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

Proceeding	92056509
Party	Defendant 3D Systems, Inc.
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Attachments	3D Systems Response to Motion to Compel.pdf(343536 bytes ) Response to MTC Exhibits 1-2.pdf(1294732 bytes ) Response to MTC Exhibits 3-7.pdf(786531 bytes ) Response to MTC Exhibits 8-9.pdf(971553 bytes )

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

Registrant: 3D Systems, Inc.  
Mark: 3DS & Design  
Reg. No.: 4,125,612 in Classes 1, 7, 9 and 40  
Registered: April 10, 2012

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Autodesk, Inc.	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92056509
	)	
3D Systems, Inc.,	)	
	)	
Respondent	)	

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**RESPONDENT’S OPPOSITION TO PETITIONER’S MOTION TO COMPEL  
DISCOVERY**

**I. Introduction**

Having made no real effort to complete discovery within the discovery period, Petitioner has filed a Motion to Compel which is nothing more than a disingenuous attempt to further extend the discovery deadline in this proceeding, despite the Board’s unequivocal statement that it would “**not entertain any further requests to extend the close of discovery whether consented to or not.**” Docket 24 (emphasis in original). Petitioner has ignored its duty under Fed. R. Civ. P. and Trademark Rule 2.120(e)(1) to make a good faith effort to resolve the issues presented by its motion, and instead, shortly after Respondent put Petitioner on notice of its request for a further meet and confer to attempt to resolve deficiencies in Petitioner’s discovery responses prior to filing a Motion to Compel, Petitioner scrambled to file the instant motion, with not even so much as a telephone call or an email to try and resolve the matters presented therein.

Notwithstanding the fact that Petitioner's complaints are without merit, as discussed further below, Petitioner's motion to compel should be viewed as mere gamesmanship, and a waste of judicial resources, and denied for failure to comply with the requirements of Fed. R. Civ. P. 37 and 37 C.F.R. § 2.120(e)(1).

## **II. Background Facts and Procedural Posture**

Petitioner Autodesk, Inc. ("Petitioner" or "Autodesk") initiated this cancellation proceeding on November 29, 2012, challenging Respondent 3D Systems, Inc.'s ("Respondent" or "3D Systems") registration for 3DS & Design (Reg. No. 4,125,612) on the basis of priority and likelihood of confusion and dilution in favor of Autodesk's 3DS MAX mark.<sup>1</sup> Over the next year, the parties requested various extensions of time to accommodate settlement negotiations that were ongoing. *See, e.g.*, Docket Nos. 8, 10, 15, 17. In the fall of 2013, Petitioner served discovery requests on Respondent, and subsequently, in a heavy-handed settlement tactic, refused to provide any further extension of time for Respondent to respond thereto, despite the advancement of settlement discussions. *See* Docket No. 19, ¶¶ 6-7. Respondent thus filed a motion to extend (without consent) its time to respond to discovery requests. Docket No. 19. Shortly thereafter, Petitioner filed its own motion to extend (without consent) seeking extension of the remaining deadlines in the proceeding by 90 days, and a 40 day extension of time to respond to discovery requests served by 3D Systems on Autodesk. *See* Docket No. 20. Having had no response from the TTAB as to its first motion, and with settlement discussions continuing, Respondent filed a second motion to extend time to respond to discovery requests on December 18, 2014. Docket No. 21. Finally, on March 18, 2014, the parties filed a consent motion to a further extend the remaining deadlines in the proceeding, and the motion was granted

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<sup>1</sup> Petitioner later consented to dismissal of its dilution claim; hence the only remaining issues are priority and likelihood of confusion. *See* Docket Nos. 12, 13.

on April 12, 2014, in an order noting that no further requests to extend the close of discovery would be granted. *See* Docket Nos. 23, 24.

On January 17, 2014, 3D Systems served responses to Autodesk's discovery requests, and on January 27, 2014, Autodesk served its discovery responses on 3D Systems. On March 18, 2014, having reviewed Autodesk's discovery responses, but not received any document production, Jason Sneed, Counsel for 3D Systems, wrote to John Slafsky, Counsel for Autodesk, outlining the deficiencies in Autodesk's discovery responses, and requesting a discovery conference during the week of March 24<sup>th</sup> to discuss. Exhibit 1. On March 28, 2014, Mr. Slafsky wrote to Mr. Sneed outlining perceived deficiencies in 3D Systems' discovery responses, but completely failing to acknowledge Mr. Sneed's letter of March 18<sup>th</sup>, or responding in any way to Mr. Sneed's request for a discovery conference during the week of March 24<sup>th</sup>. Exhibit 2. The parties eventually agreed to hold a meet and confer on May 2<sup>nd</sup>, and, unable to address all the issues of both parties during that call, the call was continued on May 6<sup>th</sup>.

During the meet and confer, Counsel for 3D Systems withdrew certain objections, agreed to supplement or amend certain discovery responses, maintained certain objections, and agreed to produce documents. 3D Systems' document production was made on June 11, 2014 by providing Counsel for Petitioner with a link to electronically download the production (with consent). On June 17, 2014, Counsel for Petitioner (Stephanie Brannen) emailed Counsel for Respondent (Sarah Hsia) stating that they were unable to download documents using the link provided. Exhibit 3. On June 18, 2014, Ms. Hsia responded to Ms. Brannen's email, first to state that she was looking into the matter, and then to explain how to download the documents. Exhibits 3-4. Approximately six hours later, Ms. Brannen emailed a letter summarizing the meet and confer in early May (six weeks earlier), stating that they would contact Counsel for

Respondent if they were unable to resolve the technical difficulties in downloading Respondent's production, and asking when they could expect amended and supplemented responses from Respondent. Exhibit 5.

Importantly, Ms. Brannen's letter of June 18, 2014 was the last communication Counsel for Respondent received from Counsel for Petitioner prior to the instant Motion to Compel: ***not a single phone call, email, or letter was made or sent between June 18, 2014 and August 7, 2014.*** Counsel for Petitioner did not make a single phone call, or send even one email or letter to Counsel for Respondent indicating that they considered Respondent's document production to be deficient in any way. At the time of the last communication from Counsel for Petitioner, Counsel for Petitioner had not even reviewed Respondent's document production.

Counsel for Respondent sent a letter summarizing the discovery conference of May 2<sup>nd</sup> and May 6<sup>th</sup>, and also sent an email inquiring as to the status of Autodesk's document production, which was not made until June 27, 2014. Exhibits 6,7. However, unlike Petitioner, when Counsel for Respondent had not received any supplemented or amended discovery responses from Petitioner, despite Petitioner's commitment to provide such responses nearly three months prior, Counsel for Respondent wrote to Counsel for Petitioner on August 5, 2014, requesting a meet and confer before August 13, 2014 "to discuss the remaining deficiencies and to satisfy our obligation under Fed. R. Civ. P. 37(a)(1) and 37 C.F.R. § 2.120(e)(1) to make a good faith effort to resolve these issues prior to filing a Motion to Compel." Exhibit 8.

Incredibly, rather than respond to Mr. Sneed's letter, or put Counsel for Respondent on notice that there were still issues with 3D Systems' discovery that it believed were unresolved three months after its last communication, Counsel for Petitioner merely proceeded to file the instant motion on August 7, 2014. Docket No. 25.

### **III. Argument**

#### **A. Petitioner has not satisfied its obligation to make a good faith effort to resolve the issues prior to filing a Motion to Compel**

After seven weeks of silence, and having not even reviewed Respondent's document production at the time of its last communication, Petitioner simply cannot be said to have satisfied its obligation pursuant to Fed. R. Civ. P. 37(a)(1) and 37 C.F.R. § 2.120(e)(1) to make a good faith effort to resolve the issues presented in the motion prior to filing, and its motion thus should be denied. Petitioner ignored the ticking of the discovery clock, and then rather than following up with Respondent to determine the status of its privilege log and amended and supplemental discovery responses, it simply filed a Motion to Compel. Moreover, Petitioner has never put Respondent on notice that it considered Respondent's document production to be deficient as its last communication with Respondent was prior to having even reviewed Respondent's document production.

The Board has recently made clear that it requires more effort than a "single, non-substantive communication" prior to filing a motion to compel. *Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080 (TTAB 2014). Yet here, Petitioner failed to make even a single communication with Respondent concerning the alleged insufficiency of its document production. Moreover, even when a party fails completely to respond to discovery, the other party has a duty to contact its adversary to ascertain why it has not received responses and whether the matter can be resolved amicably. If the discovering party is not satisfied with the answer, only then may it file a motion to compel. *Id.* By contrast, the Petitioner here did not follow up even once with Respondent to determine when its amended discovery responses would be forthcoming.

Moreover, this is not the first time that Petitioner has resorted to filing a motion rather than simply communicating with opposing counsel. *See* Docket No. 20. Petitioner should not be allowed to continue to waste judicial resources by requiring the TTAB to adjudicate matters that could have been resolved through a simple telephone call or email to opposing counsel.

And indeed, many of the issues presented by Petitioner’s instant motion have – and could have – been resolved by mere communication with Counsel for Respondent. For example, the failure to produce a privilege log was mere oversight on the part of Counsel for Respondent, and a simple telephone call or email could have resolved this issue without necessitating the intervention of the TTAB.<sup>2</sup> Similarly, Petitioner’s claims that Respondent’s production is insufficient due to the limited timeframe of production could perhaps have been resolved by a telephone call or email to Counsel for Respondent to allow for the explanation that, since the date of first use of Respondent’s registered 3DS & Design mark was in 2011, it is not surprising that the only relevant documents do not pre-date 2011. As Petitioner has utterly failed to comply with the requirements of Fed. R. Civ. P. 37(a)(1) and 37 C.F.R. § 2.120(e)(1), its motion to compel should be denied in its entirety.

B. Respondent is seeking material that is irrelevant and impermissibly broad

“A party need not provide discovery with respect to those of its marks...that are not involved in the proceeding and have no relevance thereto.” TBMP § 414(11); *see also Volkswagenwerk Aktiengesellschaft v. Thermo-Chem Corp.*, 176 USPQ 493 (TTAB 1973) (denying a motion to compel discovery about marks not at issue in a proceeding on the grounds that they are not relevant to the issue of likelihood of confusion). There is only one mark named in the cancellation petition: U.S. Reg. No. 4,125,612 for 3DS & Design, and the central issue

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<sup>2</sup> A privilege log was produced to Petitioner on August 25, 2014.

with respect thereto is whether such registration is likely to cause confusion with Petitioner's 3DS MAX mark. Petitioner has not petitioned to cancel any other registration in its petition for cancellation, and the authority of the TTAB does not extend to unregistered marks. TBMP § 102.01 ("The Board is empowered to determine only the right to register."); *see also Firsthealth of Carolinas v. Carefirst of Maryland*, 479 F.3d 825, 828 (Fed. Cir. 2007). Petitioner appears to be seeking to use this proceeding as a fishing expedition to get discovery on other of Respondent's marks, but this discovery is irrelevant and impermissibly broad, and Petitioner's motion to compel should thus be denied.

Petitioner's argument that discovery on other marks used by Respondent is somehow relevant for purposes of understanding "the full scope of goods and services promoted by Respondent under its 3DS-related marks generally" is unavailing. Petitioner's brief at p. 8. Petitioner itself notes that the 3DS & Design mark is "used by Respondent as a house mark, to promote many, if not all, of Respondent's products generally." Petitioner's brief at p. 2. Moreover, even a cursory review of the discovery materials provided by Respondent would show that Respondent does, indeed, use the registered 3DS & Design mark in connection with every product and service that it currently provides.

Moreover, Petitioner's argument that Respondent's discovery requests to Petitioner concerning the term "3DS" somehow render Respondent's other marks relevant to the cancellation proceeding is similarly without merit. Respondent is entitled, for purposes of a likelihood of confusion analysis, to attack the strength of Petitioner's mark, and to seek discovery on other, similar marks coexisting with Petitioner's mark. Those inquiries do not magically make Respondent's other marks – whether or not they contain the term "3DS" – relevant.

Petitioner then argues that “Respondent...reserves its right to argue that “3DS” is an abbreviation of its business name that it has used for years” and that this renders Respondent’s other marks relevant to this proceeding. However, in support of this contention, Petitioner cites to a letter written by Counsel for *Petitioner* which does not even mention the proposition for which it is cited. Exhibit 5.

C. Respondent’s document production is sufficient

Apart from the fact that Petitioner had not even reviewed Respondent’s document production at the time of its last communication to Respondent, and that no deficiencies with its document production have ever been identified to Respondent prior to service of this motion, Petitioner’s argument that it “can only conclude that Respondent has not conducted a thorough search or collection of its records for responsive documents” is ludicrous. As an initial matter, ALL of the documents produced by Respondent are responsive to Petitioner’s discovery requests – that’s why they were produced. Petitioner argues that the timeframe for production is limited to 2011-2013, and this conclusively demonstrates that Respondent’s production is deficient; however, as noted above, had Petitioner even called or emailed Counsel for Respondent to raise this issue, Counsel for Respondent could have pointed out that Respondent’s use of the mark did not commence until 2011 – hence the timeframe for production. Petitioner’s motion to compel should thus be denied.

D. Other Disputed Discovery Issues

1) Petitioner complains that Respondent has declined to produce promotional, marketing and business plans; however, Petitioner has not shown – and cannot show – that such plans are relevant in any way to the issues in this proceeding. Petitioner argues that such plans are relevant to the “proximity or overlap of the parties’ businesses and the potential for

commercial conflict.” Petitioner’s Brief at p. 10. However, Petitioner has alleged in its Petition for Cancellation that Respondent is a direct competitor, and Respondent has produced ample documents, including marketing materials, showing the range and scope of products and services that it currently provides in connection with the 3DS & Design registration. This information should be more than sufficient to show the “proximity or overlap of the parties’ businesses and the potential for commercial conflict.” Respondent has further stated, in response to Interrogatory Nos. 13 and 14, which sought “plans to use the mark 3DS,” and “efforts or plans to promote or expand awareness of the mark 3DS,” that “it plans to use the mark 3DS & Design generally in the manners in which it currently uses the mark.” Exhibit 9. Respondent is unclear as to what further light any prospective “promotional, marketing or business plans” would shed on a likelihood of confusion analysis, or that the value to Petitioner would outweigh Respondent’s acute intent in protecting the confidentiality and trade secret nature of its future business plans.

Importantly, to the extent that Autodesk is arguing that the goods and services provided by 3D Systems are within the natural scope of expansion of the goods claimed by Autodesk in its registration for 3DS MAX, as suggested by the *Johnston Pump/General Valve* case cited by Petitioner, such an inquiry would focus on *Petitioner’s* plans for expansion, not Respondent’s. *See Johnston Pump/General Valve, Inc. v. Chromalloy American Corp.*, 10 U.S.P.Q.2d 1671, at \*4 (TTAB 1988). And since a bona fide intent to use is not at issue in this proceeding, Respondent sees no reason why its promotional, marketing or business plans are relevant in any way to a likelihood of confusion analysis. *Cf. Intel Corp. v. Steven Emeny*, Opp. No. 91123312, 2007 WL 1520948, at \*7 (TTAB May 15, 2007).

Finally, such plans are both highly speculative and highly confidential. There is no guarantee that any plans would actually be enacted, and the potential detriment to Respondent of disclosing such plans to an adversary claiming to be a direct competitor – even under a protective order – would vastly outweigh the relevance of such plans to further establishing any overlap between the parties’ businesses.

2) Petitioner’s complaint that Respondent refuses to supply key information and documents pertaining to its selection of the [3DS & Design] mark” is specious and baseless. Respondent responded to Interrogatory No. 15, which sought “the reasons why you selected and adopted the mark 3DS,” but declined to identify any marks that were considered in the process of selecting the 3DS & Design mark. In its response, Respondent stated as follows:

Respondent adopted the mark 3DS & Design so as to create a brand that is immediately recognizable to consumers, which calls to consumers’ and potential consumers’ minds the source from which the subject goods and services originate, namely 3D Systems, Inc., by use of the term "3D" and Respondent’s 3D & Design mark (see U.S. Reg. No. 3,023,690) and incorporating the letter "S," as an abbreviation for "Systems," and which suggests a quality or characteristic of the products and related services offered and sold by the company through use of the cubical design element. [Exhibit 9]

Petitioner claims that Respondent’s intent is at issue and that thus other marks that were considered are relevant; however, here, where the stated reasons for adoption of the mark are so clearly free from malevolent intent, and more closely related to Respondent’s name than Petitioner’s 3DS MAX mark, the inquiry as to intent falls flat, and other marks considered by Respondent are not relevant or necessary for the adjudication of issues presented in this proceeding.

3) In response to Interrogatory No. 17, which sought identification of any “studies, tests, rating, or surveys related to the quality of the 3DS Products or Services,” at the discovery conference on May 6, 2014, Counsel for Respondent took the position that without a claim for tarnishment, the quality of goods provided under the contested mark was not relevant to a

cancellation proceeding. Counsel for Respondent asked Counsel for Petitioner to provide authority in support of its position, and agreed to take any such authority under advisement. However, up to the filing of the instant motion, Counsel for Petitioner failed to produce any such authority to Counsel for Respondent. Thus, Respondent fails to see how this matter is ripe for a motion to compel where Counsel for Petitioner failed to provide authority on which it intended to rely, in an effort to resolve this issue without necessitating Board intervention. Yet perhaps the reason why Petitioner never provided any authority to Respondent in support of its position is that it was unable to find any; indeed, Petitioner's sole argument for the relevance of information pertaining to the quality of goods and services offered under the 3DS & Design mark is that it "sheds light on the relationship between the parties' goods and businesses and how consumers perceive Respondent and the goods and services it offers under the [3DS & Design] mark [and] therefore it unquestionably is a 'fact probative of the effect of use'" for purposes of a likelihood of confusion analysis.

Yet in its Petition for Cancellation, Petitioner makes no allegations as to bad faith or tarnishment, and "studies, tests, rating, or surveys related to the quality of the 3DS Products or Services," cannot be said to be relevant to a likelihood of confusion analysis, or to this proceeding generally. *See Devries v. Ncc Corp.*, 227 USPQ 705, at n.3 (TTAB 1985) (noting that tarnishment is "not [a] matter[] which may be entertained by the Board as grounds for cancellation, nor is it necessary that petitioner prove either dilution or tarnishment in order to prevail on his claim of likelihood of confusion.")

4) Interrogatory No. 27 sought information about "the circumstances under which (including, but not limited to, the date) [3D Systems] first became aware of Petitioner or its use of the [3DS MAX] mark. Respondent responded that it "generally has been aware of Petitioner

for many years.” Respondent is at a loss as to how to state, with any further precision or more detail, how a large, publicly traded company became aware of another large, publicly traded company. Indeed, during the discovery conference on May 6, 2014, Petitioner narrowed its request to specifically seek information concerning whether Respondent was aware of Autodesk or its use of the 3DS MAX mark at the time Respondent adopted its 3DS & Design mark. Counsel for Respondent agreed to take this under advisement, and Counsel for Petitioner never followed up on the status of this issue.

5) Petitioner’s Request for Production No. 25 seeks “[a]ll documents relating to internal communications, other than with your legal counsel, concerning the right to use the [3DS & Design mark] or this trademark dispute. Due to the way this request was phrased, Respondent pointed out during the May 6, 2014 discovery conference that such documents (communications internally about a legal matter), if they exist, were protected by the work-product immunity and declined to produce. Petitioner now complains that Respondent is refusing to “produce documents relating to internal communications” concerning the 3DS & Design mark – which is clearly beyond the scope of what was originally requested. Petitioner cites its concern that “documents relating to concerns about confusion with Petitioner” would be withheld; however, Respondent refers to its response to Petitioner’s Request for Production No. 32, in which it agreed to produce documents relating to any actual confusion between Petitioner and Respondent and their respective products and services.

#### E. Conclusion

Petitioner has waited until the eleventh hour to attempt to move the discovery process along, and now seeks to obtain a further extension of the discovery period by filing a motion to compel on issues that are not ripe for judicial resolution. For this reason, and the other foregoing

reasons, Respondent respectfully requests that the Board deny Petitioner's Motion to Compel in its entirety.

Dated: August 27, 2014

Respectfully Submitted,

/s/ Jason M. Sneed

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*Attorneys for Respondent 3D Systems, Inc.*

Certificate of Filing / Certificate of Service

The undersigned hereby certifies that the foregoing *Respondent's Opposition to Petitioner's Motion to Compel* was filed via ESTTA, and that a copy was placed in U.S. Mail, postage prepaid, addressed to the following counsel of record:

John L. Slafsky  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, California 94304-1050  
*Attorneys for Petitioner Autodesk, Inc.*

This the 27<sup>th</sup> day of August, 2014.

/s/ Gina Iacona  
An Attorney for Respondent

# Exhibit 1

March 18, 2014

*via U.S. Mail and email*

John L. Slafsky, Esq.  
Wilson Sonsini Goodrich & Rosati LLP  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
jslafsky@wsgr.com

Re: *Autodesk, Inc. v. 3D Systems, Inc.*, Trademark Trial and Appeal Board  
Cancellation No. 92056509

Dear John:

Respondent has completed its initial review of Petitioner Autodesk, Inc.'s Responses to Respondent 3D Systems, Inc.'s First Set of Requests for Admission; Petitioner Autodesk, Inc.'s Responses to Respondent 3D Systems, Inc.'s First Set of Requests for the Production of Documents and Things; and Petitioner Autodesk, Inc.'s Responses to Respondent 3D Systems, Inc.'s First Set of Interrogatories. Autodesk's responses are deficient and incomplete in a number of respects, as detailed below. This letter is notice to you of these deficiencies and to ask Autodesk to remedy those deficiencies through amendment and/or supplementation, and to request a conference to discuss these deficiencies, in satisfaction of Respondent's obligations under 37 C.F.R. § 2.120(e)(1).

**Respondent's Interrogatories to Autodesk**

As an initial matter, Autodesk served its interrogatory responses without a signed verification, as required by Fed. R. Civ. P. 33(b)(3) and (5). Please provide a signed verification page that clearly indicates the identity of the person making responses on Autodesk's behalf.

In addition, Autodesk's responses are deficient, substantively, as follows:

**Interrogatory No. 1:** The response to Interrogatory No. 1 identifies only one individual, instead of the three requested by 3D Systems. We do not believe that identifying three individuals that are most knowledgeable about the use of the 3DS MAX mark is unduly burdensome. Please supplement your response.

**Interrogatory No. 2:** The answer to Interrogatory No. 2 is insufficient. If Autodesk opts to answer an Interrogatory by referring to business records pursuant to Fed. R. Civ. P. 33(d), Autodesk must specify the documents "in sufficient detail to enable the interrogating party to locate and identify them" and give 3D Systems a "reasonable opportunity to examine and audit the records." Fed. R. Civ. P. 33(d)(1) and (2). Autodesk has not met its burden pursuant to Fed. R. Civ. P. 33(d), and we thus insist that Autodesk amend or supplement its response to this Interrogatory to either provide a substantive response, or the information required pursuant to Fed. R. Civ. P. 33(d).

**Interrogatory No. 5:** The response to Interrogatory No. 5 is incomplete and grossly insufficient. The interrogatory clearly asks Autodesk to identify with particularity “each different type of product and service ever offered for sale or sold in the United States by Autodesk (or its Licensees) under the 3DS MAX Mark,” and for each such product or service, to provide additional information. Autodesk’s response identifies not one product or service sold under the 3DS MAX Mark, and instead provides an extensive list of marks “containing the 3DS MAX Mark” under which it has offered for sale “computer software for animating, modeling and rendering images.” Moreover, Autodesk has provided no response to subparts (v) and (vi) of the Interrogatory. Furthermore, Autodesk has not completely answered subpart (iii), which requests “the classes or types of customers...who purchase...each such type of product or service” – instead, Autodesk responds that the “classes of consumers...*include* developers of computer games and films as well as motion graphic artists” (emphasis added). This Interrogatory seeks standard information for a proceeding of this type, and Autodesk has no basis on which to object to the production of information sought by subparts (v) and (vi) given the protective order in place in this proceeding. *See, e.g.*, TBMP § 414(18). Please supplement your response immediately.

**Interrogatory No. 6:** The response to Interrogatory No. 6 identifies only one individual, instead of the three requested by 3D Systems. We do not believe that identifying three individuals that are most knowledgeable about the sales and distribution of products or services sold by Autodesk in connection with the 3DS MAX mark is unduly burdensome. Please supplement your response.

**Interrogatory No. 7:** Autodesk’s refusal to answer Interrogatory No. 7 is baseless and inappropriate. The Interrogatory seeks information regarding Autodesk’s fact witnesses, and making an objection based on privilege is without justification. Please supplement your response.

**Interrogatory No. 10:** Autodesk’s refusal to answer Interrogatory No. 10 is again baseless and inappropriate. The Interrogatory seeks information regarding the use of any marks incorporating the term “3DS” by third parties, and is wholly relevant to questions at issue in this proceeding. *See, e.g.*, TBMP § 414(9). With respect to Autodesk’s objection that the Interrogatory “seeks information related to uses of marks...that occurred outside the United States,” 3D Systems is willing to restrict the information sought by this Interrogatory to uses of marks incorporating the term “3DS” within the United States. Please supplement your response.

**Interrogatory No. 12:** The response to Interrogatory No. 12 identifies only one individual, instead of the three requested by 3D Systems. We do not believe that identifying three individuals that are most knowledgeable about Autodesk’s enforcement of the rights it claims in the 3DS MAX Mark is unduly burdensome. Please supplement your response.

**Interrogatory No. 13:** Autodesk’s refusal to answer Interrogatory No. 13 is without basis. The Interrogatory seeks information regarding any actual or purported association or confusion between Autodesk and/or its products and services sold in connection with the 3DS MAX Mark, on the one hand, and 3D Systems and/or its products and services sold in connection with the 3DS and Design mark, on the other. The information sought by this Interrogatory goes to the question of likelihood of confusion, which is the central issue in this proceeding. The

Interrogatory does not call for legal conclusions, and Autodesk's objection in this regard is inapposite. Moreover, this proceeding has been ongoing for more than a year. Autodesk's objection that "its investigation is ongoing, and accordingly it is premature to respond to this request" is wholly without basis. Please supplement your response immediately to provide the requested information.

**Interrogatory No. 14:** Autodesk's objections to this Interrogatory seeking the identity of persons most knowledgeable about "the adoption or use of the 3DS & Design Mark by 3D Systems" as well as a description of "the circumstances under which Autodesk first became aware of the 3DS & Design Mark" are, again, without basis. As an initial matter, the mere identity of persons knowledgeable about the information sought by this Interrogatory are not subject to the attorney-client privilege and/or work product doctrine. Moreover, information concerning the selection and adoption of a mark is discoverable, as are the names and addresses of a Party's officers. *See, e.g.*, TBMP § 414(4) and (12). Autodesk has no basis to refuse to answer this Interrogatory in its entirety. Please supplement your response to this Interrogatory immediately to provide the requested information.

**Interrogatory No. 15:** This Interrogatory specifically seeks "each and every *factual basis* for Autodesk's contention that the 3DS MAX Mark is confusingly similar to the 3DS & Design Mark" (emphasis added). Autodesk's objection that it "calls for legal conclusions" is thus wholly inappropriate. Moreover, Autodesk's objection that "its investigation is ongoing, and accordingly it is premature to respond to this request" is without basis. As a reminder, this proceeding has been ongoing for more than a year, which is ample opportunity for Autodesk to have investigated its factual bases for bringing this cancellation. Accordingly, we request that you supplement your response to this Interrogatory without further delay.

**Interrogatory No. 16:** As an initial matter, Autodesk's objection on the grounds that this Interrogatory "calls for disclosure of highly sensitive commercial information and/or trade secrets" is without basis given the protective order in force in this proceeding. Moreover, Autodesk's response that it "does not track annual marketing and promotion expenditures data by product or service, such as those under the 3DS MAX Mark" is inapposite. Such information is routinely discoverable in proceedings such as this one. *See, e.g.*, TBMP § 414(18). Autodesk may identify documents from which the information requested by this Interrogatory can be ascertained, or it may undertake the burden of doing so itself, but it is not relieved of its burden of answering this Interrogatory merely because it does not track certain information. Please supplement your response accordingly.

**Interrogatory No. 17:** The response to Interrogatory No. 17 identifies only one individual, instead of the three requested by 3D Systems. We do not believe that identifying three individuals that are most knowledgeable about the "advertising and promotion of goods and services offered by [Autodesk] under the 3DS MAX Mark" is unduly burdensome. Please supplement your response.

**Interrogatory No. 20:** Autodesk's refusal to answer this Interrogatory is without basis. Autodesk has refused to identify *a single person* "most knowledgeable about the creation, selection and decision by Autodesk...to adopt the 3DS MAX Mark, and identify all documents related to the creation, selection and adoption" of that mark. The information sought by this

Interrogatory is at the heart of the issues of this proceeding, and is discoverable. *See, e.g.*, TBMP § 414(4). Autodesk's apparent assertion that this information is, in its entirety, protected by privilege, is simply not credible or acceptable. Please supplement your response without further delay.

**Interrogatory No. 22:** The response to Interrogatory No. 22 identifies only one individual, instead of the three requested by 3D Systems. We do not believe that identifying three individuals that are most knowledgeable about the "adoption of ".3ds" as a filename extension by Autodesk" is unduly burdensome. Please supplement your response.

**Interrogatory No. 25:** Autodesk's refusal to answer this Interrogatory is untenable. As detailed below, Autodesk has refused to answer two of the three Requests for Admission propounded by 3D Systems, and has denied the third. As grounds for its refusal to respond, Autodesk objects to the Interrogatory as "compound" and seeking information protected by the attorney-client privilege and/or work product doctrine. Both of these objections are unfounded, and do not excuse Autodesk from its obligation to answer. The Requests for Admission propounded by 3D Systems are relevant, as discussed in further detail below, and Autodesk is obliged to answer this Interrogatory, and provide the information requested. Please supplement your response accordingly.

#### **Respondent's Requests for Admission to Autodesk**

As noted above, the responses of Autodesk to Respondent's Requests for Admission are deficient in the following respects:

**RFA Nos. 1 and 2:** Autodesk's refusal to answer these Requests is without basis. Autodesk objects on the grounds that these Requests are "vague and unintelligible," but does not identify the specific part of the Requests to which it contends this objection applies. Moreover, Autodesk's objection that these Requests are "not calculated to lead to the discovery of admissible evidence" is unfounded. Both of these Requests go to the issue of whether Autodesk has protectable rights in the 3DS MAX Mark, which is undoubtedly relevant to the claims and defenses in this proceeding. Autodesk has demonstrated that it knows how to respond to requests that it claims are "vague and unintelligible" as it responded to multiple Interrogatories and Requests for Production to which it made identical objections. While 3D Systems does not believe a meet and confer is necessary for Autodesk to answer these Requests, it will make itself available for such a meet and confer if required.

#### **Respondent's Requests for Production to Autodesk**

To date, Autodesk has not produced any documents to Respondent, despite its undertaking to do so. Respondent is thus unable, at this time, to comment on the sufficiency of Autodesk's document production. With respect to Autodesk's responses to 3D Systems' Requests for Production, 3D Systems notes that they are deficient in the following respects:

**RFP No. 7:** Autodesk, in response to this Request, objects on the grounds that it is "vague and ambiguous," but does not specify the language that it claims to not understand. While 3D Systems does not believe that the Request is unintelligible, 3D Systems is willing to meet and confer with Autodesk in order to clarify this Request, if required.

**RFP No. 9:** Autodesk objects to this Request on the grounds that it is unduly burdensome, and states that it has “entered into thousands of agreements permitting training centers, distributors and channel partners to market and sell licenses to Autodesk products, including those bearing the 3DS MAX Mark.” However, 3D Systems fails to see how the production of “[d]ocuments sufficient to show the identity of Autodesk’s Licensees relating to the 3DS MAX Mark” is unduly burdensome. To the extent that these documents contain provisions governing the use or non-use of the 3DS MAX Mark, they are likely to lead to the discovery of admissible evidence and should be produced. Please produce responsive, non-privileged documents forthwith.

**RFP No. 10:** This Request seeks documents relating to “any use of trademarks or trade names containing the term ‘3DS’” by third parties. Autodesk has declined to produce any documents in response to this Request, instead objecting that the Request is “overbroad and unduly burdensome” and “seeks third-party documents that are...equally available to 3D Systems.” 3D Systems respectfully disagrees. This Request goes to the issue of whether Autodesk has protectable rights in the 3DS MAX Mark, which is centrally at issue in this proceeding, and this information is routinely discoverable in TTAB proceedings. *See, e.g.*, TBMP § 414(9). To the extent that such documents are being withheld due to a claim of privilege, Autodesk is obliged to produce a privilege log. To the extent that Autodesk has responsive, non-privileged documents in its possession, custody or control, these documents must be produced without further delay.

**RFP No. 11:** Autodesk’s refusal to produce documents responsive to this Request is without basis. This Request goes to the issue of whether Autodesk has protectable rights in the 3DS MAX Mark, which is centrally at issue in this proceeding. Autodesk objects on the grounds that the Request is overbroad and unduly burdensome, vague and ambiguous, and calls for legal conclusions. While 3D Systems does not agree, it is willing to meet and confer with Autodesk to clarify the Request, if required.

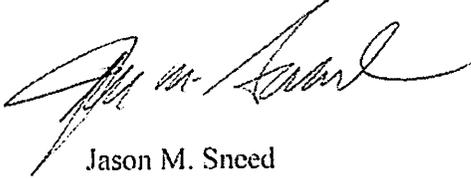
**RFP No. 12:** The documents responsive to this Request go directly to the issue of whether Autodesk has protectable rights in the 3DS MAX Mark, which is centrally at issue in this proceeding. Autodesk’s refusal to produce documents on the grounds that the Request “does not seek documents relevant to the claims or defenses in this proceeding” is misplaced. Moreover, to the extent that Autodesk intends to rely on assertions of privilege, a privilege log must be produced by Autodesk.

**RFP Nos. 14 and 15:** These Requests, seeking documents “sufficient to show each use...of the 3DS MAX Mark in conjunction with the promotion or provision of the products and/or services of Autodesk” and “referring or relating to any communication with any advertising agency...” are standard requests, wholly relevant to this proceeding, and 3D Systems can see no basis for Autodesk’s refusal to produce. *See* TBMP § 414(17). Please produce these documents without further delay.

**RFP No. 17:** Autodesk has refused to produce any documents in response to this Request, which concerns comparisons between the marks at issue in this cancellation proceeding. Such information is clearly relevant, and 3D Systems sees no basis for Autodesk’s refusal to produce, or its objections that the request is “vague and ambiguous” (without any identification of the specific language to which this objection applies) or “overbroad and unduly burdensome.”

3D Systems is very concerned with Autodesk's refusal to disclose information and/or produce documents that are clearly relevant and discoverable. We request a meet and confer to discuss the foregoing deficiencies in Autodesk's discovery responses during the week of March 24, 2014. Please let me know your availability.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason M. Sneed", written in a cursive style.

Jason M. Sneed

cc: Sarah Hsia, Esq.

4843-4699-4201. v. 1

# Exhibit 2

March 28, 2014

***VIA EMAIL***

Jason M. Sneed, Esq.  
Sneed PLLC  
610 Jetton St., Suite 120-107  
Davidson, NC 28036

Re: Autodesk, Inc. v. 3D Systems, Inc.  
TTAB Cancellation No. 92056509

Dear Jason:

We write to discuss the responses of Respondent 3D Systems, Inc. (“Respondent”) to Autodesk’s First Set of Interrogatories to Registrant (the “Interrogatories”) and First Set of Requests for Production to Registrant (the “Document Requests,” and together with the Interrogatories, the “Discovery Requests”). Respondent’s responses to the Discovery Requests are deficient in several respects, including the following:

**Responses to the Document Requests**

To date, Respondent has not produced any documents to Autodesk. Accordingly, the below issues are not inclusive or reflective of any deficiencies that may be raised in the future with respect to such production.

**General Objections**

As a general matter, Respondent’s General Objections reference the Interrogatories, and appear to have been “cut and pasted” from Respondent’s responses to the Interrogatories. For example, Objection No. 8 states that “When answering Petitioner’s interrogatories . . . Respondent will respond only with respect to the mark subject to this proceeding . . . .” Similarly, Objection No. 9 states “to the extent an interrogatory calls for the provision of information . . . .” Accordingly, please review the objections contained in Respondent’s response to the Document Requests, and revise them as appropriate to reflect objections specific to the Document Requests.

Jason M. Sneed, Esq.  
March 28, 2014  
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Additionally, there are particular General Objections that require clarification or are inapplicable to the Document Requests:

**Objection No. 9:** Respondent objects to the definition of the term “3DS Product or Service” on the basis that such definition is overly broad, vague and ambiguous, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. However, Respondent’s objection does not contain any indication or proposal as to an alternative definition for “3DS Product or Service.” Please provide clarification and set forth Respondent’s proposed definition of the term “3DS Product or Service.”

**Objection No. 10:** Respondent objects to the definition of the term “identify” with respect to a “product” and “service” as overly broad and unduly burdensome, vague and ambiguous. The Document Requests do not contain a definition for the term “identify.” Please strike this objection.

**Objection No. 12:** Respondent takes issue with Definition Nos. 13, 14, 15 and 16 as “nonsensical and confusing.” Such definitions are standard in discovery requests, and are universally understood as indicating that a verb conjugated in present tense is not limited to present tense but includes past tense as well, a singular form of a word should also be viewed as including plural, and “all” and “each” are to be read as inclusive of one another. Please explain the basis for Respondent’s objection. There is no Definition No. 16 in the Document Requests. Please strike that from Objection 12.

### **Responses and Objections to Specific Requests**

**Request No. 1:** Respondent’s response indicates that it will not produce documents responsive to this request, which calls for all documents relating to modeling, rendering or animation software or tools offered by Petitioner. However, the identification of goods and services for the registration that is the subject of this proceeding includes goods and services that can potentially be categorized as or are related to “modeling, rendering or animation software or tools.” Accordingly, please confirm that Respondent will produce documents responsive to this request.

**Request No. 2:** Respondent objects to this request as overly broad and unduly burdensome. Such objection is unfounded, insofar as the request calls only for “documents sufficient to identify” each 3DS Product or Service. Please confirm that in producing responsive documents “showing the scope of the use of the 3DS & Design mark,” Respondent will produce documents sufficient to identify each product or service offered for sale or distribution under the 3DS mark.

**Request No. 3:** Respondent objects to this request as overly broad and unduly burdensome. Such objection is unfounded, insofar as the request calls only for “documents sufficient to show” use of the mark 3DS in connection with each 3DS Product or Service each year that such product

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or service was offered for sale or distribution. Please confirm that in producing responsive documents “showing the scope of the use of the 3DS & Design mark,” Respondent will produce documents sufficient to show use of the 3DS mark in connection with each product or service offered for sale or distribution under the 3DS mark, for each year that such product or service was offered for sale or distribution.

**Request No. 5:** Respondent objects to this request on the basis that the request may call for publicly available information and because it objects to the definition of “3DS Product or Service.” Respondent states that it will produce responsive documents showing its first use date per International Class for the 3DS & Design Mark. This is not sufficient to satisfy this request, and Respondent’s stated objections do not relieve Respondent of the obligation to produce documents in its custody or control that are responsive to this request. Please confirm that Respondent will produce all responsive documents related to the earliest date Respondent offered any 3DS Product or Service.

**Request No. 9:** Respondent’s response indicates that it will not produce documents responsive to this request on the basis that it is overly broad and unduly burdensome, seeks irrelevant documents and things, and calls for proprietary or confidential information. In fact, marketing plans, marketing projections or other marketing documents prepared by or for Respondent relating to the sale, proposed sale, rendering or proposed rendering of any 3DS Product or Service are clearly relevant to this proceeding in that they bear directly on how the subject mark is used in the marketplace. Furthermore, to the extent Respondent has concerns regarding trade secrets or confidential information, such concerns are addressed by the operative Protective Order and provide no basis for refusing to produce these highly relevant documents. Please confirm that Respondent will produce all documents responsive to this request.

**Request No. 11:** Respondent objects to this request on the basis that it is overly broad and unduly burdensome, calls for publicly available information, and relies on a definition of “3DS Product or Service” to which Respondent objects. Respondent states that it will produce “representative samples” of Respondent’s advertisement, marketing and promotion of goods and services offered and sold under the 3DS & Design mark, including such advertising on its website. To the extent Respondent intends to respond to this request by producing representative samples, please provide a detailed explanation of the methodology employed in selecting such representative samples.

**Request No. 12:** Respondent’s response indicates that it will not produce documents responsive to this request on the basis that it is overly broad and unduly burdensome, calls for irrelevant documents and things, calls for the production of confidential information, and relies on a definition of “3DS mark” to which Respondent objects. Clearly, a request for documents relating to Respondent’s efforts or plans to promote or expand awareness of the mark 3DS goes directly to Respondent’s intended use of the mark in question and the likelihood of confusion

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with Petitioner's mark. Furthermore, the operative Protective Order addresses any concerns regarding confidentiality. Accordingly, please confirm that Respondent will produce all documents responsive to this request.

**Request No. 13:** Respondent objects to this request on the basis that it is overly broad and unduly burdensome, calls for confidential information, and utilizes a definition to which Respondent objects. Respondent states that it will produce only documents sufficient to show the overall sales of goods and services, on an annual basis, sold in conjunction with the 3DS & Design Mark. Respondent's objections are groundless in that Petitioner has requested only "documents sufficient to show" and such documents may be protected by the operative Protective Order. Accordingly, to the extent that Respondent possesses documents sufficient to show the annual sales (in dollars and in number of units) of each product offered under the mark 3DS, Respondent has provided no basis for not producing such documents. Please confirm that Respondent will produce such documents.

**Request No. 14:** Respondent objects to this request on the basis that it is overly broad and unduly burdensome, calls for confidential information, and utilizes a definition to which Respondent objects. Respondent states that it will produce only documents sufficient to show the overall sales of goods and services, on an annual basis, sold in conjunction with the 3DS & Design Mark. Respondent's objections are groundless in that Petitioner has requested only "documents sufficient to show" and such documents may be protected by the operative Protective Order. Accordingly, to the extent that Respondent possesses documents sufficient to show the annual sales (in dollars) of each service rendered under the mark 3DS, Respondent has provided no basis for not producing such documents. Please confirm that Respondent will produce such documents.

**Request No. 15:** Respondent objects to this request on the basis that it is overly broad and unduly burdensome, calls for confidential information, and utilizes a definition of "3DS Product or Service" to which Respondent objects. Respondent states that it will produce a listing of outlets at which the 3DS & Design mark has been used. Respondent's objections are groundless in that Petitioner has requested only "documents sufficient to show" and such documents may be protected by the operative Protective Order. Accordingly, please confirm that Respondent will produce documents responsive to this request as it was originally articulated.

**Request No. 18:** Respondent objects to this request on the basis that it calls for confidential information and utilizes a definition to which Respondent objects. Respondent states that it will produce any "license agreements" authorizing any third party to use the mark 3DS & Design. Confidential information is protected by the operative Protective Order, and these objections do not provide a basis for narrowing the request to only "license agreements." The request calls for "all documents, including but not limited to contracts and license agreements, authorizing any third party to use the mark 3DS." Production of only "license agreements" is therefore

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insufficient to satisfy the request, as there are other possible documents that may authorize a third party to use the mark 3DS. Please confirm that Respondent will produce documents responsive to this request as it was originally articulated.

**Request No. 22:** Respondent objects to this request insofar as it may cover marks considered as possible alternatives to the mark 3DS, on the grounds that it is unduly burdensome, overly broad, and calls for the production of irrelevant material. Respondent states that it will produce documents pertaining to the adoption of the 3DS & Design mark. Consideration of alternative marks is an important part of the selection of a registered mark, and that deliberative process is relevant to several aspects of the current proceeding, including insofar as it goes to Respondent's intent. Please confirm that Respondent will produce documents regarding possible alternative marks to the extent consideration of such alternative marks "pertains to the adoption of the 3DS & Design mark."

**Request No. 23:** Respondent's response indicates that it will not produce documents responsive to this request on the basis that the request is vague and ambiguous as to the reference to "3DS mark" and on the basis that it calls for documents protected by attorney-client privilege, work product, or other applicable privilege and/or immunity. These objections are unfounded. "3DS mark" is clearly defined in the Definitions, and, to the extent that the request calls for documents protected by privilege or immunity, Respondent must identify such documents in a privilege log. Accordingly, please confirm that Respondent will produce documents responsive to this request.

**Request No. 24:** Respondent's response indicates that it will not produce documents responsive to this request on the basis that it is overly broad, unduly burdensome, calls for the production of irrelevant materials, and references a definition to which Respondent objects. Documents relating to communications with third parties other than Respondent's legal counsel specifically concerning the mark 3DS are clearly relevant to this proceeding in that they potentially relate to consumer perception and confusion, among other things. Accordingly, please confirm that Respondent will produce documents responsive to this request.

**Request No. 25:** Respondent's response indicates that it will not produce documents responsive to this request on the basis that it is vague or ambiguous as regards the reference to "the mark 3DS," calls for the disclosure of confidential information, and references a definition to which Respondent objects. The term "the mark 3DS" is clearly defined by Petitioner in its Definitions and confidential information is protected by the operative Protective Order. These objections provide no basis for refusing to produce documents responsive to a request for documents relating to internal communications (other than with Respondent's legal counsel) concerning the right to use the mark 3DS or regarding this trademark dispute. Accordingly, please confirm that Respondent will produce documents responsive to this request.

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**Request No. 27:** Respondent objects to this request on the basis that it calls for documents protected by privilege, the disclosure of confidential information, the production of publicly available documents, and on the basis that it references a definition to which Respondent objects. Confidential information is adequately protected by the operative Protective Order, and, to the extent that the request calls for documents protected by privilege or immunity, Respondent must identify such documents in a privilege log. Furthermore, the request calls for “all documents relating to trademark applications you have filed for the mark 3DS”; Respondent’s offer to produce “any non-privileged documents consisting of trademark applications pertaining to the mark 3DS & Design filed with the U.S. PTO that are not equally available to Petitioner” is insufficient to satisfy this request, which is not limited to merely the trademark applications themselves, but extends to cover all non-privileged documents relating to such applications. Accordingly, please confirm that Respondent will produce all documents responsive to this request.

**Request No. 28:** Respondent’s response indicates that it will not produce documents responsive to this request on the basis that it calls for documents protected by privilege/immunity and references a definition to which Respondent objects. Respondent’s objection to the definition of “the mark 3DS” is insufficient grounds to refuse to produce any documents responsive to this request (for Respondent’s investigations regarding the availability, registrability, or use of the mark 3DS), which is highly relevant to this proceeding. To the extent that the request calls for documents protected by privilege or immunity, Respondent must identify such documents in a privilege log. Accordingly, please confirm that Respondent will produce documents responsive to this request.

**Request No. 29:** Respondent objects to this request on the basis that it calls for documents protected by privilege/immunity and references a definition to which Respondent objects. Respondent states that it will produce search reports pertaining to the mark 3DS & Design, but any related opinions and communications involving Respondent’s attorneys are subject to its privilege/immunity objection. We note that to the extent that the request calls for documents protected by privilege or immunity, Respondent must identify such documents in a privilege log. In addition, please confirm that respondent will produce all trademark searches conducted by Respondent or on Respondent’s behalf in connection with the availability, registrability, or use of the mark 3DS, which may include trademark searches of the mark 3DS & Design, as well as searches pertaining to other marks.

**Request No. 30:** Respondent’s response indicates that it will not produce documents responsive to this request on the basis that it is vague and ambiguous as to the term “inquiry,” calls for documents protected by privilege/immunity, and references a definition to which Respondent objects. Respondent’s objection to the definition of “the mark 3DS” is insufficient grounds to refuse to produce any documents responsive to this request, which is highly relevant to this proceeding. To the extent that the request calls for documents protected by privilege or

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immunity, Respondent must identify such documents in a privilege log. Accordingly, the only potential remaining objection regards the term “inquiry.” Please explain what is vague or ambiguous about the term “inquiry.”

**Request No. 31:** Respondent objects to this request on several grounds, including that it is overly broad and unduly burdensome, calls for the production of irrelevant material, is vague and ambiguous, calls for publicly available and confidential information, and references a definition to which Respondent objects. We note that documents relating to consumer recognition of 3DS Products or Services go to the heart of the likelihood of confusion inquiry, and accordingly are highly relevant to this proceeding. Furthermore, confidential information is adequately protected by the operative Protective Order. Respondent states that it will produce a representative sampling of documents evidencing consumer recognition of products and services offered and sold by Respondent in connection with the 3DS & Design Mark. To the extent Respondent intends to respond to this request by producing representative samples, please provide a detailed explanation of the methodology employed in selecting such representative samples.

**Request No. 32:** Respondent objects to this request on the basis that it is overly broad and unduly burdensome, seeks irrelevant material, is vague and ambiguous, and on the basis that it references a definition to which Respondent objects. This request seeks all documents relating to any confusion as to the origin, endorsement, approval or sponsorship of any 3DS Product or Service. As such, on its face, it goes directly to the heart of this proceeding—the likelihood of confusion regarding the subject mark. Respondent’s offer to produce documents pertaining to “actual confusion relative to Respondent and its 3DS & Design goods and/or services, on the one hand, and Petitioner and its 3DS Max goods and services, on the other hand” is insufficient to satisfy this request, particularly because the request was not limited to “actual confusion” but encompasses documents assessing potential confusion, for example. Accordingly, please confirm that Respondent will produce all documents responsive to this request, at least to the extent such documents pertain to confusion (actual or potential) between Respondent and its 3DS mark and Petitioner.

**Request Nos. 38-48:** Respondent objects to all of these requests on the grounds that they are unduly broad and overly burdensome, vague and ambiguous, and call for documents protected by privilege/work product. These objections are baseless. Each of these requests clearly specifies the subject of the request (either a denial or affirmative defense contained in Petitioner’s Answer or a document relied on by Petitioner to draft its Answer or its answers to the Interrogatories). To the extent that the requests call for documents protected by privilege or immunity, Respondent must identify such documents in a privilege log. We acknowledge that it is possible that some of the documents responsive to these requests will be produced in response to other requests. Accordingly, please confirm that Respondent will produce all documents responsive to these requests, to the extent any such documents are not otherwise produced in response to other requests.

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### **Responses to the Interrogatories**

**Objection No. 9:** Respondent objects to the definition of the term “3DS Product or Service” on the basis that such definition is overly broad, vague and ambiguous, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. However, Respondent’s objection does not contain any indication or proposal as to an alternative definition for “3DS Product or Service.” Please provide clarification and set forth Respondent’s proposed definition of the term “3DS Product or Service.”

**Objection No. 12:** This objection takes issue with Definition Nos. 13, 14, 15 and 16 as “nonsensical and confusing.” Such definitions are standard in discovery requests, and are universally understood according to their plain meaning. Please indicate specifically what Respondent finds confusing regarding the meaning of these definitions.

### **Responses and Objections to Specific Interrogatories**

**Interrogatory No. 1:** The answer to Interrogatory No. 1 is insufficient in that it does not provide historical product names. Please supplement this response to provide such information.

**Interrogatory No. 2:** The answer to Interrogatory No. 2 is implausible and incomplete. The answer to Interrogatory No. 1 sets forth dozens of products, and yet the answer to Interrogatory No. 2 identifies only one person as the most knowledgeable about the scope of Respondent’s products. The Interrogatory requests that Respondent identify the person most knowledgeable about each product or service identified in the response to Interrogatory No. 1. Please supplement this response to provide such information.

**Interrogatory No. 3:** The answer to Interrogatory No. 3 is incomplete. The Interrogatory requests that Respondent indicate the time period (month/year) that it offered each product or service identified in the answer to Interrogatory No. 1. As mentioned above, Respondent’s answer to Interrogatory No. 1 identifies dozens of products. The answer to Interrogatory No. 2 does not specify this information for each product, but merely addresses product categories. Please supplement this response to provide the requested information.

**Interrogatory No. 4:** The answer to Interrogatory No. 4 is insufficient. The Interrogatory plainly requests annual sales figures (dollar volume and units) for each of the products identified in the response to Interrogatory No. 1 from the date of first use of the mark 3DS in connection with such product or service to present. The answer to Interrogatory No. 4 merely provides overall sales figures (dollar volume) in total, and not by product. Please amend or supplement this response to provide the requested information.

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**Interrogatory No. 5:** The answer to Interrogatory No. 5 relies on and is subject to the same deficiencies as the answer to Interrogatory No. 3. Please supplement this response to provide the requested information for each of the identified products (rather than product categories).

**Interrogatory No. 6:** The answer to Interrogatory No. 6 relies on and is subject to the same deficiencies as the answer to Interrogatory No. 2. Please supplement this response to provide the requested information for each of the identified products.

**Interrogatory No. 8:** The answer to Interrogatory No. 8 is insufficient in that it fails to identify the requested expenditure information for each product identified in the answer to Interrogatory No. 1. Please supplement this response to provide the requested information for each of the identified products.

**Interrogatory No. 9:** The answer to Interrogatory No. 9 is insufficient in that it fails to specify the documents in enough detail to allow Autodesk to locate and identify them and Autodesk has not been provided a reasonable opportunity to examine such documents. Please amend or supplement this response to provide a substantive response or the information required pursuant to Fed. R. Civ. P. 33(d).

**Interrogatory No. 12:** The answer to Interrogatory No. 12 is insufficient in that it fails to specify the documents in enough detail to allow Autodesk to locate and identify them and Autodesk has not been provided a reasonable opportunity to examine such documents. Please amend or supplement this response to provide a substantive response or the information required pursuant to Fed. R. Civ. P. 33(d).

**Interrogatory No. 14:** The answer to Interrogatory No. 14 is insufficient in that it refers to the answer to Interrogatory No. 13, but fails to address the question asked. Please amend or supplement this response to provide an answer to this Interrogatory.

**Interrogatory No. 15:** The answer to Interrogatory No. 15 is incomplete because it fails to identify any marks that were considered in the process of selecting the mark 3DS. Please supplement this response to provide such information.

**Interrogatory No. 17:** Respondent refuses to answer this Interrogatory in its entirety on the basis that it is overly broad and unduly burdensome, seeks irrelevant information, and refers to a definition to which Respondent objects. These objections are unfounded and do not provide a basis for a complete refusal to answer the Interrogatory. Information regarding the quality of the 3DS Products or Services bears on, among other things, questions of damage to Autodesk in the event of consumer confusion. Please provide a substantive response to this Interrogatory.

**Interrogatory No. 22:** Respondent refuses to answer this Interrogatory in its entirety on the basis that it calls for information that is irrelevant, is vague or ambiguous, and on the basis that it

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refers to a definition to which Respondent objects. These objections are unfounded and do not provide a basis for a complete refusal to answer the Interrogatory. The "mark 3DS" is clearly defined in the Definitions. Searches done by Respondent regarding this mark are relevant to this proceeding in that they establish, among other things, Respondent's intent. Please provide a substantive response to this Interrogatory.

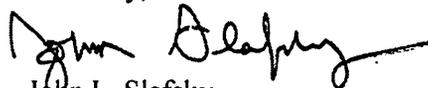
**Interrogatory No. 24:** The answer to Interrogatory No. 24 is insufficient because it fails to address enforcement efforts other than legal proceedings in the United States. Please supplement this answer to address the Interrogatory in its entirety.

**Interrogatory No. 27:** The answer to Interrogatory No. 27 is insufficient because it fails to indicate when and how Respondent first became aware of Autodesk and its use of the 3DS mark. Contrary to Respondent's objections, this information is clearly relevant as it goes to Respondent's knowledge of Autodesk and its use of the 3DS mark at the time Respondent filed the application for the registration that is the subject of this proceeding. Please supplement this answer to provide the requested information.

Please note that omission of any particular response to the Discovery Requests in the foregoing does not constitute an acceptance of such response or a waiver of any objections Autodesk may have to such response.

We request a phone conference to discuss the foregoing deficiencies in Respondent's responses to the Discovery Requests. Please let us know your availability generally during the weeks of April 8 and April 14.

Sincerely,

  
John L. Slafsky

# Exhibit 3

**Subject:** Re: Cancellation No. 92056509  
**Date:** Wednesday, June 18, 2014 at 10:25:09 AM Eastern Daylight Time  
**From:** Sarah Hsia  
**To:** Brannen, Stephanie  
**CC:** Slafsky, John, Jason M. Sneed

Stephanie – I'm looking into this and will let you know.

Sarah

**Sarah C. Hsia, Esq.**

SNEED PLLC, Of Counsel  
610 Jetton St., Suite 120-107  
Davidson, North Carolina 28036  
Tel.: 844-763-3347  
Email: [sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)

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---

**From:** <Brannen>, Stephanie <[sbrannen@wsgr.com](mailto:sbrannen@wsgr.com)>  
**Date:** Tuesday, June 17, 2014 at 12:02 PM  
**To:** Sarah Hsia <[sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)>  
**Cc:** "Slafsky, John" <[JSlafsky@wsgr.com](mailto:JSlafsky@wsgr.com)>  
**Subject:** RE: Cancellation No. 92056509

Sarah –

Unfortunately, the download link that you sent on June 11 will not work for us. Please send your client's documents to us via a customary FTP link or on a CD/DVD.

The link that you sent only gives us access to the documents within your firm's review platform; we can't download/export the documents in native or TIFF versions and we can't get access to the necessary metadata load files.

Thanks.

Stephanie

---

**From:** Sarah Hsia [<mailto:Sarah@SneedLegal.com>]  
**Sent:** Monday, June 09, 2014 12:43 PM  
**To:** Slafsky, John  
**Cc:** Jason M. Sneed  
**Subject:** Cancellation No. 92056509

John -

Please see the attached follow-up from our call last month, which was also sent by first-class mail. We expect to have documents to you in the next day or so – do you have any objection to receiving a download link instead of a CD/DVD?

Thanks,  
Sarah

**Sarah C. Hsia, Esq.**

SNEED PLLC, Of Counsel  
610 Jetton St., Suite 120-107  
Davidson, North Carolina 28036  
Tel.: 844-763-3347  
Email: [sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)

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# Exhibit 4

**Subject:** Re: Cancellation No. 92056509  
**Date:** Wednesday, June 18, 2014 at 2:35:56 PM Eastern Daylight Time  
**From:** Sarah Hsia  
**To:** Brannen, Stephanie  
**CC:** Slafsky, John, Jason M. Sneed

Stephanie:

I am informed that you can export the documents and a load file by clicking "All 507" and then clicking the Export link in the light-gray bar on the screen, which gives you the option to export the files and a load file in your desired format.

If you continue to have problems let me know.

**Sarah C. Hsia, Esq.**

SNEED PLLC, Of Counsel  
610 Jetton St., Suite 120-107  
Davidson, North Carolina 28036  
Tel.: 844-763-3347  
Email: [sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)

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**From:** <Brannen>, Stephanie <[sbrannen@wsgr.com](mailto:sbrannen@wsgr.com)>  
**Date:** Tuesday, June 17, 2014 at 12:02 PM  
**To:** Sarah Hsia <[sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)>  
**Cc:** "Slafsky, John" <[JSlafsky@wsgr.com](mailto:JSlafsky@wsgr.com)>  
**Subject:** RE: Cancellation No. 92056509

Sarah –

Unfortunately, the download link that you sent on June 11 will not work for us. Please send your client's documents to us via a customary FTP link or on a CD/DVD.

The link that you sent only gives us access to the documents within your firm's review platform; we can't download/export the documents in native or TIFF versions and we can't get access to the necessary metadata load files.

Thanks.

Stephanie

---

**From:** Sarah Hsia [<mailto:Sarah@SneedLegal.com>]  
**Sent:** Monday, June 09, 2014 12:43 PM  
**To:** Slafsky, John

**Cc:** Jason M. Sneed  
**Subject:** Cancellation No. 92056509

John -

Please see the attached follow-up from our call last month, which was also sent by first-class mail. We expect to have documents to you in the next day or so – do you have any objection to receiving a download link instead of a CD/DVD?

Thanks,  
Sarah

**Sarah C. Hsia, Esq.**

SNEED PLLC, Of Counsel  
610 Jetton St., Suite 120-107  
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Email: [sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)

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# Exhibit 5

June 18, 2014

**VIA EMAIL**

Jason M. Sneed, Esq.  
Sneed PLLC  
610 Jetton St., Suite 120-107  
Davidson, NC 28036

**Re: Autodesk, Inc. v. 3D Systems, Inc.  
TTAB Cancellation No. 92056509**

Dear Jason:

We have reviewed your letter dated June 7, 2014, which purports to summarize the parties' discovery conference held on May 2, 2014 and May 5, 2014. We write to clarify some of the items included in your summary and to provide a summary of the discussion pertaining to the deficiencies in 3D Systems' discovery responses.

**Autodesk's Discovery Responses**

While we appreciate your partial summary of the meet-and-confer discussions, we feel compelled to correct some of the characterizations in your letter regarding Autodesk's discovery responses:

**Interrogatory No. 5:** We did not agree to amend Autodesk's response to this interrogatory regarding the listing of products sold under the 3DS MAX mark. We stated our view that Autodesk has provided the requested information as to subpart (a) of the interrogatory, as it has identified the type of products sold under the 3DS MAX mark and has provided a list of specific products sold under the 3DS MAX mark. We did not agree to supplement Autodesk's response to Interrogatory No. 5(b)(i), which was neither raised in your March 18, 2014 letter nor during the phone call. We do not agree that Autodesk failed to answer subpart (iii), but are reconsidering the response to subpart (iii) and will supplement such response as appropriate.

**Interrogatory No. 7:** Your summary of the discussion regarding this interrogatory is incorrect. Rather than us agreeing to withdraw Autodesk's objections and provide a substantive response, you agreed that no response was required, in light of your repeated refusals to answer reciprocal interrogatories, citing *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002).

Jason M. Sneed, Esq.  
June 18, 2014  
Page 2

**Interrogatory No. 20:** Here, we agreed that we *may* supplement Autodesk's response, if at all, after we have fully completed our review of the documents to determine if there is any such person and/or documents.

**Request for Admission No. 1:** While we appreciate your attempt to clarify this request, we reiterate Autodesk's objections, including that this request seeks information not relevant or reasonably calculated to lead to the discovery of admissible evidence.

**Request for Admission No. 2:** While we appreciate your attempt to clarify this request, we reiterate Autodesk's objections, including that this request seeks information not relevant or reasonably calculated to lead to the discovery of admissible evidence.

**Request for Production No. 7:** We agreed to supplement Autodesk's response to this request only following clarification from you as to the meaning of "use of . . . any trademark registrations . . . ." You clarified this as referring to third-party registrations of trademarks containing the term "3DS." Any supplementation we provide will be premised on this meaning.

As you know, Autodesk made an initial document production on May 1, 2014. Autodesk intends to make its next production of documents next week. Autodesk intends to provide other supplemental responses shortly.

### **3D Systems' Discovery Responses**

We also want to memorialize the key points of our discussions with you regarding 3D Systems' discovery responses:

#### **Interrogatories**

**Objection No. 8:** You have objected to Autodesk's definition of the terms "3DS," "mark 3DS," and "3DS mark," and have indicated that you will view these terms as referring only to the 3DS & Design mark that is the subject of U.S. Reg. No. 4,125,612. You have agreed to limit your priority claims to the 3DS & Design mark that is the subject of U.S. Reg. No. 4,125,612, but have otherwise not agreed to limit your case to only the 3DS & Design mark. Accordingly, we cannot agree to your narrow definitions of these terms, as any other 3D Systems' 3DS marks may be highly relevant to this dispute.

**Objection No. 9:** You have similarly objected to Autodesk's definition of the term "3DS Product or Service." As with Objection No. 8, the parties are not able to agree on the appropriate scope of this term, as you have stated your intention to limit it to only the 3DS & Design mark that is the subject of U.S. Reg. No. 4,125,612, whereas Autodesk believes that other 3D Systems' 3DS marks, and the goods and services offered in connection therewith, are highly relevant, insofar as 3D Systems refuses to limit this proceeding to only the mark and goods and services that are the subject of U.S. Reg. No. 4,125,612.

Jason M. Sneed, Esq.  
June 18, 2014  
Page 3

The above definitions impact the vast majority of the interrogatories, including, but not limited to, interrogatories 1-18 and 21-25. Accordingly, there remains a fundamental disagreement as to the appropriate scope of your client's responses to any interrogatories that involve these definitions and/or to which you asserted Objections No. 8 and/or 9.

**Interrogatory No. 1:** You stated that 3D Systems' response includes past product names. However, there remains a dispute over the definition of the term "mark 3DS."

**Interrogatory Nos. 2 and 6:** We agreed to reserve the right to revisit this issue, in the event that the person identified is insufficient. There remains a dispute over the definition of the term "mark 3DS."

**Interrogatory No. 3:** You agreed to supplement the requested information for each category of product or service. However, there remains a dispute over the definition of the term "mark 3DS."

**Interrogatory No. 4:** You stated that your client does not maintain sales figures (dollar volume and units) for each category or product. However, there remains a dispute over the definition of the term "mark 3DS."

**Interrogatory No. 5:** You stated that the time periods identified in 3D Systems' response to Interrogatory No. 3 indicated continuous use. However, there remains a dispute over the definition of the term "mark 3DS."

**Interrogatory No. 9:** You agreed to identify and produce representative documents responsive to this interrogatory, as well as provide a brief explanation for the basis of selecting such documents as representative. However, there remains a dispute over the definition of the term "mark 3DS."

**Interrogatory No. 12:** Although there remains a dispute over the definition of the term "mark 3DS," you agreed to supplement this response to be as complete as possible.

**Interrogatory No. 14:** In addition to the remaining dispute over the definition of the term "mark 3DS," you refused to supplement a plainly inadequate response. In addition, you stated your view that "plans" are not relevant to this dispute.

**Interrogatory No. 15:** In addition to the remaining dispute over the definition of the term "mark 3DS," you refused to supplement to provide information pertaining to any marks that were considered in the process of selecting the 3DS mark.

**Interrogatory No. 17:** In addition to the remaining dispute over the definition of the term "3DS Product or Services," you asserted that the issue of quality of the 3DS Products or Services is irrelevant. You refused to supplement to provide a substantive response to this interrogatory.

Jason M. Sneed, Esq.  
June 18, 2014  
Page 4

**Interrogatory No. 22:** You agreed to supplement to provide a substantive response identifying every trademark search 3D Systems conducted relating to the mark 3DS. There remains a dispute over the definition of the term “mark 3DS.”

**Interrogatory No. 24:** You agreed to that you would produce documents from enforcement actions, to the extent there are any, outside of formal legal proceedings (for example, cease-and-desist letters). There remains a dispute over the definition of the term “mark 3DS.”

**Interrogatory No. 27:** We clarified that “Petitioner or its use of the 3DS mark” means Autodesk and any word, name, symbol or device or other designation of origin incorporating the letter string 3DS, or its phonetic equivalent as well as any domain name incorporating the letter string 3DS. Despite this clarification, you have refused to supplement your client’s response.

#### **Requests for Production**

**Objection No. 8:** You have objected to Autodesk’s definition of the terms “3DS,” “mark 3DS,” and “3DS mark,” and have indicated that you will view these terms as referring only to the 3DS & Design mark that is the subject of U.S. Reg. No. 4,125,612. You have agreed to limit your priority claims to the 3DS & Design mark that is the subject of U.S. Reg. No. 4,125,612, but have otherwise not agreed to limit your case to only this 3DS mark. Accordingly, we cannot agree to your narrow definitions of these terms, as any other 3D Systems’ 3DS marks may be highly relevant to this dispute.

**Objection No. 9:** You have similarly objected to Autodesk’s definition of the term “3DS Product or Service.” As with Objection No. 8, the parties are not able to agree on the appropriate scope of this term, as you have stated your intention to limit it to only the 3DS & Design mark that is the subject of U.S. Reg. No. 4,125,612, whereas Autodesk believes that other 3D Systems’ 3DS marks, and the goods and services offered in connection therewith, are highly relevant, insofar as 3D Systems refuses to limit this proceeding to only the mark and goods and services that are the subject of U.S. Reg. No. 4,125,612.

The above definitions impact the vast majority of the requests for production, including, but not limited to, requests 2-22, 24-25, and 27-34. Accordingly, there remains a fundamental disagreement as to the appropriate scope of your client’s responses to any requests for production that involve these definitions and/or to which you asserted Objections No. 8 and/or 9.

**Request for Production No. 1:** You agreed to supplement 3D Systems’ response to this request by producing documents with respect to 3DS MAX products only.

**Request for Production Nos. 2-3, 5:** You refused to expand your client’s response beyond the 3DS & Design mark that is the subject of Reg. No. 4,125,612. Accordingly, there remains a dispute over the definition of the terms “mark 3DS” and “3DS Product or Service.”

Jason M. Sneed, Esq.  
June 18, 2014  
Page 5

**Request for Production No. 9:** In addition to the primary dispute over the definition of the term “3DS Product or Service,” you have asserted that drafts, plans, projections, and proposals not implemented are not relevant and have refused to produce such documents.

**Request for Production No. 12:** In addition to the primary dispute over the definition of the term “mark 3DS,” you have asserted that drafts, plans, projections, and proposals not implemented are not relevant and have refused to produce such documents.

**Request for Production Nos. 13-14:** You refused to expand 3D Systems’ response beyond the 3DS & Design mark that is the subject of Reg. No. 4,125,612. Accordingly, there remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 15:** You agreed to produce a representative sample of each category of catalog, sales outlet, Internet website or other electronic means, retail outlet, and wholesale outlet at which the 3DS & Design products or services have been, or are intended to be, advertised, promoted, distributed, sold, or offered for sale. There remains a dispute over the definition of the term “3DS Product or Service.”

**Request for Production No. 18:** You agreed to produce license agreements, settlement and co-existence agreements, and a representative sample of distribution contracts. There remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 22:** You refused to produce documents pertaining to marks considered as possible alternatives to the mark 3DS. In addition, there remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 23:** You agreed to produce documents relating to use of the 3DS Max mark by Autodesk.

**Request for Production No. 24:** You have agreed to produce responsive documents discussing trademarks. However, there remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 25:** In addition to the dispute over the definition of the term “mark 3DS,” you refused to produce any documents responsive to this request on the basis of work-product privilege, although you did not assert this objection in your client’s response.

**Request for Production No. 27:** You agreed to produce emails and other communications with the United States Patent & Trademark Office, as well as otherwise non-privileged communications. However, there remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 28:** You agreed to review and consider documents on a case-by-case basis. There remains a dispute over the definition of the term “mark 3DS.”

Jason M. Sneed, Esq.  
June 18, 2014  
Page 6

**Request for Production No. 29:** You agreed to produce trademark search reports. There remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 30:** You agreed to produce documents regarding any “informal outreach.” There remains a dispute over the definition of the term “mark 3DS.”

**Request for Production No. 31:** You asserted that it is premature to formulate a final response to this request, and will revert with a final answer once you have completed review of 3D Systems’ documents. In addition, there remains a dispute over the definition of the term “3DS Product or Service.”

**Request for Production No. 32:** You confirmed that 3D Systems will produce documents relating to potential confusion, not merely actual confusion. There remains a dispute over the definition of the term “3DS Product or Service.”

**Request for Production Nos. 38-48:** We clarified that these requests seek only documents not otherwise responsive to other discovery demands. You indicated a conceptual objection to contention document demands.

You made 507 documents available to us on June 11, 2014. As discussed separately, we have had some technical difficulties downloading the documents. We will be in contact with you if we are not able to resolve this issue.

Please let us know when we can expect your amended and supplemented responses in accordance with the above understanding.

Sincerely

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation



Stephanie S. Brannen

cc: Sarah Hsia, Esq.

# Exhibit 6

June 7, 2014

*via U.S. Mail and email*

John L. Slafsky, Esq.  
Wilson Sonsini Goodrich & Rosati LLP  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
jslafsky@wsgr.com

Re: *Autodesk, Inc. v. 3D Systems, Inc.*, Trademark Trial and Appeal Board  
Cancellation No. 92056509

Dear John:

This letter is to summarize the discovery conference we had on May 2, 2014, to discuss the deficiencies in Autodesk's responses to 3D Systems' ("3DS") First Requests for the Production of Documents, Interrogatories, and Requests for Admission.

As an initial matter, we acknowledge receipt of the verification of Autodesk's Interrogatory Responses, and the initial production of documents bates numbered ADSK000001-252, consisting of website materials.

**Interrogatory Nos. 1, 6, 12, 17, 22:** with respect to the identification of persons most knowledgeable about various topics, we agreed to reserve the right to revisit this issue after depositions, in the event that the witnesses produced by Autodesk are not knowledgeable and/or adequately prepared to speak on the various topics.

**Interrogatory No. 2:** Autodesk's response, in which it opted to identify documents in accordance with Fed. R. Civ. P. 33(d), did not identify documents with sufficient specificity; you agreed to supplement this response to do so.

**Interrogatory No. 5:** you agreed to amend Autodesk's response to subpart (i) to identify products and services sold under the 3DS MAX Mark (versus "marks containing the 3DS MAX Mark"), and to supplement this response to answer subpart (v). You agreed to reconsider Autodesk's failure to answer subpart (iii), and investigate whether the information sought in subpart (vi) was available (and produce it if so).

**Interrogatory No. 7:** you agreed to withdraw Autodesk's objections to this Interrogatory and provide a substantive response.

**Interrogatory No. 10:** you agreed to supplement Autodesk's response to this Interrogatory to provide a substantive response concerning third parties who are not licensees or customers.

**Interrogatory Nos. 13 and 15:** you agreed to supplement Autodesk's response to these Interrogatories.

**Interrogatory No. 14:** you agreed to supplement Autodesk's response concerning its first awareness of the 3DS & Design mark, and to identify a witness knowledgeable about the adoption of the 3DS & Design mark by 3D Systems, if any.

**Interrogatory No. 16:** you agreed to speak to your client to determine whether Autodesk would be willing to supplement its response to this Interrogatory. Please let us know your client's response.

**Interrogatory No. 20:** you agreed to supplement Autodesk's response to this Interrogatory and identify a person knowledgeable about the adoption of the 3DS MAX mark, and to ascertain whether documents concerning the creation, selection and adoption of the 3DS MAX mark exist (and to produce them if so).

**Interrogatory No. 25:** you agreed to "take a fresh look" at Autodesk's refusal to answer this Interrogatory. Please let us know your position.

**Request for Admission No. 1:** in an attempt to resolve Autodesk's objection that this RFA was "vague and unintelligible," we explained that by "functional purpose," we meant whether the term "3DS" may be used as a filename extension to identify files that are compatible with certain programs or applications. Please supplement your response to this RFA accordingly.

**Request for Admission No. 2:** in an attempt to resolve Autodesk's objection that this RFA was "vague and unintelligible," we explained that the phrase "available freely for use by anyone as a filename extension," referred to the availability of use of the "3DS" term as a filename extension by third parties to create software files, or to create programs that can read software files using this filename extension. Please supplement your response to this RFA accordingly.

**Requests for Production Nos. 7, 10, 17:** you agreed to produce non-privileged documents responsive to these requests, if any exist.

**Request for Production No. 9:** you agreed to produce representative samples of documents sufficient to show the categories of licensees.

**Request for Production Nos. 11 and 12:** you indicated that Autodesk was objecting to these requests on the grounds of relevance (even though you did not assert this objection in Autodesk's response to Request for Production No. 11) and would not produce documents in response to these requests.

**Request for Production No. 14:** you agreed to produce documents in response to this request.

**Request for Production No. 15:** you agreed to produce documents sufficient to identify any advertising agencies, and substantive communications therewith regarding the promotion, advertising and marketing of the 3DS MAX brand.

Please provide us with your amended and supplemented responses as soon as possible, and let us know when you expect to produce additional documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason M. Sneed", with a long horizontal flourish extending to the right.

Jason M. Sneed

cc: Sarah C. Hsia, Esq. (via email)

# Exhibit 7

**Subject:** Autodesk v. 3D Systems

**Date:** Friday, June 27, 2014 at 4:40:00 PM Eastern Daylight Time

**From:** Sarah Hsia

**To:** Slafsky, John, Brannen, Stephanie

**CC:** Jason M. Sneed

John —

I am not aware that we have received any documents from you or your client yet.

Please advise.

**Sarah C. Hsia, Esq.**

SNEED PLLC, Of Counsel  
610 Jetton St., Suite 120-107  
Davidson, North Carolina 28036  
Tel.: 844-763-3347  
Email: [sarah@sneedlegal.com](mailto:sarah@sneedlegal.com)

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# Exhibit 8

August 5, 2014

*via email*

John L. Slafsky, Esq.  
Wilson Sonsini Goodrich & Rosati LLP  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
jslafsky@wsgr.com

Re: *Autodesk, Inc. v. 3D Systems, Inc.*, Trademark Trial and Appeal Board  
Cancellation No. 92056509

Dear John:

This letter responds to Ms. Brannen's letter of June 18, 2014, concerning the deficiencies in Autodesk's responses to 3D Systems' discovery requests. We request a meet and confer prior to August 13, 2014 to discuss the remaining deficiencies and to satisfy our obligation under Fed. R. Civ. P. 37(a)(1) and 37 C.F.R. § 2.120(e)(1) to make a good faith effort to resolve these issues prior to filing a Motion to Compel.

As an initial matter, we still have not received supplementation of Autodesk's discovery responses, even though you agreed to supplement Autodesk's responses during our discovery conference in early May, three months ago. As you are undoubtedly aware, discovery closes in a few short weeks, and our discovery efforts are severely prejudiced by Autodesk's failure to comply with its discovery obligations. Please supplement Autodesk's discovery responses without further delay.

**Interrogatory No. 5:** our notes clearly indicate that you agreed to amend Autodesk's response to subpart (a) even though you thought it was unnecessary, and we are thus surprised that you are now refusing to do so. With respect to subpart (b)(v), you agreed to supplement and have not yet done so. With respect to subpart (b)(vi), you agreed to investigate and produce information to the extent it was available; we have still not heard from you whether you intend to produce any further information or not. With respect to subpart (b)(iii), you have not indicated definitively whether you will agree to supplement this response; however, we note that the information sought by this subpart (classes or types of customers) is directly relevant to the issues in this Cancellation proceeding, and we thus require a full and definite answer. Please advise if Autodesk intends to supplement its response to this subpart.

**Interrogatory No. 20:** our notes clearly indicate that you agreed to supplement Autodesk's response to this Interrogatory and identify a person knowledgeable about the adoption of the 3DS MAX mark, and to ascertain whether documents concerning the creation, selection and adoption of the 3DS MAX mark exist (and to produce them if so). We still have

not received any indication from you, three months later, as to whether such documents exist, and no supplementation has been made.

**Interrogatories No. 2, 10, 13, 15, 14:** you agreed to supplement Autodesk's responses to these Interrogatories, but we have still not received any supplementation.

**Interrogatories No. 16, 25:** you agreed to consult with your client as to whether it was willing to supplement, but you have still not advised us what their position is with respect to these Interrogatories, nor has any supplementation been made. With particular regard to Interrogatory No. 25, which requires you to explain the basis for your refusal to admit any Request for Admission, please be advised that we are prepared move to compel an answer to this Interrogatory if you client declines to provide an answer.

**Requests for Admission No. 1 and 2:** we believe that evidence concerning the use of "3DS" as a file extension is directly relevant to the strength of Autodesk's 3DS MAX mark, and we are puzzled by your refusal to answer these RFAs. It is interesting that you apparently concur with our position with respect to Autodesk's Interrogatory responses, as you have agreed to identify a witness to testify about the adoption of ".3ds" as a file extension (Interrogatory No. 22), and responded to an Interrogatory asking Autodesk to "[d]escribe the nature of the ".3ds" filename extension" (Interrogatory No. 23), but refuse to answer these Requests for Admission, despite 3D Systems' clarification in response to your "vague and unintelligible" objections. We further refer you to Judge Alsup's Order in the *Autodesk v. Dassault Systèmes Solidworks Corp.* case pertaining to the issue of functionality, of which you are surely aware. We believe that your objections and refusal to answer these RFAs are baseless, and we again ask that you withdraw your objections and answer these RFAs, failing which we will move to compel.

Finally, we note that we have yet to receive a privilege log from Autodesk. Please send this without further delay.

Please provide us with the earliest possible dates and times you are available for a telephonic meet and confer to discuss the foregoing.

Sincerely,



Sarah C. Hsia, Esq.

cc: Jason M. Sneed, Esq. (via email)  
Stephanie Brannen, Esq. (via email)

# Exhibit 9

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

In the matter of Trademark Registration No. 4,125,612  
Registered: April 10, 2012  
Trademark: 3DS & Design

Autodesk, Inc.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92056509
	)	
3D Systems, Inc.,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT'S RESPONSES AND OBJECTIONS TO  
PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT**

Respondent, 3D Systems, Inc. ("3D Systems" or "Respondent"), hereby submits its responses and objections to Petitioner Autodesk, Inc.'s ("Autodesk" or "Petitioner") First Set of Interrogatories, as follows:

**GENERAL OBJECTIONS**

1. Respondent objects to each of Petitioner's Interrogatories to the extent that it is overly broad and unduly burdensome, and purports to impose obligations upon Respondent that exceed the obligations imposed by the Federal Rules of Civil Procedure and the Rules of Practice of the Trademark Trial and Appeal Board.
2. Respondent objects to each of Petitioner's Interrogatories to the extent that it seeks information that is neither relevant to the subject matter of the pending proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

3. Respondent objects to each of Petitioner's Interrogatories to the extent that it is vague and ambiguous and does not employ sufficient detail or reasonable particularity.

4. Respondent objects to each of Petitioner's Interrogatories to the extent that it calls for production of documents or information protected from discovery by the attorney-client privilege, the work product immunity, or any other applicable privilege and/or immunity.

5. Respondent objects to each of Petitioner's Interrogatories to the extent that it calls for production of publicly available information or information that is at least equally available to Petitioner and Respondent.

6. Respondent objects to each of Petitioner's Interrogatories to the extent that it purports to call for the production or disclosure of proprietary and confidential information, non-public information, or trade secrets. Such proprietary and confidential information will be produced only subject to the Protective Order in force in this Cancellation Proceeding.

7. The responses contained herein are based on information presently available to Respondent. Respondent is still engaged in discovery and investigation of this matter, the results of which may alter, modify or add to some of the responses set forth herein. Respondent reserves the right to amend or supplement the following responses based on any further investigation and discovery in this case.

**GENERAL OBJECTIONS SPECIFIC TO PETITIONER'S DEFINITIONS AND INSTRUCTIONS**

8. Respondent objects to Petitioner's definition of the term "3DS" as including, but not being limited to, the mark 3DS & Design that is the subject of U.S. Reg. No. 4,125,612 and the instant cancellation proceeding. When answering Petitioner's interrogatories, and unless otherwise noted, Respondent will respond only with respect to the mark subject to this proceeding, namely 3DS & Design mark shown below:



Similarly, Petitioner's definition of the terms "3DS," "the mark 3DS," and "the 3DS mark" to include marks other than the mark subject to this proceeding is overly broad, vague and ambiguous, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

9. Respondent similarly objects to the definition of the term "3DS Product or Services" as overly broad, vague and ambiguous, unduly burdensome, and neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, by referring: (a) to products and services offered and sold in conjunction with "the mark 3DS," and (b) to the extent the interrogatory calls for the provision of information or the production of materials in the possession, custody or control by those other than Respondent, such as its "licensees."

10. Respondent objects to the definition of the term “identify” with respect to a “product” (subsection d) and “service” (subsection e) as overly broad and unduly burdensome, and vague and ambiguous.

11. Respondent objects to the definition of the term “communication” as overly broad and unduly burdensome.

12. Respondent objects to Definition Nos. 13, 14, 15 and 16 as nonsensical and confusing.

13. Respondent objects to Instruction No. 1 to the extent that it calls for the production of information in the possession of Respondent’s attorneys, or persons acting under the direction of Respondent’s attorneys, on the basis that such information is protected from disclosure pursuant to the attorney-client communications privilege or the work product immunity doctrine.

14. Respondent objects to Instruction No. 4 on the grounds that it is overly broad, unduly burdensome, and purports to impose obligations on the Respondent that exceed the obligations imposed by the Federal Rules of Civil Procedure and the Rules of Practice of the Trademark Trial and Appeal Board.

### **RESPONSES AND OBJECTIONS TO SPECIFIC INTERROGATORIES**

**Interrogatory No. 1: Identify every product and service you have offered in connection with the mark 3DS.**

**Response:** General Objection No. 1, as to the use of “every,” and No. 8. Subject to and without waiving the foregoing objections, Respondent states that it has sold the following products and services in conjunction with the 3DS & Design mark: solid imaging materials, of plastic, metal, wax, silicone, urethane, ceramic or composites;

computer driven machines for making three-dimensional embodiments of computer printed designs (Cube®, CubeX™, ProJet® 1000, ProJet® 1500, ProJet® 160, ProJet® 260C, ProJet® 3510 SD, ProJet® 3510 HD, ProJet® 3510 HDPlus, ProJet® 3500 HDMax, ProJet® 5000, ProJet® 5500X, ProJet® 6000 SD, ProJet® 7000 SD, ProJet® 6000 HD, ProJet® 7000 HD, iPro™ 8000, iPro™ 8000 MP, iPro™ 9000, iPro™ 9000 XL, sPro™ 140, sPro™ 230, sPro™ 60 HD, sPro™ 60 SD, Phenix PXS, Phenix PXS Dental, ProX™ 200, ProX™ 200 Dental, ProX™ 300); scan based design software (Geomagic Design X, Geomagic Design Direct, Geomagic Capture®, Geomagic Studio, Geomagic Wrap), mechanical design software (Geomagic Design), freeform design software (Geomagic Freeform, Geomagic Freeform Plus, Geomagic Claytools), inspection software (Geomagic Control, Geomagic Verify), healthcare software for conversion of CT scans to 3D models (Bespoke Modeling), haptic devices (Geomagic Touch, Geomagic Touch X, Geomagic Phantom Premium and Geomagic OpenHaptics), 3D scanners (Sense); and manufacturing services, including on-demand production services (Quickparts Solutions), cloud based 3D printing services (Cubify), production software services (SLA® System software, 3DManage™, 3DPrint™, 3DEdit™ Pro, 3D Lightyear™, Buildstation, LS, SinterScan™, RealMonitor™); collaboration software services (TeamPlatform); and optical imaging systems (VIDAR Systems). Respondent further states that some of the above products have been offered and sold in conjunction with the 3DS & Design mark under different specific product names, but the names set forth above are understood to constitute the current product names for the goods and services sold in conjunction with the 3DS & Design mark.

**Interrogatory No. 2: For each product and service requested to be identified in Interrogatory No. 1, identify the persons most knowledgeable about each product or service.**

**Response:** General Objection Nos. 1, 8 and 9. Subject to and without waiving the foregoing objection(s), Respondent identifies Cathy Lewis, Chief Marketing Officer, 3D Systems, Inc., as the person most knowledgeable about the scope of 3D Systems' products and services offered and sold in connection with the 3DS & Design Mark.

**Interrogatory No. 3: For each product and service requested to be identified in Interrogatory No. 1, identify the time period (including month and year) during which you offered each of those products and services.**

**Response:** General Objection No. 1. Subject to, and without waiving, the foregoing objections, Respondent states that it has used continuously its 3DS & Design Mark in connection with solid imaging materials since at least August 1, 2011, computer driven machines for making three-dimensional embodiments of computer generated designs since at least August 1, 2011, computer software for use in designing three-dimensional objects and controlling machines for making three-dimensional embodiments of the objects since at least August 1, 2011, and manufacturing services pertaining to three-dimensional objects since at least August 1, 2011.

**Interrogatory No. 4: For each product and service requested to be identified in Interrogatory No. 1, state the sales, on an annual basis (in terms of dollar volume and units) of such product or service from the date of first use of the mark 3DS in connection with such product or service, through the present.**

**Response:** General Objection Nos. 1, 6, 8 and 9. Subject to and without waiving the foregoing objection(s), Respondent states that its sales, on an annual basis, for all goods and services on or in connection with which the 3DS & Design mark has been used are as follows:

July 1, 2011 – Dec. 31, 2011: \$127,399,000

Jan. 1, 2012 – Dec. 31, 2012: \$353,633,000

Jan. 1, 2013 – Sept. 30, 2013: \$358,583,000

**Interrogatory No. 5: For each product and service requested to be identified in Interrogatory No. 1, explain the extent to which there has been any interruption to continuous use of the mark 3DS to identify the product or service.**

**Response:** General Objection No. 3. Otherwise, Respondent incorporates its objections and response to Interrogatory No. 3.

**Interrogatory No. 6: For each product and service requested to be identified in Interrogatory No. 1, identify the persons most knowledgeable about the sales and distribution of the product or service.**

**Response:** Respondent incorporates its objections and response to Interrogatory No. 2.

**Interrogatory No. 7: For each product and service requested to be identified in Interrogatory No. 1, identify the persons most knowledgeable about the advertising and promotion (including but not limited to white paper publications, attendance and booth reservation at trade shows, and education initiatives generally) of the product or service.**

**Response:** General Objection Nos. 1, 8 and 9. Subject to and without waiving the foregoing objection(s), Respondent identifies Cathy Lewis, Chief Marketing Officer, 3D Systems, Inc., as the person most knowledgeable about the advertising and promotion of 3D Systems' products and services offered and sold in connection with the 3DS & Design Mark.

**Interrogatory No. 8: For each product and service requested to be identified in Interrogatory No. 1, list by calendar year the expenditures you have made on advertising and promotion in the United States for the product or service.**

**Response:** General Objection Nos. 1, 6, 8 and 9. Subject to and without waiving the foregoing objections, Respondent states that it has made the following expenditures on advertising and promotion of goods and services on or in connection with which the 3DS & Design Mark has been used:

July 1, 2011 – Dec. 31, 2011: \$ 457,930

Jan. 1, 2012 – Dec. 31, 2012: \$1,747,921

Jan. 1, 2013 – Sept. 30, 2013: \$1,925,812

*\*Respondent designates this response as CONFIDENTIAL pursuant to the operative protective order. "*

**Interrogatory No. 9: For each product and service requested to be identified in Interrogatory No. 1, identify the nature and title (if applicable) of the media in which all advertisements of the product or service have appeared, including the date of and the geographic scope of such advertisements.**

**Response:** General Objection Nos. 1 and 2. Subject to and without waiving the foregoing objections, Respondent states that it has advertising the goods and services on or in connection with which the 3DS & Design Mark has been used nationwide, and Respondent will produce a representative sample of advertising from which a sampling of the nature and titles of the media may be ascertained.

**Interrogatory No. 10: For each product and service requested to be identified in Interrogatory No. 1, identify each of the channels of trade through which the products or services have been or are intended to be offered for sale, distributed, sold or rendered.**

**Response:** General Objection Nos. 1 and 2. Subject to and without waiving the foregoing objections, Respondent states that its 3DS & Design products and services are

sold and intended to be sold through at least the following channels of trade in this country:

- Over the Internet
- Through various social media and electronic outlets;
- Through direct sales to a variety of industry groups, companies and individuals
- Through sales by distributors and representative groups to companies and individuals
- Through trade show participation and related sales
- Via product catalogs and inside sales

**Interrogatory No. 11: For each product and service requested to be identified in Interrogatory No. 1, describe the type of customers to whom you advertise, promote, sell, render, and/or distribute the product or service.**

**Response:** General Objection No. 1. Subject to and without waiving the foregoing objections, Respondent states that the products and services offered and sold under the 3DS & Design Mark are sold to a wide variety of consumers, from hobbyists and product design enthusiasts, to professional engineers and designers in the automotive, aerospace and defense industries, to medical professionals, industrial designers and artists and sculptors, and to general consumers purchasing gifts and novelty items made using additive manufacturing technology.

**Interrogatory No. 12: Describe all products, packaging, advertising brochures, websites, social media pages, electronic communications and other materials on which you have displayed the mark 3DS.**

**Response:** General Objection Nos. 1, 3 and 8. Subject to and without waiving the foregoing objections, Respondent identifies the products and services set forth in its response to Interrogatory No. 1 herein, Respondent will produce a sampling of advertising and promotional materials showing the use of the 3DS & Design Mark (see also response to Interrogatory No. 9), and Respondent identifies its website, [www.3dsystems.com](http://www.3dsystems.com), and at least the following websites and social media pages as social media and/or electronic media outlets at which it regularly uses and displays the 3DS & Design Mark:

- RSS feed, <http://feeds.feedburner.com/3dSystemsRssNewsFeed>;
- Facebook site: <https://www.facebook.com/3dsystemscorp?ref=ts>
- YouTube page: [http://www.youtube.com/channel/UCsx-A5uSO\\_gYgi5A4RXFCag](http://www.youtube.com/channel/UCsx-A5uSO_gYgi5A4RXFCag)
- Twitter feed: <https://twitter.com/3dsystemscorp>
- Blog site: <http://www.3dsystems.com/blog>
- LinkedIn page: <http://www.linkedin.com/company/162213>
- Google+ page: <https://plus.google.com/+3dsystems/posts>
- Flickr.com page: <http://www.flickr.com/photos/71069187@N05/>

**Interrogatory No. 13: Describe all present plans to use the mark 3DS.**

**Response:** General Objection Nos. 1, 3, 6 and 8. Subject to and without waiving the foregoing objections, and without disclosing Respondent's highly confidential and proprietary marketing plans and strategies, Respondent states that it plans to use the mark 3DS & Design generally in the manners in which it currently uses the mark.

**Interrogatory No. 14: Describe all of your efforts or plans to promote or expand awareness of the mark 3DS.**

**Response:** Respondent incorporates its response to Interrogatory No. 13.

**Interrogatory No. 15: State the reasons why you selected and adopted the mark 3DS, including any marks that were considered in the process of selecting the 3DS mark.**

**Response:** General Objection No. 8. Respondent adopted the mark 3DS & Design so as to create a brand that is immediately recognizable to consumers, which calls to consumers' and potential consumers' minds the source from which the subject goods and services originate, namely 3D Systems, Inc., by use of the term "3D" and Respondent's 3D & Design mark (see U.S. Reg. No. 3,023,690) and incorporating the letter "S," as an abbreviation for "Systems," and which suggests a quality or characteristic of the products and related services offered and sold by the company through use of the cubical design element.

**Interrogatory No. 16: Identify all persons who have participated in any decision to adopt or select the mark 3DS.**

**Response:** General Objection No. 8. The primary persons involved in the decision to adopt or select the mark 3DS & Design were the following:

- Cathy Lewis, Chief Marketing Officer, 3D Systems;
- Avi Reichenthal, President/CEO, 3D Systems;

**Interrogatory No. 17: Describe any studies, tests, ratings, or surveys related to the quality of the 3DS Products or Services.**

**Response:** General Objection No. 1, 2 and 9.

**Interrogatory No. 18: Describe any studies, tests, ratings, or surveys related to consumer recognition of the mark 3DS.**

**Response:** General Objection No. 8. Respondent is not aware of any “studies, tests, ratings, or surveys” related to consumer recognition of the 3DS & Design Mark.

**Interrogatory No. 19: Describe in detail each incident, known to you, of actual confusion between you or any of your products and services and between Petitioner or any of its products and services.**

**Response:** General Objection No. 1, to the extent this request seeks any information pertaining to any mark other than Respondent’s registered 3DS & Design Mark and Petitioner’s 3DS MAX mark. Subject to and without waiving the foregoing objections, Respondent states that it is not aware of any incidents of actual confusion between 3D Systems and its 3DS & Design mark and/or any of its related products and services, on the one hand, and, and Petitioner and its 3DS MAX mark and any of Petitioner’s products and services, on the other hand.

**Interrogatory No. 20: For each of the incidents described in response to Interrogatory No. 19, identify the persons with knowledge thereof.**

**Response:** In response to this interrogatory, Respondent incorporates its response to Interrogatory No. 19.

**Interrogatory No. 21: Identify each person who participated in a decision to file any trademark application for registration of the mark 3DS.**

**Response:** General Objection No. 8. The primary persons involved in the decision to file U.S. Application No. 85/427,976, which matured into U.S. Reg. No. 4,125,612 for the mark 3DS & Design, were the following:

- Cathy Lewis, Chief Marketing Officer, 3D Systems;

- Avi Reichenthal, President/CEO, 3D Systems;
- Keith Roberson, Intellectual Property & Technology Counsel, 3D Systems;

**Interrogatory No. 22: Identify every trademark search you conducted relating to the mark 3DS.**

**Response:** General Objection Nos. 2, 4 and 8.

**Interrogatory No. 23: Identify (including but not limited to party names, dates of inception and expiration dates) all agreements or contracts regarding the mark 3DS, including any transfer of rights between you and a third party regarding the mark 3DS and any licenses that you maintain with third parties allowing you to use the mark 3DS or allowing a third party to use the mark 3DS, and identify all documents which evidence or memorialize such agreements or contracts.**

**Response:** General Objection No. 1, 2 and 8, to the extent this request seeks information pertaining to agreements or contracts in which the primary subject matter of the agreement is not the 3DS & Design Mark. Subject to and without waiving the foregoing objections, Respondent states that it is not aware of any agreements or contracts in which the subject matter of the agreement is the 3DS & Design Mark.

**Interrogatory No. 24: Describe all efforts you have made to enforce against third parties the rights you claim in the mark 3DS.**

**Response:** General Objection No. 8. Respondent states that, apart from the present proceeding, it has not been involved in any legal proceedings in the United States with respect to its 3DS & Design mark.

**Interrogatory No. 25: Describe any instances in which a third party, other than Petitioner, has challenged the rights you claim in the mark 3DS.**

**Response:** General Objection No. 8. Subject to and without waiving the foregoing objections, no other person or entity has challenged Respondent's rights in its 3DS & Design Mark.

**Interrogatory No. 26: Identify each expert witness that you expect to provide testimony in the above-captioned proceeding, including the facts or subject matter about which they are expected to testify.**

**Response:** General Objection Nos. 1 and 7. In addition to its foregoing objections, Respondent objects to this Interrogatory on the grounds that it is premature, and calls for the disclosure of information protected by the attorney-client privilege and/or the work product immunity. Subject to, and without waiving, the foregoing objections, Respondent will make disclosures regarding expert witnesses in accordance with the schedule provided by the TTAB for this Cancellation Proceeding.

**Interrogatory No. 27: Identify the circumstances under which (including, but not limited to, the date) you first became aware of Petitioner or its use of the 3DS mark.**

**Response:** General Objection Nos. 2 and 3, and because this interrogatory is confusing. Subject to and without waiving the foregoing objection, Respondent states that, as presently understood, Respondent generally has been aware of Petitioner for many years. Respondent first became aware of its own use of its 3DS & Design Mark when it commenced use of the mark on or about May 2011.

**Interrogatory No. 28: Explain the basis for your denials to Petitioner's claims (including a statement of each fact that evidences or supports such denials) as pleaded in ¶¶ 17-21 and 23 of your Answer.**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) ("It is settled that a

party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”).

**Interrogatory No. 29: Explain the basis for the Affirmative Defense (including a statement of each fact that evidences or supports the Affirmative Defense) as pleaded on page 4, ¶ 1 of your Answer.**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) (“It is settled that a party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”).

**Interrogatory No. 30: Explain the basis for the Affirmative Defense (including a statement of each fact that evidences or supports the Affirmative Defense) as pleaded on page 4, ¶ 2 of your Answer.**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) (“It is settled that a party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”).

**Interrogatory No. 31: Explain the basis for the Affirmative Defense (including a statement of each fact that evidences or supports the Affirmative Defense) as pleaded on page 4, ¶ 3 of your Answer.**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) (“It is settled that a party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”).

**Interrogatory No. 32: Explain the basis for the Affirmative Defense (including a statement of each fact that evidences or supports the Affirmative Defense) as pleaded on page 4, ¶ 4 of your Answer.**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) (“It is settled that a party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”).

**Interrogatory No. 33: Explain the basis for the disclaimer in your USPTO Registration No. 4,125,612 for a 3DS AND DESIGN mark that "no claim is made to the exclusive right to use '3D' apart from the mark as shown."**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) (“It is settled that a party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”). Subject to and without waiving the foregoing objections, Respondent refers Petitioner to the file history U.S. Reg. No. 4,125,612, which is equally available to Petitioner.

**Interrogatory No. 34: Explain the basis for the declaration in your USPTO Application Serial No. 85/427,976, filed on November 22, 2011, to register the 3DS AND DESIGN mark that 3D Systems "believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true."**

**Response:** General Objection Nos. 1, 3 and 4. See also *Time Warner Entertainment Co., L.P. v. Jones*, 65 U.S.P.Q. 1650 (TTAB 2002) (“It is settled that a

party in a Board proceeding generally has no obligation to identify its fact witnesses or other trial evidence prior to trial”). Subject to and without waiving the foregoing objections, the referenced statement speaks for itself.

**Interrogatory No. 35: Identify each person who provided information on which your responses to these Interrogatories are based, specifying the interrogatory or interrogatories for which each person provided information.**

**Response:** General Objection No. 4. Subject to and without waiving the foregoing objections, Respondent identifies the following persons who provided information utilized in preparing these responses:

- Cathy Lewis, 3D Systems, Inc., Response Nos. 1-16, 13-15, 21
- Keith Roberson, Esq., 3D Systems, Inc., generally
- Jason M. Sneed & Sarah C. Hsia, SNEED PLLC, generally

Dated: January 17, 2014



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*Attorneys for Respondent  
3D Systems, Inc.*

**VERIFICATION**

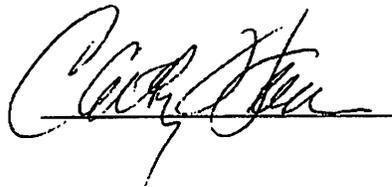
I, Cathy Lewis, hereby declare:

I am the CMO of 3D Systems, Inc. I have read the foregoing Responses and Objections to Petitioner's First Set of Interrogatories and know the contents thereof.

Based on my personal knowledge or on information provided to me by others, I am informed and I believe that the responses contained therein are true and correct.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of January, 2014.

A handwritten signature in black ink, appearing to read "Cathy Lewis", is written over a horizontal line.

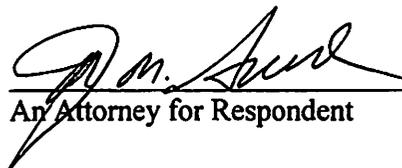
**Certificate of Service**

Pursuant to C.R.F. §2.111, I hereby certify that a true and correct copy of the foregoing Respondent's Responses and Objections to Petitioner's First Set of Interrogatories was served on the Petitioner, Autodesk, Inc., by placing a copy in U.S.

Mail, postage prepaid, and addressed to the following:

John L. Slafsky  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
*Attorneys for Petitioner*

This the 17<sup>th</sup> day of January, 2014.

  
An Attorney for Respondent