

ESTTA Tracking number: **ESTTA698469**

Filing date: **09/25/2015**

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

Proceeding	91221256
Party	Defendant Matter and Form Inc.
Correspondence Address	ASHLEE FROESE GILBERTS LLP TORONTO DOMINION CENTRE P O BOX 301 77 KING STREET WEST, SUITE 2010 TORONTO, ON M6K3P3 CANADA trademarks@gilbertslaw.ca
Submission	Other Motions/Papers
Filer's Name	Patricia A. Walker
Filer's e-mail	iplaw@walkerandjocke.com
Signature	/Patricia A. Walker/
Date	09/25/2015
Attachments	Response to Notice of Default and Motion for Suspension.pdf(18894 bytes ) EXHIBIT A - Answer and Other Filings.pdf(221009 bytes ) EXHIBIT B - Declaration of M. Eisen.pdf(463904 bytes ) EXHIBIT C - 37 CFR 2.pdf(35956 bytes ) EXHIBIT D - Agreement for Six Month Suspension.pdf(43791 bytes )

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

Trademark Application Serial No. 86/295,070  
Filed on May 29, 2014  
For the mark MATTER AND FORM  
Published: November 25, 2014

FORM & MATTER LLC,

Opposer,

v.

MATTER AND FORM INC.,

Applicant.

Opposition No.: 91221256

**RESPONSE TO NOTICE OF DEFAULT AND MOTION FOR SUSPENSION**

The Applicant, Matter and Form Inc. (“Applicant”), hereby requests that the Trademark Trial and Appeal Board not enter a default judgment against Applicant. Further, Applicant and Opposer, Form & Matter LLC (“Opposer”) request a six month suspension of the Opposition for settlement discussions. Exhibit D.

There is good cause for Applicant not answering this Opposition timely; the delay was not due to willful conduct or gross neglect. Further, Opposer was not prejudiced by the delay as Opposer agreed to allow Applicant to file a late Answer. Exhibit D. In addition, Applicant has meritorious defenses, as shown by the Answer that is filed with this Response. Exhibit A<sup>1</sup>.

**GOOD CAUSE**

Pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 312.02, [t]he determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment

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<sup>1</sup> Exhibit A also includes the Appearance of Walker & Jocke Co., LPA as counsel of record and the Change of Correspondence Address.

for failure to file an answer, and tends to resolve any doubt on the matter in favor of the defendant (notation omitted).

*See Morris v. Charnin*, 85 F.R.D. 689 (S.D.N.Y. 1980); *Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62 (TTAB 1985); *Regent Baby Products Corp. v. Dundee Mills, Inc.*, 199 USPQ 571 (TTAB 1978).

Applicant apologizes for the inconvenience the delay in filing the Answer has caused and requests that no default be entered. Applicant requests that Applicant be given the benefit of the doubt.

Applicant, unfortunately, failed to timely file an Answer due to confusion caused by the departure of the attorney of record for Applicant. Exhibit B, §2 and 4. This was not willful or gross neglect. *Id.*, §3. When it is the attorney rather than the party that is responsible for the failure to defend, the delay is more likely to be excused. *Trust Company Bank v. Tingen-Millford Drapery Company, Inc.*, 119 F.R.D. 21, 22 (E.D.N.C. 1987).

In *Djeredjian v. Kashi Co.*, the attorney failed to file an answer for five months and the Trademark Trial and Appeal Board vacated a default judgment, as the failure was caused by mistake and inadvertence not willful conduct. 21 USPQ2d 1613 (TTAB 1991). In this matter, the delay was only a little over three months<sup>2</sup> and no default judgment has been entered.

Applicant requests that the Trademark Trial and Appeal Board find that Applicant's conduct did not rise to the level of willful misconduct or gross neglect and that Applicant had good cause for the delay in answering.

### **NO PREJUDICE**

Opposer has not been prejudiced by the delay as the Applicant has been in contact with the Opposer and Opposer is aware that Applicant intended at all times to defend or settle this Opposition. Exhibit B, §5. Opposer has also consented to the delay. Exhibit D.

Opposer has consented to the delayed filing of the Answer and jointly requests the six month suspension of the Opposition proceeding to further engage in settlement discussions. Exhibit D. Applicant has been talking with Opposer and discussing settlement. Exhibit B, §5. A delay of a little over three months in filing the Answer is not a substantial period of time and

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<sup>2</sup> Applicant had obtained an extension of the time to answer until June 26, 2015. However, that extension was vacated by the August 27, 2015 Order of the Trademark Trial and Appeal Board. Therefore, the Answer was due on June 5, 2015 and the Answer was filed on September 25, 2015. Exhibit A.

does not substantially damage the Opposer, particularly as Opposer agrees to allow the Applicant to file the Answer late. Exhibit D.

### **MERITORIOUS DEFENSE**

Applicant files its Answer with this Response and indicates that it has a meritorious defense on many issues, including, but not limited to, the likelihood of confusion, dilution and the validity of the Application. Exhibit A. By filing an Answer that is not frivolous, Applicant has adequately shown that the Applicant has meritorious defenses. *Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991).

For instance, Opposer alleges that the Application for the opposed mark was only signed by Applicant's General Counsel and not by a person who was authorized to sign by Trademark Law. One of the Applicant's defenses is that 37 CFR §2.193(e) indicates that a person may sign the Application if he or she is either authorized to legally bind the entity; has first hand knowledge of the facts and implied authority; or is an attorney with implied authority. Exhibit C. It will be shown that Applicant's General Counsel meets all three criteria when he only needs to meet one.

Secondly, there are a number of defenses to Opposer's allegation of dilution of the Opposer's trademark. The one that is clearly shown in the Notice of Opposition is that Opposer's mark is not famous, as the Opposer alleges a first use of its mark only as early as March 28, 2013. Further, the registration of the Opposer's mark occurred in late 2014 and early 2015. There are also other defenses to an allegation of dilution.

Third, there are many arguments against a finding of likelihood of confusion, such as the goods and services of Opposer and Applicant are not related. There are other likelihood of confusion factors that favor Applicant. A meritorious defense has been shown.

### **CONCLUSION**

The Applicant has shown that the delay in filing the Answer was not the result of willful conduct or gross neglect on the part of the Applicant; Opposer will not be prejudiced by the delay; and the Opposer has a meritorious defense to the Action. Further, the Opposer consents to the delayed filing of the Answer. Exhibit D. Therefore, good cause has been shown for the late filing of the Answer. *See Heleasco Seventeen, Inc. v. Drake*, 102 F.R.D. 909, 917 (D.Del. 1984).

The Applicant requests that the Trademark Trial and Appeal Board not enter a default judgment against Applicant and that this Opposition be suspended for six months for the purpose of settlement discussions. Opposer joins with Applicant in the request for the suspension.

Respectfully submitted,

/s/ Patricia A. Walker

Patricia A. Walker (Ohio Reg. No. 0001779)

Ralph E. Jocke (Ohio Reg. No. 0011642)

Stacy L. Emhoff (Ohio Reg. No. 0080295)

Attorneys for Applicant

Walker & Jocke Co., LPA

231 South Broadway

Medina, Ohio 44256

Phone: 330-721-0000

Fax: 330-722-6446

E-mail: [iplaw@walkerandjocke.com](mailto:iplaw@walkerandjocke.com)

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2015 I caused the foregoing Response to Notice of Default and Motion for Suspension to be mailed by First Class U.S. mail and sent via e-mail to the following attorney for Opposer.

Martin E. Hsia

Attorney for Opposer

Cades Schutte LLP

1000 Bishop Street, Suite 1200

Honolulu, HI 96813

E-mail: [mhsia@cades.com](mailto:mhsia@cades.com)

Phone: (808) 544-3835

Fax: (808) 540-5049

/s/ Patricia A. Walker

Patricia A. Walker

# EXHIBIT A


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

<b>Proceeding</b>	91221256
<b>Party</b>	Defendant Matter and Form Inc.
<b>Correspondence Address</b>	ASHLEE FROESE GILBERTS LLP TORONTO DOMINION CENTRE P O BOX 301 77 KING STREET WEST, SUITE 2010 TORONTO, ON M6K3P3 CANADA trademarks@gilbertslaw.ca
<b>Submission</b>	Appearance of Counsel/Power of Attorney
<b>Filer's Name</b>	Patricia A. Walker
<b>Filer's e-mail</b>	iplaw@walkerandjocke.com
<b>Signature</b>	/Patricia A. Walker/
<b>Date</b>	09/25/2015
<b>Attachments</b>	Notice of Appearance with Exhibit.pdf(103055 bytes )

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Submission	Appearance of Counsel/Power of Attorney
Filer's Name	Patricia A. Walker
Filer's e-mail	iplaw@walkerandjocke.com
Signature	/Patricia A. Walker/
Date	09/25/2015
Attachments	Notice of Appearance with Exhibit.pdf(103055 bytes )

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

Trademark Application Serial No. 86/295,070  
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Published: November 25, 2014

FORM & MATTER LLC,

Opposer,

v.

MATTER AND FORM INC.,

Applicant.

Opposition No.: 91221256

**NOTICE OF APPEARANCE**

The Applicant, Matter and Form Inc. (“Applicant”), hereby requests that the Trademark Trial and Appeal Board recognize Walker & Jocke Co., LPA as its attorneys of record in this Opposition. Further, Gilbert’s LLP hereby withdraws as attorneys of record for Applicant. Exhibit A.

Walker & Jocke Co., LLP requests that the Trademark Trial and Appeal Board recognize the attorneys of Walker & Jocke Co., LPA as the successor attorneys of record in this Opposition for Applicant.

Respectfully submitted,

/s/ Patricia A. Walker

Patricia A. Walker (Ohio Reg. No. 0001779)

Ralph E. Jocke (Ohio Reg. No. 0011642)

Stacy L. Emhoff (Ohio Reg. No. 0080295)

Attorneys for Applicant

Walker & Jocke Co., LPA

231 South Broadway

Medina, Ohio 44256

Phone: 330-721-0000

Fax: 330-722-6446

E-mail: [iplaw@walkerandjocke.com](mailto:iplaw@walkerandjocke.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2015 I caused the foregoing Notice of Appearance to be mailed by First Class U.S. mail and sent via e-mail to the following attorney for Opposer.

Martin E. Hsia  
Attorney for Opposer  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813  
E-mail: [mhsia@cades.com](mailto:mhsia@cades.com)  
Phone: (808) 544-3835  
Fax: (808) 540-5049

/s/ Patricia A. Walker  
Patricia A. Walker  
Attorney for Applicant

# EXHIBIT A

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Opposition No. 91221256

*Form & Matter LLC*

v.

Serial No. 86295070

*Matter and Form Inc.*

DECLARATION OF MARK B. EISEN

1. I, Mark B. Eisen, am a lawyer associated with Gilbert's LLP.
2. I and Gilbert's LLP hereby withdraw as attorneys of record for Applicant.
3. I further request that the United States Trademark Trial and Appeal Board recognize the attorneys of Walker & Jocke Co., LPA (Patricia A. Walker, Ralph E. Jocke, Stacy L. Emhoff, Brett A. Schenck, Joe A. Powell and Joseph L. Powell) as the successor attorneys of record in this Opposition for Applicant.
4. It is my understanding that Walker & Jocke Co., LPA has consented to being named as attorneys for Applicant.

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

Executed on (Date) Sept 25/15

  
\_\_\_\_\_  
Mark B. Eisen

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

<b>Proceeding</b>	91221256
<b>Party</b>	Defendant Matter and Form Inc.
<b>Correspondence Address</b>	ASHLEE FROESE GILBERTS LLP TORONTO DOMINION CENTRE P O BOX 301 77 KING STREET WEST, SUITE 2010 TORONTO, ON M6K3P3 CANADA trademarks@gilbertslaw.ca
<b>Submission</b>	Change of Correspondence Address
<b>Filer's Name</b>	Patricia A. Walker
<b>Filer's e-mail</b>	iplaw@walkerandjocke.com
<b>Signature</b>	/Patricia A. Walker/
<b>Date</b>	09/25/2015
<b>Attachments</b>	Change of Correspondence Address.pdf(17175 bytes )

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

Proceeding	91221256
Party	Defendant Matter and Form Inc.
Correspondence Address	ASHLEE FROESE GILBERTS LLP TORONTO DOMINION CENTRE P O BOX 301 77 KING STREET WEST, SUITE 2010 TORONTO, ON M6K3P3 CANADA trademarks@gilbertslaw.ca
Submission	Change of Correspondence Address
Filer's Name	Patricia A. Walker
Filer's e-mail	iplaw@walkerandjocke.com
Signature	/Patricia A. Walker/
Date	09/25/2015
Attachments	Change of Correspondence Address.pdf(17175 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Trademark Application Serial No. 86/295,070  
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For the mark MATTER AND FORM  
Published: November 25, 2014

FORM & MATTER LLC,

Opposer,

v.

MATTER AND FORM INC.,

Applicant.

Opposition No.: 91221256

**CHANGE OF CORRESPONDENCE ADDRESS**

As Walker & Jocke Co., LPA is now the attorney of record for Applicant, Walker & Jocke Co., LPA requests that the Trademark Trial and Appeal Board send all correspondence in this matter to Walker & Jocke Co., LPA as indicated in the contact information below.

Respectfully submitted,

/s/ Patricia A. Walker

Patricia A. Walker (Ohio Reg. No. 0001779)

Ralph E. Jocke (Ohio Reg. No. 0011642)

Stacy L. Emhoff (Ohio Reg. No. 0080295)

Attorneys for Applicant

Walker & Jocke Co., LPA

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Phone: 330-721-0000

Fax: 330-722-6446

E-mail: [iplaw@walkerandjocke.com](mailto:iplaw@walkerandjocke.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2015 I caused the foregoing Change of Correspondence Address to be mailed by First Class U.S. mail and sent via e-mail to the following attorney for Opposer.

Martin E. Hsia  
Attorney for Opposer  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813  
E-mail: [mhsia@cades.com](mailto:mhsia@cades.com)  
Phone: (808) 544-3835  
Fax: (808) 540-5049

/s/ Patricia A. Walker  
Patricia A. Walker  
Attorney for Applicant


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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	91221256
<b>Party</b>	Defendant Matter and Form Inc.
<b>Correspondence Address</b>	ASHLEE FROESE GILBERTS LLP TORONTO DOMINION CENTRE P O BOX 301 77 KING STREET WEST, SUITE 2010 TORONTO, ON M6K3P3 CANADA trademarks@gilbertslaw.ca
<b>Submission</b>	Answer
<b>Filer's Name</b>	Patricia A. Walker
<b>Filer's e-mail</b>	iplaw@walkerandjocke.com
<b>Signature</b>	/Patricia A. Walker/
<b>Date</b>	09/25/2015
<b>Attachments</b>	Answer to Notice of Opposition.pdf(25236 bytes )

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Proceeding	91221256
Party	Defendant Matter and Form Inc.
Correspondence Address	ASHLEE FROESE GILBERTS LLP TORONTO DOMINION CENTRE P O BOX 301 77 KING STREET WEST, SUITE 2010 TORONTO, ON M6K3P3 CANADA trademarks@gilbertslaw.ca
Submission	Answer
Filer's Name	Patricia A. Walker
Filer's e-mail	iplaw@walkerandjocke.com
Signature	/Patricia A. Walker/
Date	09/25/2015
Attachments	Answer to Notice of Opposition.pdf(25236 bytes )

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

Trademark Application Serial No. 86/295,070  
Filed on May 29, 2014  
For the mark MATTER AND FORM  
Published: November 25, 2014

FORM & MATTER LLC,

Opposer,

v.

MATTER AND FORM INC.,

Applicant.

Opposition No.: 91221256

**ANSWER TO NOTICE OF OPPOSITION**

Applicant Matter and Form Inc. (“Applicant”) hereby answers the Notice of Opposition; admits that Applicant, a corporation formed in Canada, filed Application Registration Serial No. 86/295,070 (“Application”) on May 29, 2014 for at least the services cited by Opposer Form & Matter LLC (“Opposer”) in the preamble to the Notice of Opposition; Applicant denies that Opposer will be damaged by registration of the MATTER AND FORM mark in the Application; and Applicant denies all other allegations in the preamble to the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

1. Applicant denies all allegations in Paragraph 1 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

2. Applicant denies all allegations in Paragraph 2 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

3. Applicant denies all allegations in Paragraph 3 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

4. Applicant admits that the applications related to U.S. Trademark Registrations Nos. 4,659,862; 4,679,192 and 4,641,485 were filed prior to the Application. Applicant denies all other allegations in Paragraph 4 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

5. Applicant denies all allegations in Paragraph 5 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

6. Applicant denies all allegations in Paragraph 6 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

7. Applicant denies all allegations in Paragraph 7 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

8. Applicant admits all allegations in Paragraph 8 of the Notice of Opposition.

9. Applicant admits that the Application was filed in the International Classes indicated in Paragraph 9 of the Notice of Opposition. Applicant denies that the goods and services listed in Paragraph 9 of the Notice of Opposition are the goods and services listed in the Application. Applicant denies all other allegations in Paragraph 9 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

10. Applicant denies all allegations in Paragraph 10 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

11. Applicant denies all allegations in Paragraph 11 of the Notice of Opposition.

12. Applicant denies all allegations in Paragraph 12 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

13. Applicant denies all allegations in Paragraph 13 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

14. Applicant denies all allegations in Paragraph 14 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

15. Applicant denies all allegations in Paragraph 15 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

16. Applicant denies all allegations in Paragraph 16 of the Notice of Opposition.

17. Applicant denies all allegations in Paragraph 17 of the Notice of Opposition.

18. Applicant denies all allegations in Paragraph 18 of the Notice of Opposition.

19. Applicant denies all allegations in Paragraph 19 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

20. Applicant denies all allegations in Paragraph 20 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

21. Applicant denies all allegations in Paragraph 21 of the Notice of Opposition.

22. Applicant denies all allegations in Paragraph 22 of the Notice of Opposition.

23. Applicant denies all allegations in Paragraph 23 of the Notice of Opposition.

24. Applicant denies all allegations in Paragraph 24 of the Notice of Opposition.

25. Applicant denies all allegations in Paragraph 25 of the Notice of Opposition.

26. Applicant denies all allegations in Paragraph 26 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

27. Applicant denies all allegations in Paragraph 27 of the Notice of Opposition for lack of knowledge or information sufficient to form a belief about the truth of those allegations.

28. Applicant denies all allegations in Paragraph 28 of the Notice of Opposition.

29. Applicant admits the Application was signed by Paul Banwatt, whose position was indicated as “General Counsel”. Applicant denies all other allegations in Paragraph 29 of the Notice of Opposition.

30. Applicant denies all allegations in Paragraph 30 of the Notice of Opposition.

31. Applicant denies all allegations in Paragraph 31 of the Notice of Opposition.

#### **AFFIRMATIVE DEFENSES**

1. The likelihood of confusion factors of *In re E.I. DuPont de Nemours & Co.*, 476 F. 2d 1357, 177 USPQ 563 (C.C.P.A. 1973) do not support a finding of likelihood of confusion.

2. The elements for dilution, including, but not limited to, the lack of fame of Opposer’s mark, are absent.

3. The Application was signed by a person properly authorized to sign on behalf of Applicant pursuant to the Trademark Laws of the United States.

4. Applicant began to use Applicant’s mark and trade name before Opposer began to use Opposer’s mark.

5. Opposer did not oppose the registration of Applicant's mark in International Class 9, therefore there is no controversy concerning the registration of Applicant's mark for the goods in International Class 9.

WHEREFORE, Applicant prays that this Opposition be dismissed, that the Notice of Allowance be issued for the mark in the Application and that the Applicant's mark become registered.

Respectfully submitted,

/s/ Patricia A. Walker  
Patricia A. Walker (Ohio Reg. No. 0001779)  
Ralph E. Jocke (Ohio Reg. No. 0011642)  
Stacy L. Emhoff (Ohio Reg. No. 0080295)  
Attorneys for Applicant  
Walker & Jocke Co., LPA  
231 South Broadway  
Medina, Ohio 44256  
Phone: 330-721-0000  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of September, 2015 I caused the foregoing Answer to Notice of Opposition to be mailed by First Class U.S. mail and sent via e-mail to the following attorney for Opposer.

Martin E. Hsia  
Attorney for Opposer  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813  
E-mail: [mhsia@cades.com](mailto:mhsia@cades.com)  
Phone: (808) 544-3835  
Fax: (808) 540-5049

/s/ Patricia A. Walker  
Patricia A. Walker

# EXHIBIT B

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**Opposition No. 91221256**

*Form & Matter LLC*

v.

**Serial No. 86295070**

*Matter and Form Inc.*

**DECLARATION OF MARK B. EISEN**

1. I, Mark B. Eisen, am a Canadian lawyer associated with Gilbert's LLP.
2. Ashlee Froese, who was the original lawyer for Applicant, left Gilbert's LLP on fairly short notice in June 2015. The deadline to file an answer in this Opposition was missed unintentionally while that lawyer's practice was being parsed between those matters the attorney took with her and the matters that were left for Gilbert's LLP to continue handling.
3. The deadlines were missed unintentionally. The delay in answering was not the result of willful conduct or gross neglect.
4. I had taken over as attorney for Applicant while it was being decided whether to turn this matter over to a United States trademark lawyer or whether settlement could be concluded without the need to proceed with the opposition.
5. In the last week I have talked with Martin E. Hsia, Opposer's attorney, concerning settlement of this matter. Talks concerning settlement are ongoing, therefore, it is my opinion that the Opposer has not and will not be substantially prejudiced by any delay in this proceeding.
6. I have reviewed this matter and the Applicant has a meritorious defense in this proceeding.
7. I and Gilbert's LLP hereby withdraw as attorneys of record for Applicant. Walker & Jocke Co., LPA was asked to take over this matter on September 24, 2015. I further request that the United States Trademark Trial and Appeal Board recognize the attorneys of Walker & Jocke Co., LPA (Patricia A. Walker, Ralph E. Jocke, Stacy L. Emhoff, Brett A. Schenck, Joe A. Powell and Joseph L. Powell) as attorneys of record in this Opposition.
8. It is my understanding that Walker & Jocke Co., LPA has consented to being named successor attorneys for Applicant.

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

Executed on (Date) Sept 25 / 15

  
\_\_\_\_\_  
Mark B. Eisen

# EXHIBIT C

# 37 CFR 2.193 - Trademark correspondence and signature requirements.

§ 2.193 Trademark correspondence and signature requirements.

(a) *Signature required.* Each piece of correspondence that requires a signature must bear:

(1) A handwritten signature personally signed in permanent ink by the person named as the signatory, or a true copy thereof; or

(2) An electronic signature that meets the requirements of paragraph (c) of this section, personally entered by the person named as the signatory. The Office will accept an electronic signature that meets the requirements of paragraph (c) of this section on correspondence filed on paper, by facsimile transmission (§ [2.195\(c\)](#)), or through TEAS or ESTTA.

(b) *Copy of original signature.* If a copy, such as a photocopy or facsimile copy of an original signature is filed, the filer should retain the original as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original.

(c) *Requirements for electronic signature.* A person signing a document electronically must:

(1) Personally enter any combination of letters, numbers, spaces and/or punctuation marks that he or she has adopted as a signature, placed between two forward slash (“/”) symbols in the signature block on the electronic submission; or

(2) Sign the verified statement using some other form of electronic signature specified by the Director.

(d) *Signatory must be identified.* The name of the person who signs a document in connection with a trademark application, registration, or proceeding before the Trademark Trial and Appeal Board must be set forth in printed or typed form immediately below or adjacent to the signature, or identified elsewhere in the filing (e.g., in a cover letter or other document that accompanies the filing).

(e) *Proper person to sign.* Documents filed in connection with a trademark application or registration must be signed by a proper person. Unless otherwise specified by law, the following requirements apply:

(1) *Verification of facts.* A verification in support of an application for registration, amendment to an application for registration, allegation of use under § [2.76](#) or § [2.88](#), request for extension of time to file a statement of use under § [2.89](#), or an affidavit under section 8, 12(c), 15, or 71 of the Trademark Act must be sworn to or supported by a declaration under § [2.20](#), signed by the owner or a person properly authorized to sign on behalf of the owner. A person who is properly authorized to verify facts on behalf of an owner is:

(i) A person with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership);

(ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or

(iii) An attorney as defined in § [11.1](#) of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the owner.

(2) *Responses, amendments to applications, requests for express abandonment, requests for reconsideration of final actions, and requests to divide.* Responses to Office actions, amendments to applications, requests for express abandonment, requests for reconsideration of final actions, and requests to divide must be signed by the owner of the application or

registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § [11.14](#) of this chapter, in accordance with the following guidelines:

(i) If the owner is represented by a practitioner qualified to practice before the Office under § [11.14](#) of this chapter, the practitioner must sign, except where the owner is required to sign the correspondence; or

(ii) If the owner is not represented by a practitioner qualified to practice under § [11.14](#) of this chapter, the individual owner or someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint owners who are not represented by a qualified practitioner, all must sign.

(3) *Powers of attorney and revocations of powers of attorney.* Powers of attorney and revocations of powers of attorney must be signed by the individual applicant, registrant or party to a proceeding pending before the Office, or by someone with legal authority to bind the applicant, registrant, or party (e.g., a corporate officer or general partner of a partnership). In the case of joint applicants, registrants, or parties, all must sign. Once the applicant, registrant or party has designated a qualified practitioner(s), the named practitioner may sign an associate power of attorney appointing another qualified practitioner(s) as an additional person(s) authorized to prosecute the application or registration. If the applicant, registrant, or party revokes the original power of attorney, the revocation discharges any associate power signed by the practitioner whose power has been revoked. If the practitioner who signed an associate power withdraws, the withdrawal discharges any associate power signed by the withdrawing practitioner upon acceptance of the request for withdrawal by the Office.

(4) *Petitions to revive under § 2.66.* A petition to revive under § [2.66](#) must be signed by someone with firsthand knowledge of the facts regarding unintentional delay.

(5) *Petitions to Director under § 2.146.* A petition to the Director under § [2.146](#) must be signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § [11.14](#) of this chapter, in accordance with the following guidelines:

(i) If the petitioner is represented by a practitioner qualified to practice before the Office under § [11.14](#) of this chapter, the practitioner must sign; or

(ii) If the petitioner is not represented by a practitioner authorized to practice before the Office under § [11.14](#) of this chapter, the individual petitioner or someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint petitioners, all must sign.

(6) *Requests for correction, amendment or surrender of registrations.* A request for correction, amendment or surrender of a registration must be signed by the owner of the registration, someone with legal authority to bind the owner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice before the Office under § [11.14](#) of this chapter. In the case of joint owners who are not represented by a qualified practitioner, all must sign.

(7) *Renewal applications.* A renewal application must be signed by the registrant or the registrant's representative.

(8) *Designations and revocations of domestic representative.* A designation or revocation of a domestic representative must be signed by the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a

partnership), or a practitioner qualified to practice under § [11.14](#) of this chapter. In the case of joint applicants or registrants, all must sign.

(9) *Requests to change correspondence address in an application or registration.* A notice of change of correspondence address in an application or registration must be signed by the applicant or registrant, someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § [11.14](#) of this chapter, in accordance with the following guidelines:

(i) If the applicant or registrant is represented by a practitioner qualified to practice before the Office under § [11.14](#) of this chapter, the practitioner must sign; or

(ii) If the applicant or registrant is not represented by a practitioner qualified to practice before the Office under § [11.14](#), the individual applicant or registrant or someone with legal authority to bind the applicant or registrant (e.g., a corporate officer or general partner of a partnership) must sign. In the case of joint applicants or joint registrants, all must sign.

(10) *Cover letters.* A person transmitting paper documents to the Office may sign a cover letter or transmittal letter. The Office neither requires cover letters nor questions the authority of a person who signs a communication that merely transmits paper documents.

(f) *Signature as certification.* The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by any person, whether a practitioner or non-practitioner, constitutes a certification under § [11.18\(b\)](#) of this chapter. Violations of § [11.18\(b\)](#) of this chapter may jeopardize the validity of the application or registration, and may result in the imposition of sanctions under § [11.18\(c\)](#) of this chapter. Any practitioner violating § [11.18\(b\)](#) of this chapter may also be subject to disciplinary action. See §§ [10.23\(c\)\(15\)](#) and [11.18\(d\)](#) of this chapter.

(g) *Separate copies for separate files.*

(1) Since each file must be complete in itself, a separate copy of every document to be filed in connection with a trademark application, registration, or *inter partes* proceeding must be furnished for each file to which the document pertains, even though the contents of the documents filed in multiple files may be identical.

(2) Parties should not file duplicate copies of correspondence in a single application, registration, or proceeding file, unless the Office requires the filing of duplicate copies. The Office may dispose of duplicate copies of correspondence.

(h) *Separate documents for separate branches of the Office.* Since different branches or sections of the Office may consider different matters, each distinct subject, inquiry or order must be contained in a separate document to avoid confusion and delay in answering correspondence.

(i) *Certified documents required by statute.* When a statute requires that a document be certified, a copy or facsimile transmission of the certification is not acceptable.

[\[74 FR 54910, Oct. 26, 2009\]](#)

# EXHIBIT D

----- Original Message -----

**Subject:**RE: Opposition No. 91221256

**Date:**Thu, 24 Sep 2015 16:29:17 -1000

**From:**Martin Hsia <mhsia@caedes.com>

**To:**'Patricia A. Walker' <paw@walkerandjocke.com>

Dear Ms. Walker:

I was fortunately able to contact my client, despite the time difference. Our client consents to late filing of the Answer and a six month suspension for settlement discussions.

Best regards.

**Martin E. Hsia** | Partner | **Cades Schutte LLP**

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