

ESTTA Tracking number: **ESTTA87856**

Filing date: **06/29/2006**

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	Other Motions/Papers
Filer's Name	Jennifer Parkins Rabin
Filer's e-mail	jennifer.rabin@akerman.com
Signature	/Jennifer Parkins Rabin/
Date	06/29/2006
Attachments	Request for Leave.pdf (14 pages)(336327 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

REGISTRANT'S REQUEST FOR LEAVE TO FILE LATE ANSWER

Registrant Power Research, Inc. (the "Registrant"), through its undersigned counsel, hereby requests that the Trademark Trial and Appeal Board (the "Board") accept its late Answer to the Petition to Cancel filed in the above-referenced action. The Registrant has good cause for requesting that the Board decline to enter a default judgment and accept the Registrant's Answer filed concurrently herewith and attached hereto as Exhibit A.

The Petition to Cancel in this matter was filed by Petitioner on or about March 20, 2006. Based upon the record, it appears that on March 21, 2006, a Notice of Filing of Petition to Cancel was mailed by the Board to the Registrant at its official mailing address at 1350 East Flamingo Road, Suite 44, Las Vegas, NV 89119. Registrant has retained and used the foregoing mail drop address for many years. The address is one that is used as a permanent address for purposes of receipt of all of the Registrant's official mail and important legal and other documents. According to longstanding procedure, all important legal and other official documents are mailed directly to the mailbox address shown above, gathered by the mail agent at that location and then forwarded to the current physical address of the Registrant in Houston,

Texas. The Registrant established the mailbox drop location and foregoing procedure as a safety measure to ensure the proper handling and delivery of important documents where the company's corporate offices have changed location from time to time. Accordingly, the Registrant maintains the foregoing mail delivery procedure specifically for the purpose of preventing the loss or misdelivery of the Registrant's important legal and other documents.

Despite the foregoing safeguards, the Registrant never received a copy of the Petition to Cancel filed by FPPF Chemical Co., Inc. or the scheduling order issued by the Board. The Registrant has contacted its mail agent at the above-identified address in Nevada and they have no record of receipt of the Petition to Cancel mailed by the Board

The Registrant first learned of the instant Petition to Cancel when it received the Board's Order to Show Cause, dated May 30, 2006. The Registrant, acting pro se, immediately responded thereto by mailing the Board the correspondence attached hereto as Exhibit B explaining that it never received the Petition to Cancel and requesting an extension of time to reply. Simultaneously therewith, the Registrant mailed the correspondence attached hereto as Exhibit C to counsel for the petitioner, alerting him to the fact that the Registrant had only recently learned of the Petition to Cancel and confirming the Registrant's intent to file an Answer. On June 27, 2006, the Registrant retained the undersigned counsel to represent it in this Cancellation Proceeding. This Request for Leave to File Late Answer and the Registrant's Answer are being filed within the 30-day period set forth by the Board in its Order to Show Cause.

Under 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 USPQ2d 1556, 1557 (TTAB 1992); *see also Paolo's Associates Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1902 (TTAB 1991).

In this case, it is clear that there has been no willful conduct or gross neglect on the part of the Registrant. Despite the Registrant's diligent efforts to ensure the proper handling and delivery of important legal documents, the Petition to Cancel was never received by the Registrant. Instead, the Registrant only recently learned of the Petition by means of the Board's Order to Show Cause. Once it learned of the matter, the Registrant promptly responded to the Order seeking an extension of time, retained counsel and now files its Answer.

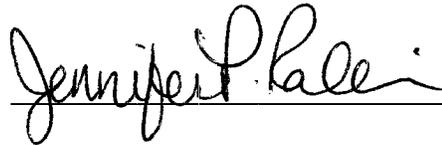
Moreover, the grant of the Registrant's request for leave will not result in prejudice to the Petitioner. Discovery in this matter is currently open and is not scheduled to close until October 7, 2006. If the Registrant's Answer is accepted and the proceeding continued, sufficient time remains for completing discovery within the original trial schedule established by the Board. Accordingly, the Registrant's late-filed Answer does not prejudice the rights of either party, nor delay the proceedings. Finally, the Registrant asserts that it has made out meritorious defenses in its Answer to the Petition to Cancel submitted herewith.¹

The Registrant believes that it has made a satisfactory showing of good cause why default judgment should not be entered against it. It is the policy of the Board to decide cases on their merits and to resolve any doubt in the favor of the defendant. Therefore, the Registrant 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.

¹ 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. *TBMP* §312.02 (citing *DeLorme Publishing Co. v. Eartha's Inc.*, 60 USPQ2d 1222, 1224 (TTAB 2000)).

Dated: June 29, 2006

Respectfully submitted,



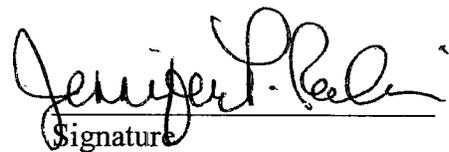
Jennifer Parkins Rabin, Esq.
AKERMAN SENTERFITT
222 Lakeview Avenue, Suite 400
Esperante Building, Fourth Floor
West Palm Beach, Florida 33401
Phone: 561-653-5000
Fax: 561-659-6313
Email: jennifer.rabin@akerman.com
Attorney for Registrant
Power Research, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by

U.S. mail on June 29, 2006 to:

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



Signature

EXHIBIT A

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

FPPF Chemical Co., Inc.,)	
Petitioner)	
)	
v.)	Cancellation No. 92045615
)	Registration No. 2,968,113
Power Research, Inc.)	
Registrant)	
_____)	

REGISTRANT'S ANSWER TO PETITION TO CANCEL

Registrant Power Research, Inc. (the "Registrant"), through its undersigned counsel, hereby answers the Petition to Cancel filed by FPPF Chemical Co., Inc. as follows:

1. Registrant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 1 of the Petition to Cancel, and therefore denies the same.
2. Registrant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 2 of the Petition to Cancel, and therefore denies the same.
3. Registrant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 3 of the Petition to Cancel, and therefore denies the same.
4. With respect to Paragraph 4 of the Petition to Cancel, Registrant admits that Registration No. 2,968,113 issued from an intent-to-use application, Serial No.

78/160,058, filed under Trademark Act §1(b), 15 U.S.C. §1051(b). Registrant admits that the application was filed on September 3, 2002. Applicant admits that it filed a Statement of Use relating to Application Serial No. 78/160,058 reciting a date of first use of 1999 and first use in interstate commerce of 2000 for the POWER FUEL mark.

5. Registrant denies the allegations contained in Paragraph 5 of the Petition to Cancel.

6. With respect to Paragraph 6 of the Petition to Cancel, Registrant denies Petitioner's allegation that it is being damaged by the Registrant's POWER FUEL registration. As to all of the remaining allegations in Paragraph 6 of the Petition to Cancel, Registrant is without sufficient knowledge or information to either admit or deny such allegations, and therefore denies the same.

7. Registrant denies the allegations contained in Paragraph 7 of the Petition to Cancel.

8. Registrant denies the allegations contained in Paragraph 8 of the Petition to Cancel.

AFFIRMATIVE DEFENSES

1. Petitioner's Petition to Cancel should be dismissed for failure to state a claim upon which relief can be granted.

2. Registrant's POWER FUEL mark is not likely to cause confusion with Petitioner's mark.

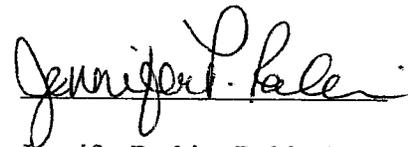
3. The registration of Registrant's POWER FUEL mark is not causing damage or injury to Petitioner.

4. Petitioner's claims should be denied on grounds of laches.
5. Petitioner's claims should be denied on grounds of acquiescence.
6. Petitioner's claims should be denied on grounds of waiver.
7. Petitioner's claims should be denied on grounds of estoppel.
8. Petitioner's claims should be denied on grounds of unclean hands.

WHEREFORE, Registrant prays that the Petition to Cancel be dismissed.

Dated: June 29, 2006

Respectfully submitted,



Jennifer Parkins Rabin, Esq.
AKERMAN SENTERFITT
222 Lakeview Ave. Suite 400
Esperante Building
Fourth Floor
West Palm Beach, FL 33401
Phone: 561-653-5000
Attorney for Registrant
Power Research, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served
by U.S. mail on June 29, 2006 to:

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

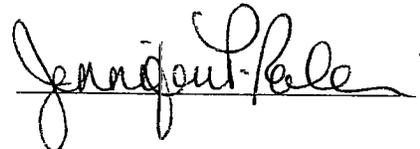


EXHIBIT B

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,

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

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EXHIBIT C

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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