

ESTTA Tracking number: **ESTTA576238**

Filing date: **12/12/2013**

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

Proceeding	92058052
Party	Defendant Charles Bugatti
Correspondence Address	CHARLES BUGATTI 4818 SWEETMEADOW CIRCLE SARASOTA, FL 34238 UNITED STATES
Submission	Stipulated/Consent Motion to Reopen
Filer's Name	Ralph H. Cathcart
Filer's e-mail	rcathcart@ladas.com,rroa@ladas.com,mmercado@ladas.com
Signature	/Ralph H. Cathcart/
Date	12/12/2013
Attachments	Bugatti - Consented Motion to Reopen Deadline to Answer Petition to Cancel.pdf(388551 bytes ) Bugatti - Declaration of Ralph H. Cathcart, Esq.pdf(257129 bytes ) Bugatti - Declaration of Charles Bugatti.pdf(121180 bytes )



## BACKGROUND

On or about October 15, 2013, Petitioner filed two separate Petitions to Cancel Respondent's BUGATTI Registration Nos. 2,606,320 and 2,728,726 and the Board assigned Cancellation Nos. 92/058,052 and 92/058,020 to the respective actions.

Supposedly, copies of the Petition to Cancel were sent together by First Class Mail to Respondent Charles Bugatti at his former address where he no longer resides or has a place of business. (Cathcart Dec'l. ¶ 2; Bugatti Dec'l. ¶¶ 2-5) Respondent Charles Bugatti never received a copy of either Petition to Cancel. *Id.*

On or about October 16, 2013, the TTAB sent electronic notice to one of our partners in our London Office, namely Graham Farrington (the attorney of record at that time on the U.S.P.T.O. database) of the filing of the Petition to Cancel in the other companion Cancellation Proceeding No. 92/058,020. (Cathcart Dec'l. ¶ 3; Exhibit A)

Neither our London Office nor our New York Office received any electronic notification of the filing of the Petition to Cancel in this proceeding. (Cathcart Dec'l. ¶ 4)

Thus, Respondent and Counsel were unaware that Petitioner had also filed a Petition to Cancel in Cancellation No. 92/058,052.

On November 13, 2013, counsel for Respondent wrote to Petitioner's counsel concerning a possible resolution and seeking an extension of time to file an Answer in the companion Cancellation No. 92/058,020. (Cathcart Dec'l. ¶¶ 6-7.)

At no time during the numerous subsequent correspondence between the respective parties' counsel was any mention made of the commencement of Cancellation No. 92/058,052 or service of a Petition to Cancel on Respondent Charles Bugatti in connection therewith. (Cathcart Dec'l. ¶ 7.)

On December 10, 2013, Petitioner's counsel alerted us to the commencement of this proceeding, the December 1, 2013 deadline to Answer and provided written consent to the instant motion to reopen the time to Answer or move.

**THE BOARD SHOULD REOPEN  
THE TIME PERIOD TO FILE AN ANSWER**

TBMP §502.04 provides in relevant part:

Motions fall into three categories: Consented, uncontested and contested. If the non-moving party has consented to a motion, the motion may be filed either as a stipulation with the signature of both parties, or as a consented motion in which the moving party states that the non-moving party has given its oral consent thereto (unless written consent is required under the provisions of 37 CFR. § 2.106(c), 2.114(c), 2.134(a), or 2.135). Ordinarily, *the Board will grant a consented motion (emphasis added)*.

If the Board were to decide this motion to reopen based on the merits, despite Petitioner's consent, Fed. R. Civ. P. 6(b) provides in relevant part:

“B. Extending Time

\* \* \*

1(b) On motion made after the time has expired if the party failed to act because of excusable neglect.”

But *see*, TBMP § 508 regarding requirement only to show good cause to obtain reopening of time for defendant to file an answer to a complaint.

In *Pioneer Investment Services Co. v. Brunswick Associates Ltd., et al.*, 507 U.S. 380 (1993) the Supreme Court rejected any “bright line” approach to determining whether “excusable neglect” exists and liberalized the standard to be applied. *Id.* Relevant factors to consider for the omission or delay include: 1) the danger of prejudice to the non-movant, 2) the length of the delay and its potential impact on judicial proceedings; 3) the reason for the delay, including

whether it was within the reasonable control of the movant; and 4) whether the movant acted in good faith. *Id.* at 507 U.S. 395.

Here, the Answer was due December 1, 2013 and there is no danger of prejudice to the non-movant and the length of the delay in seeking to reopen the period to file an Answer is only 11 days (two days after counsel learned of this Cancellation Action). Respondent has acted in good faith and Petitioner has expressly consented to this Motion to Reopen the Period to File an Answer.

The circumstances leading to the delay in filing an Answer combined to form a perfect storm of events, namely:

- 1) Respondent having recently moved from his old residence which is shown on the USPTO records (and which we shall update after filing this motion);
- 2) Respondent's move was not communicated to our London office until recently;
- 3) our London Office received electronic notification concerning only the commencement of the companion Cancellation proceeding; and
- 4) the commencement of this action was not raised during the several communications between Petitioner's counsel and Respondent's counsel until December 10, 2013.

In the present case, under the circumstances, since actual service of the Petition to Cancel was never effectuated on Respondent, Respondent agrees not to challenge the propriety of service, provided Respondent's Time to Answer is reopened.

The reopening of the time period to file an Answer will further the interest of justice.

For all of the foregoing reasons, Respondent respectfully requests, with Petitioners' consent, that the Board reopen the time for Respondent to Answer or otherwise move with respect to Cancellation No. 92/058,052.

Respectfully submitted,  
LADAS & PARRY LLP  
Attorneys for Registrant

Dated: December 12, 2013

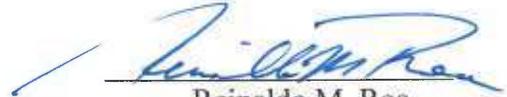
By: 

Ralph H. Cathcart  
1040 Avenue of the Americas  
New York, NY 10018-3738  
Tel: (212) 708-1920  
E-mail: rcathcart@ladas.com  
(Our Ref: C13656149)

**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **CONSENTED MOTION TO REOPEN DEADLINE TO ANSWER PETITION TO CANCEL** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: December 12, 2013

  
Reinaldo M. Roa

**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **CONSENTED MOTION TO REOPEN DEADLINE TO ANSWER PETITION TO CANCEL** was served on the person(s) listed below by First-Class Mail, postage prepaid, on the date indicated:

Susan B. Flohr, Esq.  
Blank Rome LLP  
Watergate  
600 New Hampshire Avenue, N.W.  
Washington, D.C. 20037-2403

Tel: (202) 772-5870  
Fax: (202) 572-1403  
E-mail: Flohr@BlankRome.com  
E-mail: trademarks@blankrome.com

Dated: December 12, 2013

  
Reinaldo M. Roa

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

-----X  
BUGATTI INTERNATIONAL S.A.,  
Petitioner, : Cancellation No. 92/058,052  
: Registration No. 2,606,320  
v.  
CHARLES BUGATTI,  
Respondent. :  
-----X

**DECLARATION OF RALPH H. CATHCART, ESQ.**

I, Ralph H. Cathcart, declare that the following is true and correct pursuant to 28 U.S.C. § 1746:

1. I am a partner at the law firm of Ladas & Parry LLP, attorneys for Respondent Charles Bugatti, owner of BUGATTI Registration Nos. 2,606,320 and 2,728,726 and respectfully submit this declaration in support of Respondent's Consented Motion to Reopen Deadline to Answer Petition for Cancellation.

2. Respondent Charles Bugatti was never served with a copy of the Petition to Cancel in this Cancellation proceeding or the companion proceeding 92/058,020.

3. Rather, on or about October 16, 2013, our London office received a Notice from the Board concerning only the institution of Cancellation No. 92/058,020. See Exhibit A.

4. No notice from the Board or Petitioner concerning the institution of this Cancellation Proceeding No. 92/058,052 was ever received by our respective London or New York office.

5. After our London Office advised our New York Office of the institution of Cancellation No. 92/058,020, we timely contacted Petitioner's counsel and obtained counsel's consent to a thirty (30) day extension of time to file an Answer.

6. Since November 13, 2013, we have been in correspondence with Petitioner's counsel concerning the companion Cancellation No. 92/058,020 on various matters including extensions of time to file an Answer and the possibility of an amicable resolution, and Petitioner has proposed settlement terms, which Respondent is considering.

7. Throughout this time, at no time did Petitioner's counsel ever state that there was a pending companion Cancellation action, namely this Cancellation Action, against Respondent's BUGATTI Registration No. 2,606,320.

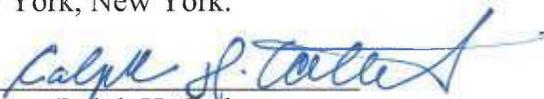
8. On December 10, 2013, Petitioner's counsel for the first time alerted us to the commencement of the Cancellation Proceeding, noting that the deadline to Answer passed on December 1, 2013.

9. Petitioner's Counsel, Susan B. Flohr, Esq., has consented to this Motion to Reopen the Deadline to File an Answer.

10. Petitioner's counsel also requested that both cancellation actions be consolidated and Respondent consents to this request if made by Petitioner.

I declare that the foregoing is true and correct under penalties of perjury.

Executed on December 12, 2013 in New York, New York.

  
Ralph H. Calhcart

**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **DECLARATION OF RALPH H. CATHCART, ESQ.** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: December 12, 2013

  
Reinaldo M. Roa

**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **DECLARATION OF RALPH H. CATHCART, ESQ.** was served on the persons listed below by First-Class Mail, postage prepaid, on the date indicated below:

Susan B. Flohr, Esq.  
Blank Rome LLP  
Watergate  
600 New Hampshire Avenue, N.W.  
Washington, D.C. 20037-2403

Tel: (202) 772-5870  
Fax: (202) 572-1403  
E-mail: Flohr@BlankRome.com  
E-mail: trademarks@blankrome.com

Dated: December 12, 2013

  
Reinaldo M. Roa

**EXHIBIT A**

-----Original Message-----

From: [ESTTA@uspto.gov](mailto:ESTTA@uspto.gov) [mailto:[ESTTA@uspto.gov](mailto:ESTTA@uspto.gov)]

Sent: 16 October 2013 23:38

To: Farrington, Graham

Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 92058020

UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board

Cancellation No. 92058020

Registration No. 2728726

10/16/2013

IMPORTANT NOTICE

A petition to cancel the registration listed above has been filed.

The Trademark Trial and Appeal Board (TTAB) has issued an order instituting the cancellation proceeding and setting trial dates. To see the order, click on the link below or paste the URL into the address box of your browser.

<http://ttabvue.uspto.gov/ttabvue/v?pno=92058020&pty=CAN&eno=2>

This order contains important information which you should review immediately. You must respond to the petition for cancellation within forty days of this date. This will be the only notification of this order you will receive. An e-mail copy of the order itself will not be sent.

If you are unable to view the order, call the TTAB for technical assistance at 571-272-8500. Do not use the reply button to respond to this message by e-mail.

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The entire public file of this proceeding may be viewed at <http://ttabvue.uspto.gov>.

Papers in Board proceedings may be filed electronically with ESTTA at <http://estta.uspto.gov>.

Further information is available at the TTAB s web page at <http://www.uspto.gov>.

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

-----X  
BUGATTI INTERNATIONAL S.A.,  
Petitioner, : Cancellation No. 92/058,052  
: Registration No. 2,606,320  
v.  
CHARLES BUGATTI,  
Registrant. :  
-----X

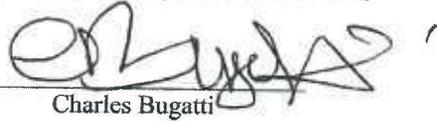
**DECLARATION OF CHARLES BUGATTI**

I, Charles Bugatti, declare that the following is true and correct pursuant to 28 U.S.C. §1746:

1. I am the Registrant and owner of BUGATTI Registration Nos. 2,606,320 and 2,728,726.
2. I no longer reside at 4818 Sweetmeadow Circle, Sarasota, FL 34238.
3. I currently reside at 2546 Parma Street, Sarasota, FL 34231.
4. At no time did I ever receive a copy of a Petition to Cancel for Cancellation No. 92/058,020 or Cancellation No. 92/058,052.
5. I was unaware until December 11, 2013 that Petitioner had filed a Petition to Cancel my BUGATTI Registration No. 2,606,320 and wish to have an opportunity to Answer the Petition to Cancel as well as set forth all applicable legal and equitable Affirmative Defenses and/or counterclaim(s).

I declare that the foregoing is true and correct under penalties of perjury.

Executed on 12 | 11 |, 2013 in Sarasota, Florida, UNITED STATES

A handwritten signature in black ink, appearing to read 'Charles Bugatti', written over a horizontal line.

Charles Bugatti

**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **DECLARATION OF CHARLES BUGATTI** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: December 12, 2013

  
Reinaldo M. Roa

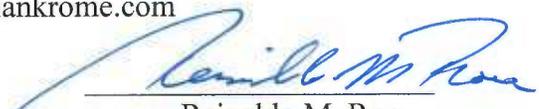
**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **DECLARATION OF CHARLES BUGATTI** was served on the persons listed below by First-Class Mail, postage prepaid, on the date indicated below:

Susan B. Flohr, Esq.  
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E-mail: Flohr@BlankRome.com  
E-mail: trademarks@blankrome.com

Dated: December 12, 2013

  
Reinaldo M. Roa