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

Proceeding	92043753
Party	Plaintiff Ernestina Castro, S.A. de C.V.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ERNESTINA CASTRO, S.A. DE. C.V.	:	
	:	
Petitioner	:	
	:	
v.	:	Cancellation No. 92043753
	:	
DOCEIRA CAMPOS DO JORDAO LTDA.	:	
	:	
Registrant	:	

**PETITIONER’S MOTION FOR JUDGMENT OR FOR AN EXTENSION OF THE
DISCOVERY PERIOD**

Petitioner Ernestina Castro, S.A. de C.V (“Petitioner”), by its undersigned counsel, hereby respectfully moves pursuant to Rule37(b)(2) of the Federal Rules of Civil Procedure for entry of an Order granting the cancellation of Registration No. 2,781,559, owned by Registrant Doceira Campos Do Jordao Ltda (“Registrant”), which is the subject of this cancellation.

Alternatively, Petitioner moves that the close of discovery be extended for a period of sixty (60) days after the date on which the Board rules on this motion and that other dates be reset accordingly.

On January 28, 2005, Petitioner properly served written interrogatories and document requests on Registrant. In these requests, Petitioner sought information critical to the Board’s determination of Petitioner’s claims that Registrant’s mark is confusingly similar to Petitioner’s marks under Section 2(d) of the Trademark Act, and that Registrant’s mark is likely to cause deception or falsely suggest a connection with Petitioner, in violation of Section 2(a) of the Trademark Act. Registrant’s answers to Petitioner’s discovery requests were due on or before March 4, 2005. However, Registrant failed to serve any answers by that deadline and to contact

Petitioner's counsel to request an extension of time. Registrant simply ignored the deadline. Despite Petitioner's repeated good faith efforts to secure sufficient and proper responses to its interrogatories and requests for production, Registrant failed to provide any responses or documents, and refused to even indicate when, or if, responses would ever be provided. Thus, on April 20, 2005, Petitioner filed a combined motion to compel or for judgment, and for an extension of the discovery period.

On April 7, 2006, the Board issued an order granting Petitioner's motion to compel discovery and extended the discovery period. A copy of the Order of the Board is attached as Exhibit A. The Board granted Petitioner's motion to compel discovery and ordered Registrant to provide responses, without objections, to Petitioner's outstanding discovery requests within 30 days from the mailing date of the order. Thus, Registrant's answers were due on or before May 7, 2006. However, Registrant failed to serve its responses as ordered by the Board. If a party fails to comply with an order of the Board relating to discovery, the Board may make any appropriate order, including rendering a judgment against the disobedient party. 37 C.F.R. § 2.120(g). Thus, in view of Registrant's failure to comply with the order of the Board compelling discovery, judgment should be entered in favor of Petitioner.

Moreover, Registrant notes that in its Order of April 7, 2006, the Board ordered that Registrant answer within 25 days explaining why it failed to timely file its answer to the amended petition for cancellation. The Board indicated also that if Registrant did not file any answer by the deadline, the Board would presume that Registrant had lost interest in the case, and that it might enter judgment against Registrant. Registrant was supposed to file its answer on or before May 2, 2006. However, to Petitioner's knowledge, no answer was filed. It is obvious that Registrant has lost interest in the case and that judgment should be entered in

Petitioner's favor.

Finally, and in the alternative, Petitioner also moves that the close of discovery be extended for a period of sixty (60) days after the date on which the Board rules on this motion and that other dates be reset accordingly.

Respectfully submitted,

ERNESTINA CASTRO, S.A. DE. C.V.

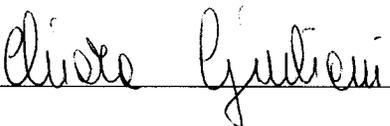
By:  _____

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion is being served upon Registrant's counsel Robert B. Golden, Lackenbach Siegel LLP, One Chase Road, Scarsdale, New York 10583 this 5th of June 2006 marked first class mail, postage prepaid.

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