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

Proceeding	92054109
Party	Defendant Interplexus, Inc.
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Date	09/17/2012
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of: Registration No.: 2,740,222 Registration Date: July 22, 2003 Mark: SERIPHOS	
T.E. NEESBY, INC., Petitioner, v. INTERPLEXUS CORPORATION, Registrant.	**Cancellation No. 92054109** **OPPOSITION OF INTERPLEXUS CORPORATION TO MOTION TO LIFT STAY OF CANCELLATION PROCEEDING**

OPPOSITION OF INTERPLEXUS CORPORATION TO MOTION TO LIFT STIPULATED STAY OF CANCELLATION PROCEEDING

Interplexus Corporation, the Registrant of the "Seriphos®" mark that is at issue in this proceeding, hereby opposes the Motion to Lift the Stay of this proceeding entered into by stipulation of the parties, and approved by this tribunal. The basis for the stay is that the Movant's arguments for cancellation of this mark are identical to those raised in an ongoing federal proceeding venued in the United States District Court for the Eastern District of California, Fresno Division, Case No. 1:11-CV-00597-AWI-BAM, entitled *Interplexus Corporation v. T. E. Neesby, Inc., Brian White, and Sheryl White*, including the related counterclaim in that action filed by the Movant, herein, T. E. Neesby, Inc. ("Neesby").

Nothing in the instant motion merits reopening of the present proceeding and lifting the stay. Neesby's motion is filled with factual misstatements and scurrilous accusations of criminal wrongdoing that have absolutely nothing to do with the merits of this trademark. Neesby's entire

approach is transparently designed to "poison the well" with this tribunal, then ask it to resolve the cancellation issues. For the following reasons, Neesby should not succeed:

1. The most recent status report in the instant proceeding was filed very recently, in August 2012. It is inconceivable the facts have changed materially since then, and they have not. Neesby's position is therefore self-contradictory.

2. The above-captioned action in the United States District Court for the Eastern District of California is still pending. By joint stipulation of ***all*** parties in that case, including Neesby, the action was recently (written stipulation filed by all parties on August 14, 2012, approved by Court on August 20, 2012) continued to commence trial on March 4, 2013. There is absolutely no reason for the TTAB to resume this proceeding, which will not resolve all issues in the case, as the parties have injunctive and damages remedies at issue. There is no logic to the position taken in the motion.

3. The accusation that Interplexus Corporation has purposely delayed the federal action in California is patently false. The most recent move of the trial and pretrial dates in that case was done at the instance of another party, Counterdefendant Elias F. Ilyia, whose separate counsel, Sam A. Eidy, was reportedly unavailable for depositions at any time before the initial discovery cutoff of August 31, 2012. He filed a motion on August 9, 2012, to continue the discovery cutoff after receiving deposition notices from counsel for Interplexus which set the depositions before the cutoff. Before Interplexus took any position on that motion, ***Neesby's counsel in the federal litigation then expressly and in writing joined Ilyia's motion to continue the discovery dates by sixty (60) days in that action.*** That joinder was filed on August 9, 2012, the same day as the motion. Only later did Interplexus, which was prepared to complete discovery in the prescribed time, voice any willingness to go along with the Neesby/Ilyia motion

to extend dates, leading to a stipulation that eventually was approved by the Court. Not only did Interplexus not initiate the move, but Neesby itself was one of the two initiating parties for the delay. The movement of Mr. White's deposition was inevitable, as again the entire basis for the motion to extend the dates was Mr. Eidy's unavailability in August for any depositions. Neesby's present position that Interplexus somehow schemed for these extensions is an astonishing fabrication.

4. Nor does Interplexus benefit from any delays of the federal action. There is no preliminary injunction in place. Interplexus wants these issues resolved as expeditiously as any party.

5. There is no legal basis to Neesby's position that a pending federal action in Washington somehow impacts the instant cancellation proceeding, or the related federal proceeding in California. It does not. Nothing that happens in the outcome of the Washington case will, or could, retroactively deprive Interplexus of enforcement of the instant mark, which is both registered and incontestable. It is an asset of Interplexus, and its current owner, who is indisputably record owner of all stock of the company, has full authority to bring it. In any case by Neesby's logic the TTAB likewise must await the Washington outcome and so no benefit is achieved by resuming this proceeding.

6. There is no indication in the papers that resuming the TTAB proceeding will somehow resolve these issues more expeditiously than the California federal action. As noted, that action is set for trial in early March 2013. Given the processes of this tribunal, it is doubtful there will be any kind of final decision by that point. Moreover, the *de novo* appeal rights ensure that the TTAB proceedings will extend will past the date of any anticipated judgment in the federal judicial proceeding. Neesby's position is thus based upon a premise that has no support.

7. Neesby takes a low road by making an unsubstantiated, multiple-hearsay claim that Interplexus's current owner has been "arrested" in Lebanon for fraud. Neesby cites Ilyia's counsel, Sam A. Eidy, as its source for this "fact." Neesby is aware Mr. Eidy has denied making the statement attributed to him and Neesby certainly has no further evidence of it. Yet Neesby has not seen fit to withdraw or modify this motion in any respect. Regardless, this accusation is false and scurrilous, made with the obvious tactical objective to prejudice this tribunal. This tribunal should strike this allegation from the record of this proceeding.

Shifting focus of this case to the TTAB will not achieve any benefit whatsoever. Neesby simply wants to avoid litigating these issues in court. The motion is factually baseless. For the above reasons, Interplexus Corporation respectfully submits that the instant proceeding should remain stayed until the federal court proceeding in California is concluded.

Dated: September 17, 2012

Respectfully submitted,

By: _____

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the foregoing **OPPOSITION OF INTERPLEXUS CORPORATION TO MOTION TO LIFT STAY OF CANCELLATION PROCEEDING** was filed electronically with the Trademark Trial and Appeal Board on this 17 of September, 2012.

Timothy J. Buchanan

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSITION OF INTERPLEXUS CORPORATION TO MOTION TO LIFT STAY OF CANCELLATION PROCEEDING** was served upon counsel for Petitioner, T.E. NEESBY, INC., this 17 of September, 2012, by sending the same via First Class U.S. Mail, postage prepaid to:

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