

ESTTA Tracking number: **ESTTA328300**

Filing date: **01/22/2010**

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

Proceeding	92051613
Party	Plaintiff Netop Business Solutions A/S
Correspondence Address	James P. Muraff Neal, Gerber & Eisenberg LLP Two North LaSalle Street Chicago, IL 60602 UNITED STATES DocketMail@ngelaw.com, jmuraff@ngelaw.com
Submission	Motion for Sanctions
Filer's Name	James Muraff
Filer's e-mail	jmuraff@ngelaw.com, mhall@ngelaw.com
Signature	/James P. Muraff/
Date	01/22/2010
Attachments	MotionforSanctions.pdf ( 19 pages )(425126 bytes )

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

In the Matter of:  
Reg Nos. 3,005,630 and 3,102,908

NETOP BUSINESS SOLUTIONS A/S,	)	
	)	
Opposer,	)	Cancellation No. 92051613
	)	
v.	)	
	)	
OMNI COPRPORATE ASSETS LIMITED.	)	
	)	
Registrant.	)	
	)	

**MOTION FOR SANCTIONS**

Pursuant to Rule 37(b)(2)(A)(i) & (vi) of the Federal Rules of Civil Procedure and Rule 2.120(g)(1) of the Trademark Rules of Practice, Netop Business Solutions A/S, hereby requests that the Board sanction Registrant for continued failure to participate in the required discovery conference by: (1) entering a default judgment in favor of Opposer; or (2) in the alternative, ruling that—or the purposes of this cancellation—Registrant has not used Trademarks Regs. 3,005,630 or 3,102,908, or any other term comprised of or incorporating the service mark or designation NETOP, in commerce for at least the past three years. In support of its motion, Opposer states as follows:

1. On October 14, 2009, Opposer filed its Notice of Cancellation.
2. On October 16, 2009, the Board set the discovery schedule for this proceeding.

The deadline for the parties to have the required conference was set for December 25, 2009.

3. On November 23, 2009, Registrant filed its Answer.

4. On December 22, 2009, Opposer reached out to Registrant in an attempt to schedule the Discovery conference prior to the December 25, 2009 deadline. Opposer attempted to reach Registrant via email at [wessling@nosltd.com](mailto:wessling@nosltd.com); and via airmail at two separate addresses,

one of which is listed as the contact address in Registrant's reply: Mr. Oliver H. Wessling, Omni Corporate Assets Limited, Palm Grove House, P.O. BOX 438, Road Town, Tortola, Virgin Islands, British; and Mr. Oliver H. Wessling, 7181 Encina Lane, Boca Raton, Florida 33433. A true and correct copy of this correspondence is attached as Exhibit A.

5. On December 23, 2009, Opposer followed up with Registrant via email at [ow@nolstd.com](mailto:ow@nolstd.com) and [wessling@nosltd.com](mailto:wessling@nosltd.com). A true and correct copy of this correspondence is attached as Exhibit B.

6. Registrant did not in any way respond to Opposer's correspondence identified in paragraphs 4 and 5 above, or communicate in any other way with Opposer.

7. On January 7, 2010, Opposer again followed up with Registrant regarding scheduling and carrying out the required discovery conference. Opposer further attempted to reach Registrant via email to [wessling@nolstd.com](mailto:wessling@nolstd.com); [ow@nolstd.com](mailto:ow@nolstd.com); and via airmail to the at two separate addresses: Mr. Oliver H. Wessling, Omni Corporate Assets Limited, Palm Grove House, P.O. BOX 437, Road Town, Tortola, Virgin Islands, British; and Mr. Oliver H. Wessling, 7181 Encina Lane, Boca Raton, Florida 33433. Opposer informed Registrant that it would move for a default judgment if Registrant failed to contact Opposer regarding discovery. A true and correct copy of this correspondence of this correspondence is attached as Exhibit C. Thus, Opposer has provided ample warning to Registrant that the discovery conference is required by the rules, as well as the potential consequences for not complying with the rules.

8. As of January 22, 2010, Opposer has not received any response regarding the required discovery conference; nor has Opposer ever received any other communications from Registrant, but for Registrant's Answers to the Notice of Cancellation.

9. Pursuant to the Board's scheduling order, initial disclosures in the matter are to take place on January 25, 2010. Opposer is prepared to make initial disclosures pursuant to the Board's schedule and pursuant to § 2.120(a)(2) and Fed. R. Civ. Pro. 26(f).

10. Accordingly, Opposer has diligently attempted to schedule and participate in the discovery conference as required by § 2.120(a)(2) and Fed. R. Civ. Pro. 26(f). Meanwhile Registrant has been willfully unresponsive for almost a month past the deadline for this discovery conference—even when informed of this impending motion for sanctions—clearly indicating that Opposer has no intention of participating in discovery proceedings. As such, the Board has good cause to sanction Opposer for failure to cooperate or participate in discovery.

WHEREFORE, Opposer requests that the Board sanction Registrant by: (1) entering a default judgment in favor of Opposer; or (2) in the alternative, ruling that for the purposes of this cancellation—Registrant has not used Trademarks Regs. 3,005,630 or 3,102,908, or any other term comprised of or incorporating the service mark or designation NETOP, in commerce for the past three years.

Dated: January 22, 2010

Respectfully Submitted,

By: /James P. Muraff/  
One of Opposer's Attorneys

James P. Muraff  
Hillary I. Schroeder  
Michael R. Turner  
NEAL, GERBER & EISENBERG LLP  
Two North LaSalle Street  
Suite 1700  
Chicago, IL 60602-3801  
(312) 269-8000

**CERTIFICATE OF SERVICE**

I, James P. Muraff, state that I served a copy of the foregoing Motion for Sanctions:

Mr. Oliver H Wessling  
Omni Corporate Assets Limited  
7181 Encina Lane  
Boca Raton, Florida 33433

via overnight courier on January 22, 2010.

/James P. Muraff/  
James P. Muraff, Esq.

NGEDOCs: 1683785.1

# Exhibit A

**White, Adrienne**

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**From:** Microsoft Exchange  
**To:** 'wessling@nosltd.com'  
**Sent:** Tuesday, December 22, 2009 1:20 PM  
**Subject:** Relayed: Required Discovery Conference in Cancellation Proceeding No. 92061613

**Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:**

'wessling@nosltd.com'

**Subject:** Required Discovery Conference in Cancellation Proceeding No. 92061613

---

Sent by Microsoft Exchange Server 2007

**White, Adrienne**

---

**From:** White, Adrienne  
**Sent:** Tuesday, December 22, 2009 1:20 PM  
**To:** 'wessling@nosltd.com'  
**Subject:** Required Discovery Conference in Cancellation Proceeding No. 92061613  
**Importance:** High  
**Attachments:** Wessling Ltr 12-22-09.pdf

Mr. Wessling:

Please see the attached correspondence dated December 22, 2009. Original will follow via First Class Mail and Airmail. We look forward to receiving your timely response.

-Jim Muraff

**James P. Muraff**

**NEAL ■ GERBER ■ EISENBERG**

Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street • Suite 1700  
Chicago IL • 60602-3801  
312.269.8034 direct • 312.750.6556 fax  
[jmuraff@ngelaw.com](mailto:jmuraff@ngelaw.com) • [www.ngelaw.com](http://www.ngelaw.com)

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December 22, 2009

**VIA EMAIL WESSLING@NOSLTD.COM**  
**CONFIRMATION BY AIRMAIL**

Mr. Oliver H. Wessling  
Omni Corporate Assets Limited  
Palm Grove House, P.O. Box 438  
Road Town, Tortola  
Virgin Islands, British

Mr. Oliver H. Wessling  
7181 Encino Lane  
Boca Raton, Florida 33433

Re: **Required Discovery Conference in Cancellation Proceeding No. 92061613**

Dear Mr. Wessling:

We are contacting you at this time to schedule the required discovery conference in Cancellation Proceeding No. 92061613. As you should be aware, this conference must take place by December 25, 2009. Given the upcoming holiday, we would like to hold this conference over the telephone on December 23, 2009 at 3:00 p.m.

As you should also be aware, this proceeding needs to be conducted in accordance with the Trademark Rules of Practice set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules") which are accessible at: <http://uspto.gov/main/trademarks.htm>. As such, you must be prepared to engage in talks with us regarding all three topics that the Trademark Rules require the parties to discuss: (1) the nature and basis of our claims (or in your case, any possible defenses); (2) the possibility of settlement or narrowing of the claims in issue; and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial. See Trademark Rule 2.120(a)(2).

Furthermore, we would like to discuss the terms of a proposed protective order with you. To that end, we are currently reviewing the Standard Protective Order furnished by the USPTO for these proceedings to see if we will require any amendment for use in this matter. We welcome any comments you have in this regard. The Standard Protective Order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>.

NEAL, GERBER & EISENBERG LLP

Mr. Oliver H Wessling  
Omni Corporate Assets Limited  
December 22, 2009  
Page 2

Please contact us to confirm this time is okay for you to attend this telephonic discovery conference, or please inform us as soon as possible to schedule the required discovery conference.

Very truly yours,



James P. Muraff

JPM:hs

NGEDOCS: 1678954.1

# Exhibit B

**White, Adrienne**

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**From:** Muraff, James P.  
**Sent:** Wednesday, December 23, 2009 1:08 PM  
**To:** 'wessling@nosltd.com'  
**Subject:** RE: Required Discovery Conference in Cancellation Proceeding No. 92061613  
**Importance:** High

Dear Mr. Wessling,

Following up on our below communication, please advise whether you are available for the requested 3pm (CST - Chicago time) discovery conference we proposed for today. Please also provide a telephone number where we can reach you at. If you are not available at that time, please propose an alternative time or times to hold the required discovery conference, to take place prior to this Friday.

We look forward to your prompt response.

Thank you.

Jim

James P. Muraff  
Neal, Gerber & Eisenberg LLP  
2 N. LaSalle Street, Suite 1700  
Chicago, IL 60602-3801  
Phone: (312) 269-8034 / Fax: (312) 269-1747  
E-mail: [jmuraff@ngelaw.com](mailto:jmuraff@ngelaw.com)  
[www.ngelaw.com](http://www.ngelaw.com)

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**From:** White, Adrienne  
**Sent:** Tuesday, December 22, 2009 1:20 PM  
**To:** 'wessling@nosltd.com'  
**Subject:** Required Discovery Conference in Cancellation Proceeding No. 92061613  
**Importance:** High

Mr. Wessling:

Please see the attached correspondence dated December 22, 2009. Original will follow via First Class Mail and Airmail. We look forward to receiving your timely response.

1/22/2010

-Jim Muraff

**James P. Muraff**

**NEAL ■ GERBER ■ EISENBERG**

Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street • Suite 1700  
Chicago IL • 60602-3801  
312.269.8034 direct • 312.750.6556 fax  
[jmuraff@ngelaw.com](mailto:jmuraff@ngelaw.com) • [www.ngelaw.com](http://www.ngelaw.com)

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**White, Adrienne**

---

**From:** Muraff, James P.  
**Sent:** Wednesday, December 23, 2009 3:48 PM  
**To:** ow@nosltd.com  
**Subject:** FW: Required Discovery Conference in Cancellation Proceeding No. 92061613  
**Importance:** High  
**Attachments:** Wessling Ltr 12-22-09.pdf

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**From:** White, Adrienne  
**Sent:** Tuesday, December 22, 2009 1:20 PM  
**To:** 'wessling@nosltd.com'  
**Subject:** Required Discovery Conference in Cancellation Proceeding No. 92061613  
**Importance:** High

Mr. Wessling:

Please see the attached correspondence dated December 22, 2009. Original will follow via First Class Mail and Airmail. We look forward to receiving your timely response.

-Jim Muraff

**James P. Muraff**

**NEAL ■ GERBER ■ EISENBERG**  
Neal, Gerber & Eisenberg LLP  
Two North LaSalle Street • Suite 1700  
Chicago IL • 60602-3801  
312.269.8034 direct • 312.750.6556 fax  
[jmuraff@ngelaw.com](mailto:jmuraff@ngelaw.com) • [www.ngelaw.com](http://www.ngelaw.com)

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December 22, 2009

**VIA EMAIL WESSLING@NOSLTD.COM**  
**CONFIRMATION BY AIRMAIL**

Mr. Oliver H. Wessling  
Omni Corporate Assets Limited  
Palm Grove House, P.O. Box 438  
Road Town, Tortola  
Virgin Islands, British

Mr. Oliver H. Wessling  
7181 Encino Lane  
Boca Raton, Florida 33433

Re: **Required Discovery Conference in Cancellation Proceeding No. 92061613**

Dear Mr. Wessling:

We are contacting you at this time to schedule the required discovery conference in Cancellation Proceeding No. 92061613. As you should be aware, this conference must take place by December 25, 2009. Given the upcoming holiday, we would like to hold this conference over the telephone on December 23, 2009 at 3:00 p.m.

As you should also be aware, this proceeding needs to be conducted in accordance with the Trademark Rules of Practice set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules") which are accessible at: <http://uspto.gov/main/trademarks.htm>. As such, you must be prepared to engage in talks with us regarding all three topics that the Trademark Rules require the parties to discuss: (1) the nature and basis of our claims (or in your case, any possible defenses); (2) the possibility of settlement or narrowing of the claims in issue; and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial. *See* Trademark Rule 2.120(a)(2).

Furthermore, we would like to discuss the terms of a proposed protective order with you. To that end, we are currently reviewing the Standard Protective Order furnished by the USPTO for these proceedings to see if we will require any amendment for use in this matter. We welcome any comments you have in this regard. The Standard Protective Order is available for viewing at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>.

NEAL, GERBER & EISENBERG LLP

Mr. Oliver H Wessling  
Omni Corporate Assets Limited  
December 22, 2009  
Page 2

Please contact us to confirm this time is okay for you to attend this telephonic discovery conference, or please inform us as soon as possible to schedule the required discovery conference.

Very truly yours,



James P. Muraff

JPM:hs

NGEDOCs: 1678954.1

# Exhibit C

**Muraff, James P.**

---

**From:** White, Adrienne  
**Sent:** Thursday, January 07, 2010 12:58 PM  
**To:** 'wessling@nosltd.com'; 'ow@nolstd.com'  
**Subject:** Required Discovery Conference in Cancellation Proceeding No. 92061613  
**Attachments:** Letter to O. Wessling.pdf

Mr. Wessling,  
Please see attached correspondence from James P. Muraff dated January 7, 2010. Original will follow via Airmail. Thank you.

***Adrienne White***

Assistant to Michael G. Kelber,  
James P. Muraff and Lawrence E. James, Jr.  
Neal, Gerber & Eisenberg LLP  
2 N. LaSalle Street, Suite 1700  
Chicago, IL 60602-3801  
Phone: (312) 269-2903 / Fax: (312) 269-1747  
E-mail: [awhite@ngelaw.com](mailto:awhite@ngelaw.com)  
[www.ngelaw.com](http://www.ngelaw.com)

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January 7, 2010

**VIA EMAIL WESSLING@NOSLTD.COM & OW@NOLSTD.COM  
CONFIRMATION BY AIRMAIL**

Mr. Oliver H Wessling  
Omni Corporate Assets Limited  
Palm Grove House, P.O. BOX 437  
Road Town, Tortola  
Virgin Islands, British

Mr. Oliver H. Wessling  
7181 Encina Lane  
Boca Raton, Florida 33433

Re: **Required Discovery Conference in Cancellation Proceeding No. 92061613**

Dear Mr. Wessling:

As you likely are aware, we have attempted on several occasions to set up a required discovery conference with you prior to the December 25, 2009 deadline. Specifically, we reached out to you by email on both December 22, 2009 and on December 23, 2009, but we have not received any responsive communication back from you. We also confirmed these communications at the mailing address you provided in your Answer to our Petition. Thus, we have now attempted to reach you at the following mailing and email addresses to arrange the required discovery conference pursuant to Trademark Rule 2.120 (a)(2):

Mr. Oliver H Wessling  
Omni Corporate Assets Limited  
Palm Grove House, P.O. BOX 437  
Road Town, Tortola  
Virgin Islands, British

Mr. Oliver H. Wessling  
7181 Encina Lane  
Boca Raton, Florida 33433

[ow@nolstd.com](mailto:ow@nolstd.com)

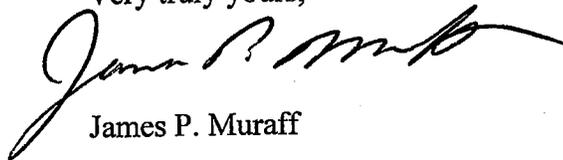
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Mr. Oliver H Wessling  
Omni Corporate Assets Limited  
January 7, 2010  
Page 2

[wessling@nolstd.com](mailto:wessling@nolstd.com)

None of our correspondence was returned as undeliverable. We request that you immediately contact us so that we may schedule a discovery conference in this matter. If the discovery conference does not take place before January 12, 2009, we will petition the Trademark Trial and Appeal Board for a default judgment in our favor pursuant to Trademark Rule § 2.120(g)(1) and Fed. R. Civ. Pro. 37(b)(2).

Very truly yours,

A handwritten signature in black ink, appearing to read "James P. Muraff", written in a cursive style.

James P. Muraff

JPM:hs