Designated as Protected.**

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness

legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

### 3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of Paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

**Parties** and their **attorneys** shall have access to information designated as **confidential** or **highly confidential**, subject to any agreed exceptions.

**Outside counsel, but not in-house counsel**, shall have access to information designated as **trade secret/commercially sensitive**.

**Independent experts or consultants**, **non-party witnesses**, and **any other individual** not otherwise specifically covered by the terms of this order may be afforded access to **confidential** or **highly confidential** information in accordance with the terms that follow in Paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in Paragraphs 4 and 5.

### 4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

### 5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of Paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the

information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

**6) Responses to Written Discovery.**

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from Paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of Paragraph 12.

**7) Production of Documents.**

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from Paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from Paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of Paragraph 12.

**8) Depositions.**

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for thirty (30) days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from Paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

**9) Filing Notices of Reliance.**

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

**10) Briefs.**

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in Paragraph 12 of this order.

**11) Handling of Protected Information.**

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

**12) Redaction; Filing Material With the Board.**

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is affected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

**CONFIDENTIAL**

*This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.*

**13) Acceptance of Information; Inadvertent Disclosure.**

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

**14) Challenges to Designations of Information as Protected.**

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

**15) Board's Jurisdiction; Handling of Materials After Termination.**

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within thirty (30) days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

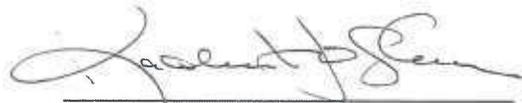
**16) Other Rights of the Parties and Attorneys.**

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

**By Agreement of the Following, effective:**

\_\_\_\_\_  
Ralph H. Cathcart of  
Ladas & Parry LLP  
Attorneys for Plaintiff

Dated: \_\_\_\_\_, 2014



\_\_\_\_\_  
Katherine M. Hoffman of  
McKenna Long & Aldridge LLP  
Attorneys for Defendant

Dated: April 10, 2014

**By Order of the Board, effective:**

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_