

ESTTA Tracking number: **ESTTA743040**

Filing date: **04/28/2016**

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

Proceeding	91223088
Party	Defendant Liberty Mutual Insurance Company
Correspondence Address	REBECCA B LEDERHOUSE BAKER & MCKENZIE LLP 300 E RANDOLPH STREET, SUITE 5000 CHICAGO, IL 60601-6342 UNITED STATES chiusptomail@bakermckenzie.com, rebecca.lederhouse@bakermckenzie.com
Submission	Other Motions/Papers
Filer's Name	Rebecca B. Lederhouse
Filer's e-mail	rebecca.lederhouse@bakermckenzie.com
Signature	/Rebecca B. Lederhouse/
Date	04/28/2016
Attachments	91223088 Applicant Response to Opposer Motion to Extend Scanned.pdf(369136 bytes ) 91223088 Ex. A Declaration in Support of Applicant Response to Opposer Motion to Extend Scanned.pdf(167956 bytes ) 91223088 Numbered Exhibits to Declaration in Support of Applicant Response Scanned.pdf(754304 bytes )

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

In the matter of Application No. 86496558

Lytx, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**APPLICANT'S RESPONSE TO OPPOSER'S  
MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

Liberty Mutual Insurance Company ("Applicant") for its Response to Lytx Inc.'s ("Opposer") Motion to Extend Discovery and Trial Periods ("Motion to Extend") states as follows:

**I. INTRODUCTION**

With time remaining in the discovery period, knowing that Applicant had not agreed to extend the discovery and trial periods, instead of preparing and serving discovery, Opposer filed an unconsented Motion to Extend. The claimed good cause for the motion is Opposer's belief that Applicant represented it was interested in settling. Even if Opposer's belief were accurate or justified, existence of settlement negotiations does not constitute good cause sufficient to justify granting an unconsented motion to extend discovery and trial periods. Further, Opposer has not provided any detailed facts to support good cause. Opposer's inaction was caused by its own lack of diligence. For these reasons, Opposer's Motion to Extend should be denied.

## II. BACKGROUND

Opposer opposed Applicant's trademark application for DRIVE COACH on August 3, 2015. (1 TTABVUE).

The parties held their Discovery Conference on Wednesday, September 30 by telephone. (Declaration<sup>1</sup> of Rebecca Lederhouse, par. 4). As required by TBMP § 401.01, the parties discussed the possibility of settling. Opposer's counsel suggested several possibilities for settling, including Applicant could delete Class 9 and/or agree not to use the trademark in connection with video event recorders and the software that uploads, downloads or records that video. Applicant's counsel said that it would mention these possibilities to its client. *Id.* The parties have had no further telephone conferences. *Id.*

There was no further communication between the parties until Applicant served Opposer with its Initial Disclosures on November 10, 2015. (Declaration of Rebecca Lederhouse, par. 5). Initial Disclosures were due on November 11, 2015. (2 TTABVUE, page 3). On or about November 24, 2015, Applicant received Opposer's Initial Disclosures in an envelope postmarked November 19, 2015. (Declaration of Rebecca Lederhouse, par. 5).

On December 9, 2015, Opposer's counsel emailed Applicant's counsel asking if she had discussed with her client the possibility of settlement. (Declaration of Rebecca Lederhouse, par. 6). Applicant's counsel responded by email on December 18, 2015 that "I have discussed this matter with my client and it would like you to provide a proposal." (Declaration of Rebecca Lederhouse, par. 7).

Two more months passed without Opposer's counsel sending a proposal and without any further communication from Opposer's counsel. (Declaration of Rebecca Lederhouse, par. 8). On February 22, 2016, Opposer's counsel emailed a request for a phone conference "to go over potential settlement terms in order to potentially avoid the cost of discovery..." *Id.* Applicant's counsel responded that Opposer should "forward its proposals by email so that my client can consider them before any telephone conference." (Declaration of Rebecca Lederhouse, par. 9).

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<sup>1</sup> The Declaration of Rebecca B. Lederhouse in Support of Applicant's Response to Opposer's Motion to Extend Discovery and Trial Periods ("Declaration of Rebecca Lederhouse") is attached as Exhibit A. The numbered exhibits are attached to the Declaration of Rebecca Lederhouse.

On February 25, 2016, Opposer's counsel sent an email suggesting several options for settlement, including deleting Class 9 from the application, adding "by Liberty" to the mark in Class 9, including a disclaimer in advertising and/or having Applicant suggest amendments to its identification of goods. (Exhibit 6, February 25, 2016, email from Opposer's counsel to Applicant's counsel). After February 25, 2016, Opposer's counsel did not send any additional settlement proposals or any draft agreements. (Declaration of Rebecca Lederhouse, par. 10).

On March 3, 2016, Opposer's counsel asked if his email had been received and "can we schedule a time to discuss this matter" to which Applicant's counsel responded by email, "My client is considering your proposal of February 25." (Declaration of Rebecca Lederhouse, par. 11, 12).

After March 4, 2016, there was no further correspondence or conversation between the parties until Thursday, April 7, 2016, when Opposer's counsel sent a request for Applicant's counsel to consent to a motion for discovery dates to be re-set and restarted "in view of the protracted settlement discussions" to which Applicant's counsel responded that her "client does not agree to your proposed motion." (Declaration of Rebecca Lederhouse, par. 13, 14). There was no further contact between the parties regarding the extension or settlement. *Id.*

Opposer filed and served its unconsented Motion to Extend on April 8, 2016 (5 TTABVUE). Applicant timely served its Discovery Requests on April 11, 2016. (Declaration of Rebecca Lederhouse, par. 16). Opposer did not serve any discovery requests during the discovery period. *Id.*

### **III. LEGAL STANDARD**

A motion to extend filed before the expiration of the time period must meet the following standard under TBMP § 509.01(a):

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient.

Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. The Board will

"scrutinize carefully" any motion to extend time, to determine whether the requisite good cause has been shown.

Opposer's Motion to Extend must allege detailed facts that constitute good cause and it must demonstrate that the extension is not necessitated by Opposer's own lack of diligence or unreasonable delay.

#### **IV. ARGUMENT**

##### **A. The Mere Existence of Settlement Negotiations Does Not Constitute Good Cause.**

The mere existence of settlement negotiations, discussions or proposals does not constitute good cause for an extension. *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000) ("even if the parties had been discussing settlement, the mere existence of such negotiations or proposals, without more, would not justify petitioner's delay..."). In *Fairline*, the record was "devoid of any explanation as to why petitioner waited until the day before its testimony period closed to request the extension." *Id.* at 1480. The Board denied the extension. *Id.*

Opposer relies solely on the discussions regarding settlement as the "good cause" for its delay in seeking discovery or moving forward with its case<sup>2</sup>. Opposer has not presented any facts to explain why Opposer need not proceed with discovery. Similarly, Opposer does not explain why it waited so long to request an extension or why it was unable to take discovery during the discovery period. Opposer does not explain why it could not serve discovery requests when it learned that Applicant would not consent to the extension. Opposer cannot rely solely on discussions of possible settlement to shirk its duty as the plaintiff in this proceeding to move forward in a timely manner.

##### **B. Opposer Does Not Provide Detailed Facts to Support Good Cause.**

Opposer must set forth with particularity detailed facts constituting good cause and may not rely on vague, conclusory allegations. TBMP § 509.01(a). In *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372 (TTAB 2001), on the last day of the testimony period, the opposer filed a motion to extend

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<sup>2</sup> These same conclusory facts are repeated at pages 3- 4 of Opposer's Motion to Extend, but at those pages Opposer erroneously refers to itself as the Applicant (5 TTABVUE).

the testimony period and to withdraw as counsel. The Board denied the motion on the grounds that the opposer had failed to take any discovery during the discovery period, filing its motion to extend on the last day and relying on vague allegations that a series of corporate transactions and internecine litigation prevented it from taking testimony. *Id.* at 1375. The Board found these vague statements inadequate to serve as the "detailed facts" required. *Id.* Similarly here, Opposer does not provide any facts, detailed or otherwise, that would explain why it could not serve discovery during the discovery period or why it could not seek Applicant's consent to extend discovery sooner than the final days of discovery.

Cursory or conclusory allegations are not sufficient to establish good cause. *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999). In *Instruments*, the Board found that the plaintiff could not "reasonably have concluded, from the assurances or actions of the defendant, that the plaintiff need not go forward with discovery...." *Id.* Similarly, Opposer's statement that "the parties have been engaged in prolonged settlement discussions" is entirely conclusory. (5 TTABVUE, page 1). Opposer's characterization of a handful of email exchanges over five months as "prolonged settlement discussions" does not make it so. Likewise, Opposer's belief that its "settlement proposal would be accepted by Applicant with only minor modification in terms, if any" is not supported by any facts. (5 TTABVUE, page 4). Opposer's only "settlement proposal" was contained in its February 25, 2016 email and it included at least four separate options for settlement. The only communication with any substantive settlement proposal contradicts the possibility that there was a negotiated agreement that Applicant could accept with only minor modifications. Even Opposer's counsel referred to these options as merely "fuel for future discussions." (Exhibit 6, February 25, 2016, email from Opposer's counsel to Applicant's counsel).

Opposer could not reasonably assume that the discovery period should or would be extended or that the parties were close to an agreement.

**C. Opposer's Inaction Was Caused by Its own Lack of Diligence.**

Opposer must demonstrate that its inaction was not caused by its own lack of diligence or unreasonable delay. TBMP § 509.01(a); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB

1999). In *Luemme*, the Board denied the petitioner's motion to extend the discovery period because there were insufficient facts to show good cause and the record showed that the reason for the delay was requesting party's delay in initiating discovery. *Id.*

[V]ague assertion that extensive travel has made it difficult for petitioner to participate with its counsel in the discovery process "did not evidence good cause." More important, the Board should not have to remind petitioner that it brought this cancellation proceeding in the first instance, and that it carries the burden of going forward in a timely manner.

*Id.* at 1761.

Here, Opposer is seeking an extension based upon its belief that there might be a possibility of settlement. Opposer has not provided any facts to explain its failure to take discovery or that Opposer tried to take discovery, but was thwarted in some way. Opposer had sufficient time to prepare and serve discovery between April 8 and April 11, 2016, and offers no explanation for why it did not prepare and serve discovery in a timely fashion. Applicant's willingness to consider a settlement proposal does not provide Opposer with a reasonable assumption that some or all deadlines would or should be extended.

Opposer has the burden of persuading the Board that it was diligent in meeting its deadlines. *National Football League v. DNH Management LLC*, 85 USPQ2d 1852 (TTAB 2008). In the absence of consent, the party seeking suspension is expected to comply with its responsibilities, which "means not only shouldering the burden of proof at trial but also the responsibility for moving the case forward on the prescribed schedule." *Id.* at 1855.

Opposer waited more than two months before providing Applicant with its settlement proposal. Opposer delayed in serving its initial disclosures, delayed in providing Applicant a settlement proposal, and delayed in requesting consent to an extension of the discovery period. Opposer's pattern of delay is the sole basis for Opposer's motion.

**D. Opposer's Delay Is Unreasonable.**

Opposer's delay was not reasonable. In *Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542 (TTAB 2001), the petitioner did not notify the respondent that it would need additional time to take testimony until the penultimate day of the testimony period. The Board noted that "the record

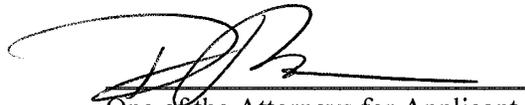
is devoid of any explanation as to why petitioner waited until the last day of its testimony period to request the extension." *Id.* at 1544. "Petitioner brought this cancellation proceeding and, thus carries the burden of going forward in a timely manner." *Id.* The Board denied the extension. *Id.*

Here the Opposer has not provided any explanation for its delay in requesting an extension, its failure to take discovery during the discovery period, or to show that it was diligent in its responsibilities with regard to discovery. Opposer had five months to serve discovery requests or to ascertain whether or not Applicant would extend the discovery period. Its failure to do either was not reasonable.

## V. CONCLUSION

The existence of settlement negotiations does not constitute good cause sufficient to grant an unconsented motion to extend discovery and trial periods. Opposer has not provided any facts to support good cause. Opposer's inaction was caused by its own lack of diligence. For these reasons, Opposer's delay is unreasonable and Opposer's Motion to Extend Discovery and Trial Periods should be denied.

Date: April 28, 2016



One of the Attorneys for Applicant,  
Liberty Mutual Insurance Company

BAKER & MCKENZIE LLP  
Lisa Parker Gates  
Rebecca Lederhouse  
300 E. Randolph Drive, Suite 5000  
Chicago, IL 60601  
Tel. (312) 861-8949  
[Lisa.Gates@bakermckenzie.com](mailto:Lisa.Gates@bakermckenzie.com)  
[Rebecca.Lederhouse@bakermckenzie.com](mailto:Rebecca.Lederhouse@bakermckenzie.com)

**CERTIFICATE OF MAILING AND SERVICE**

The undersigned certifies that **APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS** was filed electronically via the Electronic System for Trademark Trial and Appeal (ESTTA) with a copy sent by First Class Mail to:

Karl M. Steins  
Steins & Associates, P.C.  
2333 Camino de Rio South, Suite 120  
San Diego, CA 92108

on April 28, 2016

A handwritten signature in black ink, appearing to read 'Rebecca B. Lederhouse', written over a horizontal line.

Rebecca B. Lederhouse

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

In the matter of Application No. 86496558

Lytx, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**DECLARATION OF REBECCA B. LEDERHOUSE IN SUPPORT OF  
APPLICANT'S RESPONSE TO OPPOSER'S  
MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

I, Rebecca B. Lederhouse, declare as follows:

1. I am an attorney with the law firm of Baker & McKenzie, LLP, counsel for Applicant, Liberty Mutual Insurance Company.
2. I am a member in good standing of the Bar of Illinois.
3. I submit this Declaration in support of Applicant's Response to Opposer's Motion to Extend Discovery and Trial Periods.
4. On September 30, 2015, Rebecca B. Lederhouse (hereafter "Applicant's counsel"), and Karl Steins (hereafter "Opposer's counsel"), held the required discovery conference by telephone. The parties discussed the possibility of settling as required by TBMP § 401.01. Opposer's counsel suggested several possibilities for settlement such as having Applicant delete its Class 9 goods or having Applicant agree not to use the trademark in connection with video event recorders and the software that uploads, downloads or records that video. Although these were Opposer's counsel's suggestions, Opposer's counsel explained that

he did not know if his client would agree with his suggestions. Applicant's counsel said she would mention these possibilities to her client. There was no further telephone conversation after the discovery conference.

5. There was no further communication between the parties until Applicant served Opposer with its Initial Disclosures on November 10, 2015. There had been no discussion about suspending deadlines and both parties served their initial disclosures which were due November 11, 2015. (2 TTABVUE, page 3). Opposer's Initial Disclosures were received by Applicant's counsel on or about November 24, 2015 in an envelope postmarked November 19, 2015, although its certificate of mailing stated November 9, 2015. Attached as **Exhibit 1** is copy of an envelope postmarked November 19, 2015 in which Opposer's Initial Disclosures were sent to Applicant's counsel with November 9, 2015 certificate of mailing.

6. After the Initial Disclosures, there was no further communication between the parties until December 9, 2015 when Opposer's counsel emailed Applicant's counsel asking if she had discussed the "possibility for settlement of this Opposition as you and [I] discussed several weeks ago". Because there had been no discussion of settlement after the Discovery Conference on September 30, 2015, Opposer's counsel must have been referring to the September 30, 2015 Discovery Conference. Attached as **Exhibit 2** is a copy of the email dated December 9, 2015, from Opposer's counsel to Applicant's counsel.

7. On December 18, 2015, Applicant's counsel responded that "I have discussed this matter with my client and it would like you to provide a proposal." Attached as **Exhibit 3** is a copy of an email dated December 18, 2015, from Applicant's counsel to Opposer's counsel.

8. Despite having asked for a proposal from Opposer's counsel, Opposer's counsel did not send one and there was no further correspondence or communication between the parties for two months. On February 22, 2016, Opposer's counsel emailed Applicant, "I apologize for the delay in replying to your previous email." Opposer's counsel did not provide any explanation for the two-month delay in providing a proposal and Opposer's counsel did not, at that time actually include a proposal with its February 22,

2016 email. Rather, Opposer's counsel's email requested a phone conversation "to go over potential settlement terms in order to potentially avoid the cost of discovery for both sides." Attached as **Exhibit 4** is a copy of the email dated February 22, 2016, from Opposer's counsel to Applicant's counsel.

9. Applicant's counsel responded by email that same day that Opposer should "forward your proposals by email so that my client can consider them before any telephone conference." Attached as **Exhibit 5** is a copy of the email dated February 22, 2016, from Applicant's counsel to Opposer's counsel.

10. On February 25, 2016, Opposer's counsel forwarded an email wherein he proposed several alternatives including deleting Class 9 from the application, adding "by Liberty" to the mark in Class 9, including a disclaimer in advertising and/or having Applicant suggest amendments to its identification of goods. Opposer's counsel explained "it's difficult to propose specific terms of an agreement, so please accept this as fuel for future discussion." There were no further discussions, no further written proposals and there was no draft agreement. Attached as **Exhibit 6** is a copy of the email dated February 25, 2016, from Opposer's counsel to Applicant's counsel.

11. Opposer's counsel sent an email on March 3, 2016, asking if his email had been received and asking if the parties could "schedule a time to discuss this matter." Attached as **Exhibit 7** is a copy of the email dated March 3, 2016, from Opposer's counsel to Applicant's counsel.

12. On March 4, 2016, Applicant's counsel responded that "my client is considering your proposal of Feb. 25." Attached as **Exhibit 8** is a copy of an email dated March 4, 2016, from Applicant's counsel to Opposer's counsel.

13. Discovery was scheduled to close on Saturday, April 9, 2016. (2 TTABVUE, page 3). There was no further communication between the parties until April 7, 2016 when Opposer's counsel sent an email stating "in view of the protracted settlement discussions, we are now reaching the end of the period for discovery. Unless we're able to consummate a settlement right away, my intention would be to request that

Discovery dates be re-set and restarted. Will you agree to such a motion?" Attached as **Exhibit 9** is a copy of an email dated April 7, 2016, from Opposer's counsel to Applicant's counsel.

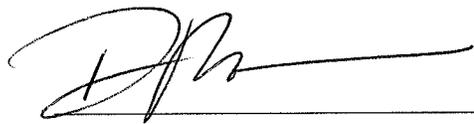
14. There had been no previous discussion about extensions or suspensions. The parties had never previously discussed whether additional time for discovery might be required. The parties never discussed whether any or all deadlines would be suspended while there was any possibility of settlement discussions. Applicant's counsel responded that "my client does not agree to your proposed motion." Attached as **Exhibit 10** is a copy of an email dated April 8, 2016, from Applicant's counsel to Opposer's counsel.

15. On April 8, 2016, Opposer filed and served its unconsented Motion to Extend. (5 TTABVUE).

16. On Monday, April 11, 2016, Applicant served its Discovery Requests on Opposer. These were timely because they were served on the first business day after the Saturday, April 9, 2016 close of discovery. Opposer has not yet served any Discovery Requests on Applicant.

Pursuant to 28 U.S.C. 1746, the undersigned declares under penalty of perjury that the foregoing is true and accurate.

Dated: April 28, 2016

A handwritten signature in black ink, appearing to read 'R. Lederhouse', is written over a horizontal line.

Rebecca B. Lederhouse

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 1**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

Steins & Associates, P.C.  
2333 Camino del Rio South, Suite 120  
San Diego, CA 92108



SAN DIEGO CA 921

19 NOV 2015 PM 11 A

BAKER & MCKENZIE LLP  
Rebecca Lederhouse  
300 E. Randolph Street  
Suite 5000  
Chicago, IL 60601-6342

60601634233



**In the United States Patent and Trademark Office  
Before the Trademark Trials and Appeals Board**

LYTX, INC.	)	Opposition No.: 91223088
	)	
Opposer,	)	
	)	Application Ser. No.: 86/496,558
vs.	)	Filed: 1/6/2015
	)	
	)	
LIBERTY MUTUAL INSURANCE	)	
COMPANY	)	
	)	
Applicant.	)	

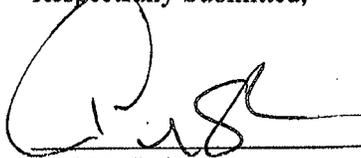
**Opposer's Initial Disclosures**

In accordance with 37 CFR §2.120(a)(2), Opposer submits its Initial Disclosures below. Opposer avers that Supplemental Disclosures will be made when possible in those circumstances where full contact information is not currently available.

1. Representative of Lytx, Inc.  
9785 Towne Center Drive  
San Diego, CA 92121  
858-430-4000  
858-430-4001 fax

Has knowledge of claims and supporting evidence related to the Opposition.

Respectfully Submitted,



---

Dated: November 9, 2015

Karl M. Steins  
Registration No. 40,186  
Steins & Associates  
2333 Camino del Rio South #120  
San Diego, CA 92108  
(619) 692-2004

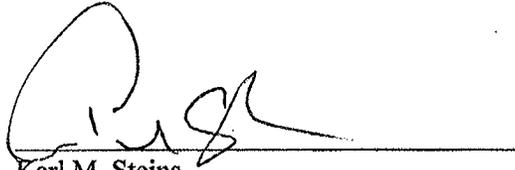
Attorney for Opposer

Certificate of Service

It is hereby certified that a copy of the above Opposer's Initial Disclosures is being forwarded by first class mail on November 9, 2015, to Rebecca Lederhouse, attorney for Applicant:

Rebecca Lederhouse  
BAKER & MCKENZIE LLP  
300 E. Randolph Street  
Suite 5000  
Chicago, IL 60601-6342

Dated: November 9, 2015



Karl M. Steins  
Registration No. 40,186  
Steins & Associates  
2333 Camino del Rio South #120  
San Diego, CA 92108  
(619) 692-2004

Attorney for Opposer

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 2**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

## Lederhouse, Rebecca B

---

**From:** Karl Steins <gringoksteins@gmail.com> on behalf of Karl M. Steins <karl@steins-patents.com>  
**Sent:** Wednesday, December 09, 2015 6:22 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** Lytx, Inc. v. Liberty Mutual Insurance Company - For Settlement Purposes Only

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Rebecca,

As we move forward with discovery, I'm taking the opportunity to reach out and see whether or not you were able to discuss the possibility for settlement of this Opposition as you and discussed several weeks ago.

Could you please let me know whether or not you'd discussed the potential with your client, and whether or not there was any room for further discussion?

Thank you,

Karl

--

Karl M. Steins  
Steins & Associates, P.C.  
2333 Camino del Rio South  
Suite 120  
San Diego, CA 92108

619-692-2004 / 714-549-1198  
facsimile 619-692-2003 / 714-549-1197  
Toll-free 1-877-4STEINS (478-3467)

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 3**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

## Lederhouse, Rebecca B

---

**From:** Lederhouse, Rebecca B  
**Sent:** Friday, December 18, 2015 10:34 AM  
**To:** 'karl@steins-patents.com'  
**Subject:** RE: Lytx, Inc. v. Liberty Mutual Insurance Company - For Settlement Purposes Only

Dear Karl,

Thank you for your email. I have discussed this matter with my client and it would like you to provide a proposal.

Rebecca B. Lederhouse  
Attorney at Law  
Baker & McKenzie LLP  
300 E. Randolph Street, Suite 5000  
Chicago, Illinois 60601

312-861-8949  
fax 312-698-2710  
[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)

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

From: Karl Steins [<mailto:gringoksteins@gmail.com>] On Behalf Of Karl M. Steins  
Sent: Wednesday, December 09, 2015 6:22 PM  
To: Lederhouse, Rebecca B  
Subject: Lytx, Inc. v. Liberty Mutual Insurance Company - For Settlement Purposes Only

Hello Rebecca,

As we move forward with discovery, I'm taking the opportunity to reach out and see whether or not you were able to discuss the possibility for settlement of this Opposition as you and discussed several weeks ago.

Could you please let me know whether or not you'd discussed the potential with your client, and whether or not there was any room for further discussion?

Thank you,

Karl

--

Karl M. Steins  
Steins & Associates, P.C.  
2333 Camino del Rio South  
Suite 120  
San Diego, CA 92108

619-692-2004 / 714-549-1198  
facsimile 619-692-2003 / 714-549-1197  
Toll-free 1-877-4STEINS (478-3467)

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 4**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

**Lederhouse, Rebecca B**

---

**From:** Karl Steins <gringoksteins@gmail.com> on behalf of Karl M. Steins <karl@steins-patents.com>  
**Sent:** Monday, February 22, 2016 2:24 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** TM Opposition No. 91223088

Hello Rebecca,

I apologize for the delay in replying to your previous email. Could we schedule a brief phone conversation this week to go over potential settlement terms in order to potentially avoid the cost of discovery for both sides?

Please suggest a couple time windows, if possible. I will be unavailable Friday all day, but am pretty clear except for that.

Sincerely,

Karl

--

Karl M. Steins  
Steins & Associates, P.C.  
2333 Camino del Rio South  
Suite 120  
San Diego, CA 92108

619-692-2004 / 714-549-1198  
facsimile 619-692-2003 / 714-549-1197  
Toll-free 1-877-4STEINS (478-3467)

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--

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 5**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

**Lederhouse, Rebecca B**

---

**From:** Lederhouse, Rebecca B  
**Sent:** Monday, February 22, 2016 2:25 PM  
**To:** 'karl@steins-patents.com'  
**Subject:** RE: TM Opposition No. 91223088

Dear Karl,

Please forward your proposals by email so that my client can consider them before any telephone conference.

Rebecca B. Lederhouse  
Attorney at Law  
Baker & McKenzie LLP  
300 E. Randolph Street, Suite 5000  
Chicago, Illinois 60601

312-861-8949  
fax 312-698-2710  
[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)

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

From: Karl Steins [<mailto:gringoksteins@gmail.com>] On Behalf Of Karl M. Steins  
Sent: Monday, February 22, 2016 2:24 PM  
To: Lederhouse, Rebecca B  
Subject: TM Opposition No. 91223088

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Sincerely,

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

In the matter of Application No. 86496558

Lytx, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 6**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

## Lederhouse, Rebecca B

---

**From:** Karl Steins <gringoksteins@gmail.com> on behalf of Karl M. Steins <karl@steins-patents.com>  
**Sent:** Thursday, February 25, 2016 3:03 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** Re: TM Opposition No. 91223088- FOR SETTLEMENT PURPOSES ONLY

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Hello Rebecca,

As we discussed in the fall, my client would be looking to come to an agreement with Liberty Mutual to avoid continuing the Opposition. As we still have no real idea what your client's product/service would be, it's difficult to propose specific terms of an agreement, so please accept this as fuel for future discussion.

Your client's TM application for "DRIVE COACH" is for "A downloadable mobile device application that monitors and reports safe and unsafe driving behaviors (class 009) and Auto insurance administration and underwriting (class 036)."

We have no issue with your client's registration of the mark in Class 036 for the services as described. We are concerned strictly about the class 9 goods, in fear of potential for confusion and/or dilution of Lytx's "DriveCam," "Onboard Coach" and "FlexCoach" marks. If your client canceled the Class 9 goods, Lytx would dismiss the Opposition.

We would not object to their registration of "Drive Coach by Liberty Mutual" or a similar mark for the class 9 goods (so long as that's how the mark was used).

One possible option is to negotiate boundaries on your client's future offerings, rather than attempting to wordsmith a new description of goods that would resolve the concerns about likelihood of confusion. Since we don't have any information on the functioning of the Liberty Mutual system, I believe that you'd be better suited to propose boundaries that might prevent our clients from overlapping substantially in the market.

Another option would be to include a term ' "DRIVE COACH" is not affiliated with "DRIVECAM ® ," "ONBOARD COACH ® " or "FLEXCOACH ™" , which are the property of Lytx, Inc.' where your client uses the DRIVE COACH mark.

Please understand that our goal is to reach an amicable settlement - not only to prevent future conflicts between our clients, but also to prevent a third party from diluting the strength of either of our clients' marks.

I look forward to your response/input.

Sincerely,

Karl

On 2/22/2016 12:25 PM, Lederhouse, Rebecca B wrote:

Dear Karl,

Please forward your proposals by email so that my client can consider them before any telephone conference.

Rebecca B. Lederhouse  
Attorney at Law  
Baker & McKenzie LLP  
300 E. Randolph Street, Suite 5000  
Chicago, Illinois 60601

312-861-8949  
fax 312-698-2710  
[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)

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

From: Karl Steins [<mailto:gringoksteins@gmail.com>] On Behalf Of Karl M. Steins  
Sent: Monday, February 22, 2016 2:24 PM  
To: Lederhouse, Rebecca B  
Subject: TM Opposition No. 91223088

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Sincerely,

Karl

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--

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 7**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

**Lederhouse, Rebecca B**

---

**From:** Karl Steins <gringoksteins@gmail.com> on behalf of Karl M. Steins <karl@steins-patents.com>  
**Sent:** Thursday, March 03, 2016 3:36 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** Fwd: Re: TM Opposition No. 91223088- FOR SETTLEMENT PURPOSES ONLY

Hello Rebecca,

Did you receive my email below? If so, can we schedule a time to discuss this matter?

Sincerely,

Karl

----- Forwarded Message -----

**Subject:** Re: TM Opposition No. 91223088- FOR SETTLEMENT PURPOSES ONLY  
**Date:** Thu, 25 Feb 2016 13:03:17 -0800  
**From:** Karl M. Steins <karl@steins-patents.com>  
**Reply-To:** karl@steins-patents.com  
**Organization:** Steins & Associates, P.C.  
**To:** Lederhouse, Rebecca B <Rebecca.Lederhouse@bakermckenzie.com>

Hello Rebecca,

As we discussed in the fall, my client would be looking to come to an agreement with Liberty Mutual to avoid continuing the Opposition. As we still have no real idea what your client's product/service would be, it's difficult to propose specific terms of an agreement, so please accept this as fuel for future discussion.

Your client's TM application for "DRIVE COACH" is for "A downloadable mobile device application that monitors and reports safe and unsafe driving behaviors (class 009) and Auto insurance administration and underwriting (class 036)."

We have no issue with your client's registration of the mark in Class 036 for the services as described. We are concerned strictly about the class 9 goods, in fear of potential for confusion and/or dilution of Lytx's "DriveCam," "Onboard Coach" and "FlexCoach" marks. If your client canceled the Class 9 goods, Lytx would dismiss the Opposition.

We would not object to their registration of "Drive Coach by Liberty Mutual" or a similar mark for the class 9 goods (so long as that's how the mark was used).

One possible option is to negotiate boundaries on your client's future offerings, rather than attempting to wordsmith a new description of goods that would resolve the concerns about likelihood of confusion. Since we don't have any information on the functioning of the Liberty Mutual system, I believe that you'd be better suited to propose boundaries that might prevent our clients from overlapping substantially in the market.

Another option would be to include a term ' "DRIVE COACH" is not affiliated with "DRIVECAM ®," "ONBOARD COACH ® " or "FLEXCOACH ™" , which are the property of Lytx, Inc.' where your client uses the DRIVE COACH mark.

Please understand that our goal is to reach an amicable settlement - not only to prevent future conflicts between our clients, but also to prevent a third party from diluting the strength of either of our clients' marks.

I look forward to your response/input.

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Karl

On 2/22/2016 12:25 PM, Lederhouse, Rebecca B wrote:

Dear Karl,

Please forward your proposals by email so that my client can consider them before any telephone conference.

Rebecca B. Lederhouse  
Attorney at Law  
Baker & McKenzie LLP  
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Chicago, Illinois 60601

312-861-8949  
fax 312-698-2710  
[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)

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

From: Karl Steins [<mailto:gringoksteins@gmail.com>] On Behalf Of Karl M. Steins  
Sent: Monday, February 22, 2016 2:24 PM  
To: Lederhouse, Rebecca B  
Subject: TM Opposition No. 91223088

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Please suggest a couple time windows, if possible. I will be unavailable Friday all day, but am pretty clear except for that.

Sincerely,

Karl

--

Karl M. Steins  
Steins & Associates, P.C.  
2333 Camino del Rio South  
Suite 120  
San Diego, CA 92108

619-692-2004 / 714-549-1198  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 8**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

**Lederhouse, Rebecca B**

---

**From:** Lederhouse, Rebecca B  
**Sent:** Friday, March 04, 2016 8:08 AM  
**To:** 'karl@steins-patents.com'  
**Subject:** RE: Re: TM Opposition No. 91223088- FOR SETTLEMENT PURPOSES ONLY

Dear Karl,

My client is considering your proposal of Feb. 25..

Rebecca B. Lederhouse  
Attorney at Law  
Baker & McKenzie LLP  
300 E. Randolph Street, Suite 5000  
Chicago, Illinois 60601

312-861-8949  
fax 312-698-2710  
[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)



2015 GLOBAL LAW FIRM OF THE YEAR + MANAGING IP  
RANKED BAND 1: 2009-2015 + CHAMBERS GLOBAL

---

**From:** Karl Steins [mailto:gringoksteins@gmail.com] **On Behalf Of** Karl M. Steins  
**Sent:** Thursday, March 03, 2016 3:36 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** Fwd: Re: TM Opposition No. 91223088- FOR SETTLEMENT PURPOSES ONLY

Hello Rebecca,

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Sincerely,

Karl

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**Subject:** Re: TM Opposition No. 91223088- FOR SETTLEMENT PURPOSES ONLY  
**Date:** Thu, 25 Feb 2016 13:03:17 -0800  
**From:** Karl M. Steins <[karl@steins-patents.com](mailto:karl@steins-patents.com)>  
**Reply-To:** [karl@steins-patents.com](mailto:karl@steins-patents.com)  
**Organization:** Steins & Associates, P.C.  
**To:** Lederhouse, Rebecca B <[Rebecca.Lederhouse@bakermckenzie.com](mailto:Rebecca.Lederhouse@bakermckenzie.com)>

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[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)

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

From: Karl Steins [<mailto:gringoksteins@gmail.com>] On Behalf Of Karl M. Steins

Sent: Monday, February 22, 2016 2:24 PM

To: Lederhouse, Rebecca B

Subject: TM Opposition No. 91223088

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Karl

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

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 9**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

**Lederhouse, Rebecca B**

---

**From:** gringoksteins@gmail.com on behalf of Karl Steins <karl@steins-patents.com>  
**Sent:** Thursday, April 07, 2016 1:36 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** Opposition Number 91223088

Hello Rebecca,

In view of the protracted settlement discussions, we are now reaching the end of the period for discovery. Unless we're able to consummate a settlement right away, my intention would be to request that Discovery dates be re-set and restarted. Will you agree to such a motion?

Thank you,

Karl

--

Karl M. Steins  
Steins & Associates, P.C.  
2333 Camino del Rio South  
Suite 120  
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619-692-2004 / 714-549-1198  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application No. 86496558

Lytix, Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91223088
	)	
Liberty Mutual Insurance Company	)	
	)	
Applicant.	)	
_____	)	

**EXHIBIT 10**  
**TO DECLARATION IN SUPPORT OF**  
**APPLICANT'S RESPONSE TO OPPOSER'S**  
**MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS**

## Lederhouse, Rebecca B

---

**From:** Lederhouse, Rebecca B  
**Sent:** Friday, April 08, 2016 2:29 PM  
**To:** 'Karl Steins'; 'gringoksteins@gmail.com'  
**Subject:** RE: Opposition Number 91223088

Dear Karl,

My client does not agree to your proposed motion.

Sincerely,

Rebecca B. Lederhouse  
Attorney at Law  
Baker & McKenzie LLP  
300 E. Randolph Street, Suite 5000  
Chicago, Illinois 60601

312-861-8949  
fax 312-698-2710  
[Rebecca.Lederhouse@BakerMcKenzie.com](mailto:Rebecca.Lederhouse@BakerMcKenzie.com)

 BAKER & MCKENZIE

RANKED BAND 1: 2009-2016 • CHAMBERS GLOBAL  
2015 GLOBAL LAW FIRM OF THE YEAR • MANAGING IP

**From:** [gringoksteins@gmail.com](mailto:gringoksteins@gmail.com) [mailto:[gringoksteins@gmail.com](mailto:gringoksteins@gmail.com)] **On Behalf Of** Karl Steins  
**Sent:** Thursday, April 07, 2016 1:36 PM  
**To:** Lederhouse, Rebecca B  
**Subject:** Opposition Number 91223088

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Thank you,

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