

ESTTA Tracking number: **ESTTA92586**

Filing date: **08/01/2006**

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

Proceeding	92045615
Party	Defendant Power Research Inc. Power Research Inc. 1350 East Flamingo Road, Suite 44 Las Vegas, NV 89119
Correspondence Address	Power Research Inc. 1350 East Flamingo Road, Suite 44 Las Vegas, NV 89119
Submission	Reply in Support of Motion
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Date	08/01/2006
Attachments	PowerFuelReply.pdf (14 pages)(419150 bytes)

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

FPPF Chemical Co., Inc.,)
 Petitioner)
)
 v.)
)
Power Research, Inc.)
 Registrant)
_____)

Cancellation No. 92045615
Registration No.: 2,968,113
Mark: POWER FUEL

**REPLY TO PETITIONER’S OPPOSITION TO REGISTRANT’S
REQUEST FOR LEAVE TO FILE LATE ANSWER**

Registrant Power Research, Inc. (“Registrant” or “Power Research”), by and through its undersigned attorneys, files this Reply to Petitioner’s Opposition to Registrant’s Request for Leave to File Late Answer (the “Opposition”) and states as follows:

As detailed in its Request for Leave to File Late Answer (the “Motion for Leave”), the failure of Power Research to timely respond to the Petition to Cancel (the “Petition”) was due to the fact that it did not receive the Board’s March 21, 2006 notice of the Petition and setting of trial dates. Thus, the Registrant was not aware of the Petition until it received the Board’s Notice of Default/Order to Show Cause dated May 30, 2006.

In its Opposition, Petitioner requests that Power Research’s Motion for Leave be denied on grounds that: (i) the motion lacks sufficient evidentiary basis in that it allegedly consists of “nothing more than attorney argument[;]” and (ii) there purportedly exists “affirmative evidence” that Registrant’s failure to timely respond to the Petition was due to gross neglect or willful conduct. Registrant disputes these allegations and respectfully submits that its Motion for Leave should be granted.

I. Sufficient Evidentiary Basis has been Established to Grant Registrant's Request for Leave to File Late Answer

Petitioner's allegation that the Motion for Leave consisted of "mere attorney argument" is erroneous. Power Research's Motion for Leave included direct evidence from Power Research confirming the fact that the company never received the Petition to Cancel. Specifically, on June 15, 2006 a representative of Power Research, Inc., acting *pro se*, corresponded directly with the Board and alerted it that the Registrant had never received the Petition to Cancel. This communication was received by the Board on June 23, 2006, entered into the docket as of July 3, 2006 and constitutes evidence of record.

Moreover, the referenced communication was attached to the Motion for Leave as Exhibit B and constitutes direct evidence, *albeit* not under oath, in the form of a statement by Registrant confirming that it did not receive the Board's original communication dated March 21, 2006 forwarding the Petition to Cancel. Accordingly, Power Research respectfully submits that its Motion for Leave does not consist of "mere attorney argument" and does not lack sufficient evidentiary basis.

It is Power Research's position that its Motion for Leave is supported by direct evidence sufficient to allow the Board to rule in its favor. Nevertheless, to address Petitioner's argument that Registrant's statements should have been made under oath and in order that the Board may be fully informed in its ruling on the Motion for Leave, Registrant now submits herewith Wanda Lewis' Declaration in Support of Registrant's Reply to Petitioner's Opposition to Registrant's Request for Leave to File Late Answer (the "Lewis Declaration") as Attachment A. The Lewis Declaration confirms and sets forth under oath the central facts detailed in Power Research's Motion for Leave, including among other facts, that Registrant never received a copy of the

Petition to Cancel nor the Scheduling Order issued by the Board, that Registrant determined that there is no record of Registrant's mail agent receiving either the Petition to Cancel or the Scheduling Order, that Registrant first learned of the Petition to Cancel when it received the Order to Show Cause and that Registrant immediately responded to the Order to Show Cause explaining that the Company never received the Petition to Cancel and requesting an extension of time to reply. See Attachment A, Lewis Declaration, ¶¶ 7-10.

II. Registrant's Failure to Timely Respond was not the Result of Gross Neglect or Willful Conduct and Registrant Meets the Trademark Trial and Appeal Board Standard of Good Cause to Permit Late Filing of the Answer

Under Trademark Trial and Appeal Board precedent, "good cause [to permit late filing of an answer] is usually found to have been established if the delay in the filing is not the result of willful conduct or gross neglect on the part of the defendant, if the delay will not result in substantial prejudice to the plaintiff, and if the defendant has a meritorious defense." *TBMP* §312.02; *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 U.S.P.Q.2d 1556, 1557 (TTAB 1992); *see also Paolo's Associates Ltd. Partnership v. Bodo*, 21 U.S.P.Q.2d 1899, 1902 (TTAB 1991).

Other than the bald assertions in the Opposition, there is nothing to suggest that there has been willful conduct or gross neglect on the part of Power Research. Moreover, the purported "affirmative evidence" set forth in the Opposition, even if true, does not establish gross neglect on the part of Power Research in connection with the failure to timely file an answer.

In an effort to encourage the Board to draw the conclusion that Power Research must in fact have received the Petition, Petitioner sets forth a litany of wholly unrelated allegations based on circumstantial evidence. These assertions, however, have nothing to do with the central issue

at hand - whether Power Research received the Petition – and, therefore, cannot be marshaled together to prove gross neglect or willful conduct.

Registrant's prior trademark prosecution involving the prior receipt of communications from the U.S. Patent and Trademark Office, Registrant's purported receipt of Petitioner's demand letter of April 5, 2005 (almost one year before the Petition was filed and not including any petition to cancel) and Petitioner's placement of a telephone call to Registrant threatening to file a cancellation action, have nothing to do with whether Registrant actually received the Cancellation Petition from the Board, and thus, do not establish gross neglect on the part of Registrant. None of the foregoing circumstances alleged as "affirmative evidence" by Petitioner alerted Power Research that a petition to cancel had in fact been filed and that it was operating under a time deadline to file an answer. Where Power Research had no actual notice of the Petition it cannot be said to have acted willfully or to have engaged in gross neglect.

Still further, Petitioner's Response does not aver that the delay will result in substantial prejudice to the Petitioner. Registrant respectfully submits that there is no evidence that the delay will result in substantial prejudice to the Petitioner. The Registrant's late-filed Answer does not prejudice the rights of either party, nor delay the proceedings.

Likewise, Petitioner's Response fails to contend that Registrant's Answer and affirmative defenses set forth therein are not meritorious defenses. Registrant respectfully submits that meritorious defenses have been shown and notes that the "showing of a meritorious defense does not require an evaluation of the merits of the case. All that is required is a plausible response to the allegations in the complaint." T.M.E.P. § 312.02 (*Citing DeLorme Publishing Co v. Eartha's Inc.*, 60 U.S.P.Q.2d 1222, 1224 (TTAB 2000)).

Further, the Lewis Declaration confirms under oath that the delay in filing was not the result of willful conduct or gross neglect on the part of Registrant. In summary, despite the Registrant's diligent efforts and longstanding mail receipt procedure to ensure the proper handling and delivery of important legal documents, the simple fact is that the Petition and the Scheduling Order were never received by the Registrant. See Attachment A, Lewis Declaration, ¶¶ 1-8. Once Registrant learned of the Petition and cancellation action, the Registrant promptly responded to the Order seeking an extension of time, retained counsel and filed its Answer. See Attachment A, Lewis Declaration, ¶¶ 9-11.

III. Conclusion

The Registrant believes that it has made a satisfactory evidentiary showing of good cause why default judgment should not be entered against it and notes that the Trademark Trial and Appeal Board weighs heavily in favor of deciding cases on their merits and resolving any doubt in the favor of the defendant, Power Research. Therefore, Power Research respectfully requests that the Board exercise its discretion pursuant to TBMP §312.02 to accept the Registrant's Answer and allow the proceeding to be adjudicated on the merits.

Dated: August 1, 2006

Respectfully submitted,

AKERMAN SENTERFITT

/Peter A. Chiabotti/
Jennifer Parkins Rabin, Esq.
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*Attorneys for Registrant
Power Research, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Reply to Petitioner's Opposition to Registrant's Request for Leave to File Late Answer has been served on Walter W. Duft by mailing said true and complete copy on the 1st of August 2006, via First Class Mail, postage prepaid, and fax (716-633-1932), to:

Walter W. Duft
Law Offices of Walter W. Duft
8616 Main Street, Suite 2
Williamsville, NY 14221

/Peter A. Chiabotti/
Peter A. Chiabotti

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

FPPF Chemical Co., Inc.,)
Petitioner)
)
v.)
)
Power Research, Inc.)
Registrant)
_____)

Cancellation No. 92045615
Registration No.: 2,968,113
Mark: POWER FUEL

WANDA LEWIS’S DECLARATION
IN SUPPORT OF REGISTRANT’S REPLY TO PETITIONER’S OPPOSITION TO
REGISTRANT’S REQUEST FOR LEAVE TO FILE LATE ANSWER

I, Wanda Lewis, declare and state as follows:

1. I am the President of Power Research, Inc. (the “Company”, “Registrant” or “Power Research”) and I make this declaration based upon personal knowledge in support of Registrant’s Reply to Petitioner’s Opposition to Registrant’s Request for Leave to File Late Answer.
2. Our Company has retained and used the address of 1350 East Flamingo Road, Suite 44, Las Vegas, NV 89119 (the “mail drop box”) as a mail drop box for its official mailing address for many years.
3. Power Research’s mail drop box is used as a permanent address for purposes of receipt of all of the Company’s official mail and important legal and other documents.
4. All correspondence, and in particular, important legal and other official documents, that are mailed directly to the mail drop box are timely gathered by a mail agent and forwarded to the Company’s current physical address in Houston, Texas, in accordance with the Registrant’s longstanding procedure.

5. Power Research established the mail drop box and foregoing procedure as a safety measure to ensure the proper handling and delivery of important documents.
6. Power Research's mail drop box and longstanding procedure in connection with the same, have been implemented for, among other things, the purpose of preventing the loss or misdelivery of the Company's important legal and other documents.
7. Power Research never received a copy of the Petition to Cancel filed by FPPF Chemical Co., Inc., nor a copy of the Scheduling Order issued by the Board.
8. The Company's Operations and Administrative Assistant, Rachel East, within the scope of her duties and with the requisite authority of the Company, contacted the Company's mail agent in Nevada for the mail drop box and determined that there is no record of receipt of the Petition to Cancel, nor of the Scheduling Order mailed by the Trademark Trial and Appeal Board.
9. Power Research first learned of the instant Petition to Cancel when it received the Board's Order to Show Cause, dated May 30, 2006.
10. The Company's Operations and Administrative Assistant, Rachel East, within the scope of her duties and with the requisite authority of the Company, immediately responded thereto by mailing the Trademark Trial and Appeal Board the correspondence attached hereto as Exhibit A, explaining that the Company never received the Petition to Cancel and requesting an extension of time to reply.
11. At the same time, Power Research mailed the correspondence attached hereto as Exhibit B to counsel for the Petitioner, alerting him to the fact that the Company had only recently learned of the Petition to Cancel and confirming the Company's intent to file an Answer.

Cancellation No. 92045615

Mark: POWER FUEL

Wanda Lewis's Declaration in Support of Registrant's

Reply to Petitioner's Opposition to Registrant's Request for Leave to File Late Answer

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Attachment A

Declaration

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

Executed on August 1, 2006

Signature: Wanda Lewis

Name: Wanda Lewis

Title: President of Power Research, Inc.

Exhibit A



United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

June 15, 2006

Opposition No. 92045615

FPPF Chemical Co., Inc.

v.

Power Research, Inc.

To Whom It May Concern:

The purpose of this letter is to show why judgment by default should NOT be entered against us, Power Research Inc.

This office never received notice that a Petition to Cancel was filed from Walter W. Duft, attorney for FPPF Chemical Company.

The letter from the USPTO dated May 30, 2006 is the first correspondence we have received regarding this matter. If we had known this petition had been filed, rest assured we would have responded promptly.

It is for this reason we feel a judgment by default should not be entered against us, and an extension should be granted to allow us proper response time.

Thank you,

A handwritten signature in cursive script that reads "Rachel A. East".

Rachel A. East
Operations Assistant
On behalf of Wanda E. Lewis, President

06-23-2006

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Exhibit B

Walter W. Duft
Law Offices of Walter W. Duft
8616 Main Street, Suite 2
Williamsville, NY 14221

Regarding: Trademark Cancellation #92045615

June 15, 2006

Mr. Duft:

This letter is to inform you that this office never received a copy of the Petition to cancel, dated March 21, 2006, regarding our Power Fuel trademark number 2968113, and was therefore unaware of any action being taken against us.

It is our understanding that it is the Plaintiff's responsibility to notify the Defendant of any action taken.

We have sent a letter to the United States Patent and Trademark Office stating why a judgment by default should not be entered against us. We have also filed a motion to extend our response time regarding this matter.

Respectfully,

Rachel A. East
Operations Assistant
On behalf of Wanda E. Lewis, President

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