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

Proceeding	92046796
Party	Plaintiff eSpeed, Inc.
Correspondence Address	GEORGES NAHITCHEVANSKY KILPATRICK STOCKTON LLP 31 W. 52ND STREET NEW YORK, NY 10019 UNITED STATES juthomas@kilpatrickstockton.com, ghn@kilpatrickstockton.com
Submission	Reply in Support of Motion
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Signature	/William M. Bryner/
Date	09/05/2007
Attachments	Reply Brief.pdf (62 pages)(1545992 bytes)

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

ESPEED, INC.,)	
)	
Petitioner,)	
)	Cancellation No. 92046796
vs.)	
)	Mark: ESPEEDIENT SYSTEMS
ESPEEDIENT SYSTEMS, LLC,)	
)	
Registrant.)	

**PETITIONER’S REPLY BRIEF IN SUPPORT OF MOTION FOR
LEAVE TO AMEND PETITION TO CANCEL**

On July 31, 2007, Petitioner eSpeed, Inc. (“eSpeed”), through counsel and pursuant to 37 C.F.R. § 2.115 and Fed. R. Civ. P. 15(a), filed its Motion for Leave to Amend Petition to Cancel (the “Motion”). On August 20, 2007, Registrant eSpeedient Systems, LLC (“eSpeedient”), filed its response in opposition to the Motion (the “Response”). Although eSpeed acknowledges that the filing of a reply brief is not a matter of right, the Trademark Trial and Appeal Board (the “Board”) may nonetheless, in its discretion, give consideration to a reply brief. See 37 C.F.R. § 2.127(a). Consequently, eSpeed respectfully requests that the Board consider eSpeed’s reply brief herein because it seeks to clarify the issues under consideration and to assist the Board in arriving at a just resolution of the Motion.

REPLY ARGUMENT

eSpeedient does not dispute the governing legal standard, namely, that leave to amend a pleading “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Nor does eSpeedient dispute that courts, and the Board, have repeatedly held that leave to amend a complaint should be liberally granted unless a proposed amendment will result in undue

prejudice to the other party, has not been offered in good faith, has been unduly delayed, or the moving party has had repeated opportunities to cure defects by amendments previously allowed. *See, e.g., Foman v. Davis*, 371 U.S. 178, 182 (1962); *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993); *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503 (T.T.A.B.1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 U.S.P.Q.2d 1221 (T.T.A.B. 1993). Instead, eSpeedient merely argues in conclusory fashion, and without any evidence to support its allegations, that it would be prejudiced by the proposed amendment. However, eSpeedient's arguments lack merit and, as such, the Motion should be granted. Furthermore, and as requested in the instant Motion, eSpeed requests that Board reset the close of the discovery period in this proceeding, currently scheduled to close on September 8, 2007, upon its ruling on the Motion.

I. Any Alleged "Delay" is Due to eSpeedient's Conduct, not eSpeed's

In its Response, eSpeedient's sole argument is that the Motion is a dilatory tactic by eSpeed to avoid a resolution of this dispute on the merits. Resp. at p. 1. In making these specious assertions, eSpeedient has failed to acknowledge that any delays to this point have been of its own making. Similarly, eSpeedient fails to address the ways in which its failures to respond to legitimate discovery requests occasioned the timing of eSpeed's Motion.

Because eSpeedient has mischaracterized the history of this proceeding, and has failed to introduce any evidence to support its unfounded allegations, eSpeed believes it is necessary to clarify the facts, as supported by the Declaration of Georges Nahitchevansky attached hereto as Exhibit 1. For instance, eSpeedient claims that eSpeed "delayed two years in filing its Petition to Cancel", Resp. at p. 1, without explaining that eSpeed attempted to

resolve this matter amicably with little to no cooperation from eSpeedient's counsel for eight months before commencing the cancellation proceeding. Nahitchevansky Decl. at ¶¶ 2.

eSpeed first became aware of the trademark at issue, ESPEEDIENT SYSTEMS (the "Mark"), in late 2005, less than one year after the Mark was registered. *Id.* After conducting an investigation regarding the Mark, eSpeed's counsel sent a demand letter to eSpeedient on eSpeed's behalf. *Id.* at ¶¶ 2 and Ex. A. Although eSpeedient's counsel advised that he would respond to eSpeed's demand after discussing the matter with eSpeedient, no response was forthcoming and eSpeed's counsel contacted him again. *Id.* At that point, eSpeedient's counsel claimed to be making arrangements for the matter to be handled by another attorney. *Id.* After more time passed without a response from eSpeedient, eSpeed's counsel again contacted eSpeedient's counsel. *Id.* eSpeedient's counsel again delayed in responding, at which point eSpeed's counsel informed eSpeedient that eSpeed intended to file a petition to cancel the registration for the Mark. *Id.* eSpeed's counsel was then contacted by another attorney on eSpeedient's behalf, but she too failed to pursue the matter. *Id.* After more than eight months of fruitless attempts to resolve this matter amicably with eSpeedient, eSpeed had no choice but to file the instant cancellation proceeding on December 19, 2006, well within the five-year time period allowed by 15 U.S.C. § 1064. *Id.*

Once the cancellation proceeding was instituted, eSpeedient continued to protract the litigation by unjustifiably attempting to avoid its discovery obligations. On February 7, 2007, eSpeed served eSpeedient with its first set of discovery requests, including a specific request for information and documents regarding eSpeedient's use, including its first use, of the Mark. *Id.* at ¶¶ 3. On March 14, 2007, eSpeedient purported to respond to these requests, but did not produce a single document and its responses consisted almost entirely of refusals

to respond. *Id.* at ¶ 3 and Ex. B. Among other things, eSpeedient refused to provide any information about how the Mark was selected, the types of services for which the Mark has been or is being used, or eSpeedient's first use of the Mark. *Id.* After eSpeed's counsel sent a letter to eSpeedient's counsel regarding the deficiencies in these responses and asking for revised responses and the production of documents, eSpeedient's attorney responded, nearly a month later, by arguing that the information about the use of the Mark was not "relevant to the narrow issue presented by [eSpeed's] Petition to Cancel nor is it likely to lead to the discovery of evidence that would be admissible in that proceeding." *Id.* at ¶¶ 5-6 and Exs. C-D. The next day, eSpeed's counsel sent a second letter to eSpeedient's counsel, again insisting that eSpeedient revise its responses and produce the responsive documents without delay. *Id.* at ¶ 7 and Ex. E.

Nearly two weeks later, on May 10, 2007, eSpeedient's counsel responded by stating that eSpeedient would produce some documents upon the entry of a mutually-agreeable protective order. *Id.* at ¶ 8 and Ex. F. Once eSpeedient finally produced a handful of documents and a conclusory statement about its alleged first use of the Mark, eSpeed's counsel undertook his own investigation into eSpeedient's first use of the Mark. *Id.* at ¶¶ 9-10. The instant Motion was filed promptly after the completion of that investigation and after discussion with eSpeed's in-house counsel. *Id.* at ¶ 10.

Because it took nearly four months for eSpeedient to produce a single document and to respond to eSpeed's discovery requests, the parties agreed to extend the close of the discovery period by sixty (60) days to allow time for follow-up discovery. *Id.* at ¶ 11. The extension request was filed on May 22, 2007, eight days before eSpeedient produced finally its first documents. *Id.*

Once these facts are brought to light, it becomes clear that any delay in this proceeding has been the result of eSpeedient's own dilatory tactics. eSpeed, on the other hand, has actively pursued the resolution of this matter, including eSpeed's initial attempts to resolve this dispute without resort to litigation and eSpeed's promptness in following-up with eSpeedient's counsel regarding its discovery requests. Furthermore, eSpeed quite simply could not have amended its petition to include a claim of fraud until after eSpeedient actually engaged in the discovery process and produced materials sufficient to permit eSpeed to plead its claims of fraud with the particularity required by Fed. R. Civ. P. 9. Until eSpeedient produced (or apparently could not produce) information or documents confirming the alleged first use date of the Mark, eSpeed's additional claims would have been premature.

Furthermore, eSpeedient's claim that eSpeed "has already extended the discovery period" is equally disingenuous. Once eSpeedient failed to respond to eSpeed's discovery requests, eSpeed had no choice but to move for an extension of the discovery period, which it did with eSpeedient's consent. As stated above, despite eSpeed's request for documents in February, 2007, it did not receive any documents until the end of May, 2007, and the close of discovery was initially scheduled to close on July 8, 2007. Thus, eSpeedient's own tardiness in producing documents led to the very delays of which eSpeedient now complains. Therefore, eSpeedient cannot now legitimately claim "delay" in the matter when it has been eSpeedient's own conduct that is to blame.

II. eSpeedient Has Shown No Prejudice That Would Result from Granting the Motion

eSpeedient has not established, in any respect, how granting this Motion would prejudice eSpeedient. As noted above, granting the Motion would not result in any

prejudicial delay. Furthermore, and as more fully explained in the Motion, eSpeedient still has ample opportunity to investigate and respond to these claims, especially when the information necessary to respond to these claims is exclusively within eSpeedient's possession. Finally, extending a cancellation proceeding in order to address eSpeed's additional claims would hardly seem to prejudice a Registrant such as eSpeedient since the registration would remain valid and uncanceled until a final resolution of this matter. Because eSpeedient has not, and cannot, show that any prejudice would result from the Board's granting of the Motion, the Motion should be granted.

III. eSpeedient Does Not Contest the Legal Sufficiency of the Amended Petition to Cancel

When a party requests leave to add a new claim, the Board considers whether the proposed pleading is legally sufficient. *See, e.g., Octocom Systems Inc. v. Houston Computer Services Inc.*, 918 F.2d 937, 16 U.S.P.Q.2d 1783 (Fed. Cir. 1990); *Cool-Ray, Inc. v. Eye Care, Inc.* 183 U.S.P.Q. 618, 621 (T.T.A.B. 1974). As shown in the Motion and brief in support thereof, there is ample legal support for eSpeed's additional claims of non-use and fraud. Moreover, eSpeedient does not contest the legal sufficiency of these additional claims at all in its Response. Therefore, the Motion should be granted because the additional claims are legally sufficient.

CONCLUSION

For the reasons stated above, eSpeed respectfully requests that the Board grant eSpeed's Motion for Leave to Amend Petition to Cancel and allow eSpeed to amend its Petition to Cancel as proposed in the instant Motion. eSpeed also requests that the Board reset the close of the discovery period in this proceeding upon its ruling on the Motion.

Dated: September 5, 2007

Respectfully submitted,

KILPATRICK STOCKTON LLP

/s/ William M. Bryner

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e-mail: wbryner@kilpatrickstockton.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PETITIONER'S REPLY BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND PETITION TO CANCEL**

was served upon counsel for the Respondent by first class mail, addressed as follows:

Richard W. Young
Melissa S. Dillenbeck
DRINKER BIDDLE GARDNER CARTON
191 N. Wacker Drive, Suite 3700
Chicago, IL 60606-1459

This the 5th day of September, 2007.

/s/ William M. Bryner
William M. Bryner

EXHIBIT 1

**TO PETITIONER'S REPLY BRIEF IN SUPPORT OF MOTION
FOR LEAVE AMEND PETITION TO CANCEL**

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796

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

ESPEED, INC.,)	
)	
Petitioner,)	
)	Cancellation No. 92046796
vs.)	
)	Mark: ESPEEDIENT SYSTEMS
ESPEEDIENT SYSTEMS, LLC,)	
)	
Registrant.)	

DECLARATION OF GEORGES NAHITCHEVANSKY

I, GEORGES NAHITCHEVANSKY, declare under penalty of perjury under the laws of the United States as follows:

1. I am a member of the bar of the State of New York and am a partner in the law firm of Kilpatrick Stockton LLP. I am one of the counsel of record for Petitioner eSpeed, Inc. (“Petitioner”) in the above-entitled action. I make this declaration in support of Petitioner’s Motion for Leave to Amend Its Petition to Cancel based on my personal knowledge and on records kept in the ordinary course of business of my law firm.

2. Petitioner first became aware of the ESPEEDIENT SYSTEMS trademark (the “Mark”) of Registrant eSpeedient Systems, LLC (“Registrant”) in late 2005. Petitioner then conducted an investigation regarding the Mark. On April 11, 2006, I sent a demand letter to Registrant on Petitioner’s behalf. See Exhibit A. An attorney for Registrant then advised us that he would speak to his client and respond to our concerns. When he failed to do so, I contacted him and he informed me that given his lack of trademark experience, he was making arrangements to assign the matter to another attorney. More time passed without a response from Registrant, so I again contacted

Registrant's attorney. After further delay in responding by Registrant's attorney, I advised Registrant that we intended to file a petition to cancel the registration for the Mark. At this time, I was contacted by another attorney who informed me that she would be handling the matter on behalf of Registrant, but she too failed to pursue the matter. After more than eight months of this fruitless exchange with attorneys representing Registrant, we abandoned our good faith efforts to resolve the dispute amicably and we commenced the instant cancellation proceeding.

3. On February 7, 2007, Petitioner served Registrant eSpeedient Systems, LLC ("Registrant") with Petitioner's First Set of Interrogatories and Requests for Production of Documents and Things. Within those interrogatories and document requests Petitioner specifically asked Registrant to provide information and documents regarding Registrant's use, including its first use, of Registrant's service mark ESPEEDIENT SYSTEMS (the "Mark").

4. On March 14, 2007, Registrant purported to respond to Petitioner's interrogatories and document requests. In doing so, Registrant did not produce a single document, and its responses to Petitioner's interrogatories consisted almost entirely of refusals to respond. Among these refusals, Registrant declined to provide any information about how the Mark was selected, the types of services for which the Mark has been and is being used, or the first use of the Mark by Registrant. See Exhibit B.

5. On March 29, 2007, Petitioner sent a letter to Registrant's attorney objecting to Registrant's responses and asking Registrant to revise its responses and produce responsive documents without delay. See Exhibit C.

6. On April 26, 2007, Registrant's attorney responded by letter, stating that the information sought by Petitioner about the use of Registrant's Mark was not "relevant to the narrow issue presented by Espeed's Petition to Cancel nor is it likely to lead to the discovery of evidence that would be admissible in that proceeding." See Exhibit D.

7. On April 27, 2007, Petitioner sent a second letter to Registrant's attorney, again insisting that Registrant revise its responses and produce responsive documents without delay. See Exhibit E.

8. On May 10, 2007, Registrant's attorney responded by letter, stating that it would produce some documents upon the completion of a mutually-agreeable protective order. See Exhibit F.

9. On May 30, 2007, following the filing of a Motion to Enter the Stipulated Protective Order, Registrant produced its Supplemental Answers to Petitioner's First Set of Interrogatories and Requests for Production of Documents and Things. Although Registrant's supplemental responses included a conclusory statement about its alleged first use of the Mark, Registrant produced only a handful of documents at that time.

10. Because of Registrant's responses and meager document production, we undertook further investigation, through independent sources, to attempt to confirm when Registrant first began use of its Mark and conducted further legal research for the matter. Following the completion of that additional investigation and research in or about mid-July 2007, and thereafter discussing the matter with eSpeed's in-house counsel, we promptly prepared and filed Petitioner's instant motion to amend the petition for cancellation. The motion and proposed amended pleading were filed on July 31, 2007.

11. As noted above, it took nearly four months for Registrant to produce a single document and to respond to Petitioner's discovery requests. As discovery was due to close on July 8, 2007, Petitioner and Respondent agreed to extend the discovery dates in this proceeding by sixty (60) days so as to provide time for follow-up discovery once Registrant produced documents and supplemental responses. The extension request was filed on May 22, 2007 and Registrant produced documents and responses by mail on May 30, 2007.

Dated: New York, New York
September 4, 2007

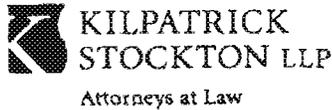


Georges Nahitchevansky

EXHIBIT A

TO DECLARATION OF GEORGES NAHITCHEVANSKY

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796



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April 11, 2006

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**BY FEDERAL EXPRESS
AND FACSIMILE**

Mr. Paul E. Dubuque
Managing Member
Espeedient Systems, LLC
10 North Dearborn Street
Suite 300
Chicago, Illinois 60602

Re: eSpeed, Inc. – Objection to Use of ESPEEDIENT (Our Ref. 56758-326797)

Dear Mr. Dubuque:

We represent eSpeed, Inc. (“eSpeed”), owner of the trademark and trade name ESPEED. Our client, through its predecessors, has used its ESPEED name and mark and a family of other SPEED-formative marks for many years in connection with a wide array of products and services in the financial, information, technological, e-commerce and telecommunications fields in the United States and throughout the world.

Our client is a leader in developing and deploying electronic marketplaces and related trading technology that offers traders access to the most liquid, efficient and neutral financial markets in the world, including marketplaces for exchange of mortgage-backed securities. eSpeed operates multiple buyer, multiple seller real-time electronic marketplaces for the global capital markets, including the world's largest government bond markets and other fixed income and equities marketplaces. eSpeed's suite of marketplace tools and services provide end-to-end transaction solutions for the purchase and sale of financial products over eSpeed's global private network or via the Internet. An average of over US\$200 billion worth of transactions are processed every day using eSpeed's software and technological ESPEED platform (which is a greater volume than the New York Stock Exchange and the NASDAQ combined). The total annual volume for all financial instruments traded via the ESPEED system is over US\$40 trillion. For more information on our client's products and services, please refer to our client's website at www.espeed.com.

Our client owns a number of United States federal trademark registrations for the mark ESPEED and variant marks, including without limitation the following:

Mr. Paul Dubuque
 Espeedient Systems, LLC
 April 11, 2006
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<u>U.S. Reg. No.</u>	<u>Mark</u>	<u>Class(es)</u>
2535418	ESPEED	9, 36
2774523	ESPEED	35, 36
2424609	E-SPEED	36
2833516	ESPEED & Design	36
2879386	ESPEED ELITE	36
2882152	ESPEED FILING	42

These registrations constitute prima facie evidence of eSpeed's ownership of and exclusive rights in the ESPEED mark and its variants for a wide array of services in the financial field. Moreover, due to the extensive use that eSpeed has made of these marks in the United States and throughout the world, the marks have become extremely well known and, therefore, are entitled to a very wide ambit of enforceable protection.

Our client has become aware that your company has a) adopted the corporate and trade name Espeedient Systems, LLC; b) commenced using the trademark ESPEEDIENT as a brand name for financial consulting and online banking and payment processing systems; c) registered the internet domain name espeedient.com; and d) filed for a trademark registration for the mark ESPEEDIENT SYSTEMS (collectively, the ESPEEDIENT Name, Mark and Domain Name). The ESPEEDIENT Name, Mark and Domain Name incorporate as their most distinctive element our client's well known ESPEED name and mark. Accordingly, the ESPEEDIENT Name, Mark and Domain Name are quite similar, both visually and phonetically, to our client's trademark. The addition of "ient" at the end of ESPEED and of generic terms such as "systems" and "LLC" do nothing to distinguish the ESPEEDIENT Name, Mark and Domain Name from our client's ESPEED name and mark.

Given that your service are targeted to businesses in the financial industry, your company's use of the ESPEEDIENT Name, Mark and Domain Name is likely to cause confusion, mistake, and deception as to the source of your services, and may lead the relevant consumers to form the erroneous and false impression and implication that eSpeed is in some manner responsible for, has sponsored, approved, or endorsed your services, or that you are in some way affiliated with eSpeed. Your company's activities constitute a clear and unqualified encroachment upon our client's proprietary rights under U.S. federal and state trademark, unfair competition, anti-cybersquatting and anti-dilution laws. Such actions are damaging the substantial goodwill that our client has built in its ESPEED and variant names and marks at its

Mr. Paul Dubuque
Espeedient Systems, LLC
April 11, 2006
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significant expense and effort, and are causing and will continue to cause irreparable harm to our client unless they are ceased.

Consequently, on behalf of our client, we hereby demand that you (a) immediately and permanently cease all use of the names and marks ESPEED, ESPEEDIENT, ESPEEDINET SYSTEMS, LLC and/or any other names or marks confusingly similar with our client's ESPEED name and trademarks; (b) transition your company name to another name that does not incorporate the term ESPEED or any other term confusingly similar thereto within an acceptable time frame; (c) transfer to our client your domain name registration for ESPEEDIENT as well as any other domain names that incorporate our client's ESPEED name and mark; and (d) voluntarily cancel your existing registration for the mark ESPEEDIENT SYSTEMS.

In view of the importance of this matter, we expect your substantive response by 5:00 pm Eastern Standard Time, April 24, 2006. Should you fail to cooperate, our client shall proceed to take such actions as are necessary to protect its rights, including any and all appropriate legal and equitable remedies to prevent the infringement of its trademarks and other valuable property.

This letter is not intended to be a complete statement of law and/or the facts relevant to this matter, nor of our client's rights, remedies or causes of action, all of which are hereby expressly reserved.

Sincerely,



Georges Nabitchevansky

cc: eSpeed, Inc.
Jason M. Vogel, Esq.

EXHIBIT B

TO DECLARATION OF GEORGES NAHITCHEVANSKY

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796

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

ESPEED, INC.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92046796
)	
ESPEEDIENT SYSTEMS, LLC)	
)	
Registrant.)	

**REGISTRANT’S ANSWERS TO PETITIONER’S
FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the U.S. Trademark Rules of Practice, eSpeedient Systems, LLC (“Registrant”), by and through its attorneys, hereby answers Petitioner eSpeed Inc.’s (“Petitioner”) First Set of Interrogatories and Requests for Production of Documents and Things (collectively, “Discovery Requests”) as follows:

GENERAL OBJECTIONS

1. Nothing in these responses or in this production shall be construed as waiving rights or objections that otherwise may be available to Registrant.
2. Registrant’s responses to the Discovery Requests should not be deemed as an admission of relevancy, materiality, or admissibility in evidence of either the Discovery Requests or the responses thereto.
3. The present responses are based upon and reflect only Registrant’s present knowledge, information, and belief. The responses may be subject to change, correction, or amplification on the basis of further facts, information, or circumstances that may come to Registrant’s attention.

4. Registrant objects to the instructions and definitions set forth in Applicant's Discovery Requests to the extent that they are inconsistent with or attempt to impose obligations that exceed the requirements of the Federal Rules of Civil Procedure and/or the Trademark Trial and Appeal Board Manual of Procedure.

5. Registrant objects to each of the Discovery Requests to the extent that they seek disclosure of information or documents protected by the attorney-client privilege, that constitutes attorney work product, or that is subject to any other applicable privilege or doctrine.

6. Registrant objects to each of the Discovery Requests to the extent that they seek Registrant's trade secrets or confidential business information. Registrant will only provide such information after entry of a suitable protective order.

7. Registrant objects to each of the Discovery Requests to the extent that they are overly broad, unduly burdensome, immaterial, or seek information or documents neither relevant nor likely to lead to the discovery of admissible information or documents.

Without waiving and subject to each of the objections set forth above and below, Registrant responds to the Discovery Requests as follows:

Interrogatories

Interrogatory No. 1:

(a) Identify each person or entity, including but not limited to any assignee, franchisee, subsidiary, affiliate, parent, licensee, licensor, distributor or division of Registrant or any business owned or controlled by Registrant that uses or is authorized by Registrant to use Registrant's Mark in the United States; and

(b) Identify all agreements, such as licenses, or other documents authorizing use of Registrant's Mark.

Response to Interrogatory No. 1:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant responds as follows:

(a) Registrant and its wholly owned subsidiary Espeedient Processing Solutions use Registrant's mark in the United States.

(b) There are no documents authorizing use of Registrant's ESPEEDIENT SYSTEMS trademark ("Registrant's Trademark").

Interrogatory No. 2:

(a) Identify and describe in detail each service or product on which Registrant's Mark appears or has appeared in the United States, including promotional items;

(b) State the time period, such as 2000 to the present, during which each person identified in response to Interrogatory No. 1 has used Registrant's Mark in the United States for each of the goods or services listed above; and

(c) Describe in detail the manner in which Registrant's Mark, or any variation or component thereof, is or has been used by Registrant on or in connection with each of the goods or services listed above.

Response to Interrogatory No. 2:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant responds as follows:

(a) Registrant's Mark is used in connection with its services, namely, providing electronic payment solutions and a browser-based customer relationship management system.

As part of this use, Registrant's Mark is used on marketing and promotional materials, brochures, Registrant's web site, invoices, letterhead, and other related documents.

(b) Registrant has used the mark continuously since at least December 2000.
eSpeedient Processing Solutions has used the mark continuously since at least July 2002.

(c) Upon entry of a suitable protective order and in compliance with the procedures set forth in Federal Rule of Civil Procedure 33(d), Registrant will produce documents sufficient to provide the requested information.

Interrogatory No. 3:

In connection with each of the goods or services listed in response to Interrogatory No. 2:

- (a) State the date Registrant's Mark was first used by Registrant;
- (b) Describe the circumstances under which Registrant's Mark, or any component thereof, was first used on goods or services;
- (c) Identify by whom and to whom services or goods under Registrant's Mark, or any component thereof, were first offered; and
- (d) Identify all relevant documents regarding the first use of Registrant's Mark.

Response to Interrogatory No. 3:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that it used its Mark at least as early as December 2000.

Interrogatory No. 4:

If the use of Registrant's Mark has been discontinued for any item identified in response to Interrogatory No. 2:

- (a) State the items for which such use has not been continuous;
- (b) State the period(s) during which Registrant or any party whose use Registrant contends inures to its benefit did not use Registrant's Mark in connection

with such item;

(c) State the reason for the discontinuance; and

(d) State whether the use of Registrant's Mark was resumed for any of the items and, if so, when and why it was resumed.

Response to Interrogatory No. 4:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that use of its mark has been continuous with all of the services identified in the registration.

Interrogatory No. 5:

State Registrant's main business address, all names under which Registrant does business, and describe the business of Registrant.

Response to Interrogatory No. 5:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that eSpeedient Systems, LLC's main business address is 10 North Dearborn, Suite 300, Chicago, Illinois 60602. Registrant also does business through its wholly owned subsidiary, eSpeedient Processing Solutions, LLC. Registrant provides its customers with technology solutions for managing accounts, products, transactions, customer interactions, operational workflows, and security.

Interrogatory No. 6:

(a) Explain when, why, and how Registrant developed and came to use the Registrant's Mark; and

(b) Explain the meaning or significance of Registrant's Mark.

Response to Interrogatory No. 6:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that the only meaning or significance of Registrant's Mark is an indication of origin of the services originating with Registrant.

Interrogatory No. 7:

If any alternative marks were considered, identify them and explain why each was rejected.

Response to Interrogatory No. 7:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that two other marks were considered, Expaware and Expresoft. These marks were not adopted for business reasons.

Interrogatory No. 8:

Identify all other marks of Registrant that incorporate or are similar to Registrant's Mark and/or which incorporate the mark and name ESPEED or E-SPEED.

Response to Interrogatory No. 8:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that to the best of its knowledge, it is aware of no other such marks.

Interrogatory No. 9:

(a) Identify those individuals most knowledgeable about the selection, creation, development and adoption of Registrant's Mark; and

(b) Identify those individuals most knowledgeable about the sales, advertising, promotion and marketing of services or goods bearing or identified by Registrant's Mark.

Response to Interrogatory No. 9:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 10:

(a) Describe the method and nature of advertisements and promotional materials disseminated in the United States for services or goods offered under or identified by Registrant's Mark (for example, brochures, television commercials, press releases, newspaper articles or magazine advertisements);

(b) Identify the specific media in the United States or circulating in the United States in which material set forth in sub-paragraph (a) above has appeared or will appear and the date or dates that such materials appeared or will appear;

(c) List all events or trade shows at which Registrant or any authorized users of Registrant's Mark have advertised, promoted, sold, offered for sale or provided services or goods under Registrant's Mark, and the dates thereof; and

(d) Specify all geographic areas in which Registrant has advertised or promoted services or goods under Registrant's Mark, and/or in which Registrant has sold or offered for sale goods and services under Registrant's Mark and set forth the date when such first use occurred in such geographic area.

Response to Interrogatory No. 10:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 11:

Identify all advertising agencies, marketing firms, or other entities that promote or

advertise or have been engaged to promote or advertise Registrant's Mark, or any services or goods of Registrant bearing the Mark in the United States.

Response to Interrogatory No. 11:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 12:

Describe all channels of trade through which the services or goods bearing Registrant's Mark, as identified in response to Interrogatory No. 2, are, have been and/or will be offered, advertised, promoted, distributed or sold in the United States.

Response to Interrogatory No. 12:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 13:

Describe the consumer to which the services or goods bearing Registrant's Mark have been and/or will be offered.

Response to Interrogatory No. 13:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 14:

State the amount of money spent by Registrant, and any other authorized user of Registrant's Mark, for advertising and promotion of services or goods bearing Registrant's Mark, for each year since the date of first use.

Response to Interrogatory No. 14:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 15:

State Registrant's total actual revenue from goods or services under Registrant's Mark for each year since the date of first use.

Response to Interrogatory No. 15:

Registrant objects to this Interrogatory because it seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 16:

Identify all of Registrant's past or present applications or registrations for Registrant's Mark, or variations thereof, in the U.S. Patent and Trademark Office, or the trademark registry of any state.

Response to Interrogatory No. 16:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that it filed Application Serial No. 78/062,127 for ESPEEDIENT on May 4, 2001. That application lapsed on February 4, 2002. Registrant also owns U.S. Trademark Reg. No. 2,912,657 for ESPEEDIENT SYSTEMS, which issued on December 21, 2004.

Interrogatory No. 17:

(a) Identify by name, tribunal and docket number each court litigation or Patent and Trademark Office ("inter partes") proceeding relating to Registrant's Mark to which

Registrant or any party whose use Registrant contends inures to its benefit was or is a party, or of which Registrant has knowledge; and

(b) State the current status of such litigation or proceeding and identify any judgment or settlement agreement.

Response to Interrogatory No. 17:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant responds as follows:

(a) Other than this proceeding, Registrant is aware of no such litigation or proceeding.

(b) Because Registrant is aware of no other such litigation or proceeding, Registrant has no responsive information.

Interrogatory No. 18:

For the purpose of this Interrogatory, a claim shall be defined as a demand brought by or against Registrant or an authorized user of Registrant's Mark, by or against a third party, that the party to whom the demand is addressed cease use or modify its use of a mark alleged to be confusingly similar to Registrant's Mark, and which has not resulted in a litigation or a trademark inter partes proceeding. Identify each person or entity against which Registrant, or any authorized user of Registrant's Mark, has asserted a claim or which has asserted a claim against Registrant or any authorized user and for each such person or entity:

- (a) state the mark concerned;
- (b) state how and when the claim was asserted (e.g., cease and desist letter, conference between the parties);
- (c) describe the current status of the claim (e.g., claim rejected, no further action taken; claim resolved by agreement; claim still unresolved and negotiations pending); and
- (d) identify all documents concerning any such claim, including but not limited to demand letters and all settlement agreements or letters embodying a settlement of a claim.

Response to Interrogatory No. 18:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Without waiving and subject to all objections, Registrant responds as follows:

- (a) Registrant has no responsive information.
- (b) Registrant has no responsive information.
- (c) Registrant has no responsive information.
- (d) Registrant has no responsive information.

Interrogatory No. 19:

Identify each trademark search report concerning the existence of possible conflicting or diluting rights obtained for Registrant's Mark or any element or variant of Registrant's Mark (including the mark or element ESPEED) and identify the searcher who made the report(s) and indicate when the report was prepared.

Response to Interrogatory No. 19:

Registrant objects to these Interrogatories to the extent that they seek information protected by the attorney-client privilege and/or the attorney work-product doctrine.

Registrant further objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 20:

State whether or not Registrant has conducted or plans to conduct or cause to be conducted any market research or trademark searches or surveys regarding Registrant's Mark and/or Petitioner's Mark.

Response to Interrogatory No. 20:

Registrant objects to these Interrogatories to the extent that they seek information

protected by the attorney-client privilege and/or the attorney work-product doctrine.

Registrant further objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 21:

If the answer to Interrogatory No. 19 is other than an unqualified negative:

(a) identify and describe such market research, trademark search, or survey;

(b) identify each search report, report or summary of reports of market research, testing or survey relating to the level of public recognition of Registrant's Mark or the types of goods or services with which consumers associate Registrant's Mark; and

(c) identify each search report, report, or summary of reports of market research, testing or survey relating to confusion or lack of confusion between Registrant's Mark or goods bearing Registrant's Mark, and any mark used by Petitioner, including Petitioner's Mark, or other parties.

Response to Interrogatory No. 21:

Registrant objects to these Interrogatories to the extent that they seek information protected by the attorney-client privilege and/or the attorney work-product doctrine.

Registrant further objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 22:

State whether Registrant or any party identified in response to Interrogatory No. 1 has ever:

(a) received mail, telephone calls, bills, payments, invoices or any other materials referring to or inquiring about Petitioner, its services or Petitioner's Mark; or

(b) obtained any knowledge or information regarding confusion on the part of any person as to the source, sponsorship, affiliation or approval of either (i) Registrant's goods or services under Registrant's Mark or (ii) Registrant's goods or services under Registrant's Mark.

Response to Interrogatory No. 22:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant responds as follows:

(a) In early 2001, a male individual, who identified himself as a representative of eSpeed, contacted Registrant to ask if Registrant wished to sell its name and domain name. Registrant declined. The caller then asked if Registrant would object to eSpeed's use of the name. Registrant declined to authorize such use. Since that single call, the only other relevant communications were Registrant's receipt of a letter from Petitioner's counsel in April 2006 and of the Petition for Cancellation in this proceeding.

(b) Registrant has no knowledge or information regarding any confusion on the part of any person as to the source, sponsorship, affiliation or approval of either (i) Registrant's goods or services under Registrant's Mark or (ii) Registrant's goods or services under Registrant's Mark.

Interrogatory No. 23:

If the answer to any of the subparts of Interrogatory No. 21 [*sic*] is anything other than an unqualified negative:

(a) identify each and every person or entity that corresponded with Registrant or made statements to Registrant or was otherwise confused;

(b) give the dates on which such contact was made;

(c) identify all persons who have knowledge of the matter described in this interrogatory; and

(d) identify all documents concerning confusion.

Response to Interrogatory No. 23:

Registrant objects to these Interrogatories to the extent that they seek information protected by the attorney-client privilege and/or the attorney work-product doctrine. Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant states that Paul Dubuque and Brian Saville are knowledgeable about the call in Spring of 2001.

Interrogatory No. 24:

State when and describe the circumstances under which Registrant first became aware of Petitioner's use of Petitioner's Mark.

Response to Interrogatory No. 24:

Registrant objects to these Interrogatories because they seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 25:

Identify each and every person Registrant expects to call as an expert witness at the trial of this proceeding and, as to each, state: the expert's name, address, present employer, position, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

Response to Interrogatory No. 25:

Registrant objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Registrant objects to this interrogatory as premature. This matter is in its initial stages, and without more information, Registrant cannot determine whether an expert witness, if any, will be required to testify in this proceeding.

Interrogatory No. 26:

Identify each person who answered or provided information used in answering the preceding Interrogatories, specifying the particular Interrogatories to which each person answered or provided information.

Response to Interrogatory No. 26:

Without waiving and subject to all objections, Registrant responds as follows: Paul E. Dubuque.

DOCUMENT REQUESTS

Document Request No. 1:

All documents requested to be identified in responding to Petitioner's First Set of Interrogatories.

Response:

Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 2:

All documents consulted in preparing responses to Petitioner's First Set of Interrogatories.

Response:

Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 3:

All documents concerning or indicating the meaning or significance of Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 4:

All documents concerning the conception, creation, adoption, development and selection of Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 5:

Documents sufficient to identify all people who participated in the creation, adoption, development and selection of Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 6:

Documents sufficient to identify all public relations firms and/or advertising agencies that have been engaged to advertise or promote Respondent's Mark and/or Respondent's services offered under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 7:

All communications between Respondent and any public relations firms and/or advertising agencies that have been engaged to advertise or promote Respondent's Mark and/or Respondent's services offered under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 8:

All documents and things sufficient to identify the period or periods of use of the Respondent's Mark, since the date of first use (if any use has been made to date).

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 9:

All documents and things sufficient to identify the geographical areas in which Respondent has used Respondent's Mark, since the date of first use (if any use has been made to date).

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 10:

Documents sufficient to identify all services and/or goods offered, sold or distributed by Respondent under Respondent's Mark

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 11:

All invoices, purchase orders, sales reports, shipping orders, inventory reports, or other records concerning any services rendered to any person or entity under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 12:

Documents identifying all financial services and/or businesses in the financial services field to whom Respondent has offered, marketed, promoted or sold its products and/or services under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 13:

Documents sufficient to identify all domain names owned by Respondent that incorporate, in whole or in part, Respondent's Mark, the mark ESPEED and/or the mark E-SPEED.

Response:

Registrant objects to these requests because they seek documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 14:

All organizational charts concerning the organization of any businesses that have any interest (financial, ownership or otherwise) in Respondent's Mark.

Response:

Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 15:

Documents sufficient to identify every person or entity with an interest (financial, ownership or otherwise) in Respondent's Mark.

Response:

Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 16:

Documents sufficient to describe any business or venture with which you intend to or have used Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 17:

All documents evidencing, referring, or relating to any confusion, or the likelihood or possibility of confusion, between you and Petitioner, or between the goods and/or services offered, sold, or distributed by you and those offered, sold, or distributed by Petitioner, including:

- (a) All consumer letters or statements, both solicited and unsolicited; and
- (b) All documents concerning the public's understanding or lack thereof about Petitioner's connection or association with, approval, sponsorship or authorization of the products and services offered under Respondent's Mark.

Response:

Without waiving and subject to all objections, Registrant has no documents responsive to these requests.

Document Request No. 18:

All documents concerning any complaint or statement by any person about the operation, efficiency, or quality of Respondent's services offered under Respondent's Mark.

Response:

Registrant objects to these requests because they seek documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 19:

All documents relating to Respondent's first use of Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 20:

All Market Research conducted by or caused to be conducted or obtained for you, whether conducted for marketing purposes, litigation purposes, or other purposes, concerning Petitioner's Mark, Petitioner and/or Respondent's Mark, and all documents concerning any such Market Research.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 21:

All documents concerning the type of customers to whom you advertise, market, provide and/or sell the services offered under Respondent's Mark, or to whom you plan to do so in the future.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 22:

Copies of all advertisements, catalogs, brochures, articles and other promotional materials, including print ads, e-mail solicitations, point-of-purchase displays, audio and videotapes, web site printouts concerning Respondent's Mark, or displaying or describing the services sold or intended to be sold by Respondent under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 23:

Documents sufficient to show any publication in which Respondent's Mark and/or services offered under Respondent's Mark have appeared or will appear.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 24:

Copies of all brochure or marketing materials created and/or distributed by Respondent concerning goods or services featuring Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 25:

All press clippings or press releases concerning Respondent or services offered under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 26:

Documents sufficient to identify each channel of trade through which Respondent has marketed, markets or intends to market its services under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 27:

All documents concerning or constituting your business plans for offering for sale services provided under Respondent's Mark, whether or not those plans were implemented.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 28:

All opinions concerning your right to use Respondent's Mark.

Response:

Registrant objects to this request to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

Document Request No. 29:

All documents concerning Respondent's decision to apply to register Respondent's Mark with the United States Patent and Trademark Office.

Response:

Registrant objects to this request to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 30:

All trademark search reports concerning Respondent's Mark or Petitioner's Marks.

Response:

Registrant objects to this request to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 31:

All documents concerning Petitioner, Petitioner's Mark, or any products sold and/or services provided by Petitioner under Petitioner's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 32:

All documents, including financial, accounting and corporate records concerning:

(a) Respondent's total income by year since the date of first use from the provision of services and/or sales of services or goods under Respondent's Mark; and

(b) Respondent's projected income from the provision of services and/or sales of services and/or goods under Respondent's Mark.

Response:

Registrant objects to these requests because they seek documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 33:

Documents sufficient to establish the total revenue obtained by Respondent from the sale, offering for sale of services under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 34:

All documents sufficient to identify the type of consumers to which Respondent has sold, is offering to sale goods or services, and/or is planning to sale or distribute services or goods under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 35:

All documents, including financial, accounting and corporate records concerning:

- (a) the money spent by you in advertising, marketing and promoting services offered under Respondent's Mark;
- (b) your projected costs for advertising and marketing services offered under Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 36:

All documents that show your actual and intended uses of Respondent's Mark as of the date of your response to these requests.

Response:

Registrant objects to these requests because they seek documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Document Request No. 37:

All documents concerning your efforts to avoid confusion between you and Petitioner.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant has no responsive documents.

Document Request No. 38:

Copies of the minutes of any and all meetings of your Board of Directors and/or shareholders in which the Board of Directors or shareholders mentioned or discussed any issue pertaining to your decision to adopt Respondent's Mark.

Response:

Registrant objects to this request because it seeks documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving and subject to all objections, Registrant has no responsive documents.

Document Request No. 39:

All documents concerning any applications or registrations for Respondent's Mark, or variations thereof, in the U.S. Patent and Trademark Office, or the trademark registry of any state.

Response:

Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 40:

All documents concerning any claim, demand, complaint, objection, opposition, cancellation, administrative proceeding (including, but not limited to, office actions), legal opinion or civil action (whether filed by you or another party) involving your use of, registration for, or application to register Respondent's Mark.

Response:

Registrant objects to this request to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 41:

All documents that support or contradict any affirmative defenses you have asserted in this proceeding.

Response:

Without waiving and subject to all objections, Registrant will produce non-privileged documents responsive to this request, if any, upon entry of a suitable protective order.

Document Request No. 42:

For each expert whose opinion may be relied upon in this proceeding, each document concerning: (i) any opinions that may be presented at trial; (ii) the reasons for any such opinions; (iii) any data or information considered by the witness in forming the opinions; (iv) any exhibits used in support of or summarizing the opinions; (v) the compensation being paid to the witness, and (vi) any cases in which the witness has testified at trial or by deposition from 1993 to date.

Response:

Registrant objects that this Request is premature. Without waiving and subject to all objections, Registrant has no responsive documents.

Document Request No. 43:

Résumés of all experts whose testimony you expect to place in evidence.

Response:

Registrant objects that this Request is premature. Without waiving and subject to all objections, Registrant has no responsive documents.

Document Request No. 44:

Copies of annual reports and company financial reports for any entity with an interest in Respondent's Mark (financial, ownership or otherwise).

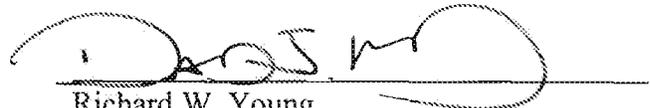
Response:

Registrant objects to these requests because they seek documents neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Dated: March 14, 2007

Respectfully submitted,

ESPEEDIENT SYSTEMS, LLC

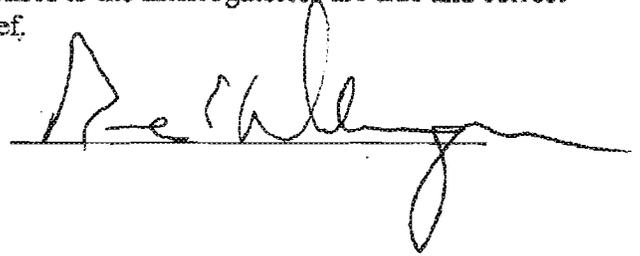
A handwritten signature in black ink, appearing to read 'R. Young', is written over a horizontal line.

Richard W. Young
Melissa S. Dillenbeck
David J. Moorhead
DRINKER BIDDLE GARDNER CARTON
191 N. Wacker Drive, Suite 3700
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Attorneys for Registrant

VERIFICATION

I, Paul E. Dubuque, on behalf of eSpeedient Systems, LLC, declare that based on an investigation of information reasonably available at this time and in reliance on the accuracy of information supplied by others, the foregoing responses to the interrogatories are true and correct to the best of my knowledge, information, and belief.

March 14, 2007

A handwritten signature in black ink, appearing to read "Paul E. Dubuque", is written over a horizontal line. The signature is stylized and cursive.

CERTIFICATE OF SERVICE

The undersigned attorney certifies that a copy of the foregoing REGISTRANT'S ANSWERS TO PETITIONER'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS was served this 14th day of March 2007, by depositing a copy thereof in the United States Mail, First Class, postage prepaid, addressed to:

Georges Nahitchevansky
Kilpatrick Stockton LLP
31 W. 52nd Street
New York, NY 10019

A handwritten signature in black ink, appearing to read "G. Nahitchevansky", is written over a horizontal line. The signature is stylized and somewhat cursive.

EXHIBIT C

TO DECLARATION OF GEORGES NAHITCHEVANSKY

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796



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March 29, 2007

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Via Facsimile

Richard W. Young
Drinker Biddle Gardner Carton
191 N. Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698

Re: eSpeed, Inc. v. eSpeedient Systems, LLC, Cancellation No. 92046796

Dear Mr. Young:

I am writing with regard to the discovery responses you recently provided on behalf of your client eSpeedient Systems, LLC ("eSpeedient") in response to Petitioner eSpeed, Inc.'s ("eSpeed") First set of Interrogatories and Requests for Production of Documents and Things. I am writing this letter in a good faith effort to resolve the significant deficiencies in the responses.

Apart from the fact that not a single document was produced on behalf of your client, the responses make clear that your client is essentially refusing to produce documents or provide relevant information. By way of example, your client has refused to respond to interrogatories seeking the identity of the individuals who selected and conceived of the ESPEEDIENT mark at issue (the "Mark"), how the Mark was selected, the channels of trade for the services under the Mark, the consumers to whom the services or goods are sold or distributed to, the types of services for which the Mark is used, the first use of the Mark by your client, the searches conducted regarding the availability of the Mark and the sales and advertising of goods and services under the Mark. Similarly, you have essentially refused to produce any documents related to such categories and have refused to produce copies of trademark searches -- which as you know under well settled precedent you have an obligation to produce.

We also note that for the few categories where you have stated that documents would be produced, you have apparently withheld them under some claim of confidentiality. Perhaps I am missing something, but it is inconceivable to me that documents showing how



Richard W. Young
March 29, 2007
Page 2

and the services with which your client is using the Mark are “confidential.” *See, e.g.*, Response to Document Request No. 10.

In view of the foregoing, we ask that you immediately review and revise your responses and that your client produce responsive documents without any delay. We trust that you will reconsider your position and that no further action will be required.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Georges Nahitchevansky'.

Georges Nahitchevansky

EXHIBIT D

TO DECLARATION OF GEORGES NAHITCHEVANSKY

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796

Law Offices

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Wisconsin

April 26, 2007

Confirmed Copy

By Facsimile and Mail

Georges Nahitchevansky
Kilpatrick Stockton LLP
31 West 52nd Street, 14th Floor
New York, NY 10019

Re: *eSpeed, Inc. v. eSpeedient Systems, LLC*
Cancellation No. 92046796

Dear Mr. Nahitchevansky:

This responds to your March 29, 2007 letter regarding the discovery responses provided by my client, eSpeedient Systems, LLC.

Your client's petition to cancel filed in this proceeding seeks cancellation of my client's registration under Section 2(d) of the Lanham Act. Under Section 2(d), a trademark is not entitled to registration if it "consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office ... as to be likely, when used on or connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive...." 15 U.S.C. §1052(d). A petition to cancel an existing registration under Section 2(d) is thus focused on the likelihood of confusion between the petitioner's mark and the mark that is the subject of registrant's registration, namely the mark as shown in the drawing of the registration and the goods and/or services identified therein. 3 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, §20.53 (2007) ("Since cancellation is concerned solely with the status of the registration, not the common law right to the mark, likelihood of confusion must be considered only on the basis of the goods described in the registration of the respondent."). See also *Commerce Drug Co., Inc. v. Kirkman Labs., Inc.*, 461 F.2d 833, 835 (CCPA 1972) (affirming TTAB's denial of petition to cancel and rejecting petitioner's arguments regarding the channels of trade through which the goods bearing the registered mark may travel and explaining that even if registrant "does eventually sell FLURA-GEL on the same basis on which ORA-JEL is marketed, this cancellation proceeding must be resolved on the basis of the goods as described in the registration."). The registrant's actual use of its registered mark is not relevant in this proceeding.

You complain in your letter that our client has refused to provide discovery regarding how the registered mark was selected, how the mark is used, the channels of trade through which goods bearing the mark travel, and the consumers to whom goods bearing the mark are sold or distributed. None of this information is relevant to the narrow issue

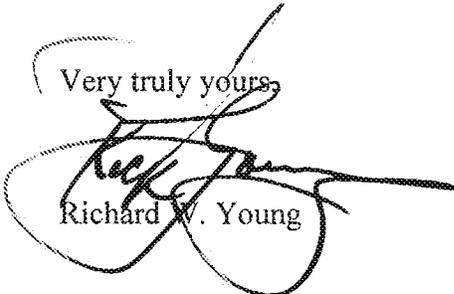
Georges Nahitchevansky
April 26, 2007
Page 2

presented by Espeed's Petition to Cancel nor is it likely to lead to the discovery of evidence that would be admissible in that proceeding.

With regard to your concern regarding the entry of a protective order to facilitate the production of requested documents, I have prepared and enclose a draft protective order for your review and approval. Please let me know if it is acceptable to you.

I look forward to hearing from you.

Very truly yours,



Richard W. Young

RWY/MSD

Enclosure
CH01/12507303.3

EXHIBIT E

TO DECLARATION OF GEORGES NAHITCHEVANSKY

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796



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April 27, 2007

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GNahitchevansky@KilpatrickStockton.com

Via Facsimile

Richard W. Young
Drinker Biddle Gardner Carton
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Chicago, Illinois 60606-1698

Re: eSpeed, Inc. v. eSpeedient Systems, LLC, Cancellation No. 92046796 (Our
Ref. 56758-326797)

Dear Mr. Young:

I write to you in response to your letter dated April 26, 2007, regarding the discovery responses that you provided on behalf of your client eSpeedient Systems, LLC ("eSpeedient").

As a preliminary matter, we acknowledge receipt of your proposed draft protective order. We are preparing our own version, but for the sake of simplicity we will review this draft and respond to it shortly. We would be grateful if you would provide us with a version of the protective order in Microsoft Word format.

As to your substantive claims concerning your client's obligations to respond to our discovery requests, we firmly disagree with your analysis. You cite McCarthy for the premise that "likelihood of confusion must be considered only on the basis of the goods described in the registration of respondent." However, McCarthy also states that the test used in cancellation proceedings "is, of course, identical to that employed in trademark infringement litigation." 3 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, §20:53 (2007). Further, McCarthy notes that the TTAB does permit discovery of information relating to the use of a party's marks when it is relevant to "whether the parties market goods of the same type and [relative to] the commercial interface between the parties." 3 J. Thomas McCarthy, §20:112. With regard to trademark search reports, McCarthy has also noted that the TTAB has held that "the contents of a search report are not privileged from discovery." *Id.*

In short, there is simply no reason for withholding broad categories of documents and information discovery requests that specifically address and are related to the likelihood of confusion factors that, as a matter of law, are to be considered in this matter.

Richard W. Young
Drinker Biddle Gardner Carton
April 27, 2007
Page 2

In light of the foregoing, we again ask that you immediately review and revise your responses and that your client produce responsive documents without delay.

This letter is not intended to be a complete statement of law and/or the facts relevant to this matter, nor of our client's rights, remedies or causes of action, all of which are hereby expressly reserved.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Nahitchevansky", written in a cursive style.

Georges Nahitchevansky

EXHIBIT F

TO DECLARATION OF GEORGES NAHITCHEVANSKY

eSpeed, Inc. v. eSpeedient Systems, LLC
Cancellation No. 92046796

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PRESIDENTIAL

WASHINGTON

May 10, 2007

By E-mail and Mail

Georges Nahitchevansky
Kilpatrick Stockton LLP
31 West 52nd Street, 14th Floor
New York, NY 10019

**Re: *eSpeed, Inc. v. eSpeedient Systems, LLC*
Cancellation No. 92046796**

Dear Mr. Nahitchevansky:

This responds to your April 27, 2007 letter and your May 7, 2007 e-mail.

I have attached a revised version of the proposed protective order in Word format as well as a redline identifying the changes that you requested and we have made. Specifically, we added "or any appeals thereof" to the end of paragraphs 6 and 12. We also added language in paragraph 13 regarding how a receiving party should handle a subpoena. We removed the requirement that a party identify its designated officer or employee within 10 days of entry of the protective order.

We have not made the other changes that you proposed as we believe them to be either unnecessary or imprudent. Under the proposed protective order, a party may designate its in-house counsel as a Qualified Person under Paragraph 8(b), so there is no need to add a separate category for in-house counsel.

In addition, improper use or disclosure of confidential information and trade secrets cannot be policed effectively if that information is disclosed to individuals not known to the owner of that information. We both must know who is receiving such information. We must also have the right and opportunity to object to disclosure of information to individuals who are either untrustworthy or in a position to make improper use of such information even though unintentional. This is the only way to protect the confidential information and ensure that it is not misused or disclosed.

If the revised protective order is acceptable to you, I will move to have the Board enter it.

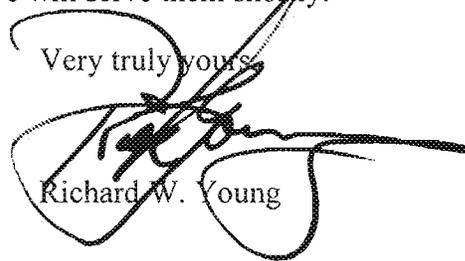
With regard to your comments on eSpeedient's discovery responses, we continue to disagree with you with regard to the proper scope of discovery in this cancellation proceeding. As you know, this is not an infringement proceeding. This is a cancellation proceeding brought under Section 2(d) of the Lanham Act, where the only inquiry is

Georges Nahitchevansky
May 10, 2007
Page 2

whether eSpeedient's registered mark "so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States . . . as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive. . . ." 15 U.S.C. §1052(d). In a cancellation action, the "likelihood of confusion" standard is applied only to the mark as registered, *i.e.*, for the goods and services identified in the certificate of registration. In a cancellation action, those goods and services are assumed to travel in the channels of commerce and to be sold to consumers to whom such goods and services would customarily travel or be sold without regard to the registrant's actual use of the mark. Thus, information regarding eSpeedient's actual use of the registered mark is outside any issue to be decided by the Board and your attempts to discover such information are improper.

We are nonetheless willing to work with you to reach some compromise on this issue. Accordingly, in that spirit and without waiving the right to assert the objection, we are preparing revised discovery responses. We will serve them shortly.

Very truly yours,



Richard W. Young

RWY/DJM

Enclosures
CH02/ 22485735.2