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

Proceeding	92058543
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

EDGE GAMES, INC.	}	
(California Corporation)	}	
	}	
Petitioner	}	Cancellation No. 9205843
	}	
v.	}	Mark: EDGE
	}	
RAZER (ASIA-PACIFIC PTE LTD	}	Registration No. 4,394,393
(Singapore Corporation)	}	
	}	Registered: September 3, 2013
Registrant	}	
	}	
-----	}	

PETITIONER EDGE GAMES, INC.'S OPPOSITION TO REGISTRANT
RAZER (ASIA-PACIFIC) PTE LTD'S MOTION FOR JUDGMENT,
OPPOSITION TO MOTION TO COMPEL DISCOVERY AND OPPOSITION
TO MOTION TO SUSPEND PROCEEDINGS.

INTRODUCTION:

There is a well known aphorism in legal circles, often called the ad hominem tactic, which essentially states: "If you have the law on your side, hammer the law. If not, then if you have the facts on your side, hammer the facts. If you have neither the law nor the facts on your side, then hammer opposing counsel's reputation."

In this case, it was clear from the beginning of these proceedings that Registrant Razer did not have the law on its side, since Petitioner was making continuous genuine use of the exact same trademark, for the same goods, sold through the same U.S. channels of trade -- with the likelihood of confusion therefore undeniable -- for some 30 years before Registrant Razer commenced its first use of the mark for the goods in question. Indeed, Razer itself ceased all use of the mark in 2013 once it realized Edge's priority rights.

Now that Petitioner Edge Games has served evidence on Registrant the proves said priority of trademark ownership and continuous genuine use, it is clear Razer also does not have the facts on its side either. Therefore, the Board should perhaps not be surprised that Registrant has resorted to ad hominem attacks on Petitioner Edge Games and its CEO Rev Dr Langdell, seeking any technical "knock out" it can devise in

order to try to prevent the Board fairly and equitably considering this case on the law and on the facts. Any fair consideration of this case on the merits must now rule in favor of Petitioner Edge Games, and clearly Registrant Razer is very aware of this fact: hence this latest Registrant motion which is entirely without merit.

The motion is moot since (a) Registrant received the discovery documents that it herein seeks to compel, which were served on it on November 17, 2015 - the same day this motion was filed; (b) Registrant received full additional responses and corrections from Petitioner on December 5, 2015, after first having the further requests brought to its attention by Registrant in this instant motion (but not by any other means); (c) there are no other valid or meritorious grounds for the motion, for judgment or otherwise.

REGISTRANT'S MOTION IS AN ABUSE OF PROCESS SINCE THE MOTION'S TRUE SOLE PURPOSE WAS TO GAIN AN EXTENSION OF TIME TO RESPOND TO DISCOVERY (VIA A SUSPENSION OF THE PROCEEDINGS) THAT REGISTRANT KNEW IT WOULD NOT BE OTHERWISE GRANTED.

Registrant's responses to Petitioner's amended Second Set of Interrogatories, Second Set of Request for Production and Second Set of Admission Requests were due November 30, 2015. As can be seen from the email sent to Petitioner's counsel by Razer's counsel (Mr. Barritt) on October 23, 2015, Mr. Barritt indicated that he would be unavailable from November 16 to November 27, 2015. Accordingly, Mr. Barritt was due to return and be able to work on this case again on the business day following November 27th, namely the due date for the discovery responses, Monday November 30th. It follows by simple logic that by November 16, 2015 Mr. Barritt had not yet completed Registrant's responses to Petitioner's new discovery requests,¹ and, knowing he was about to be unavailable until the day the responses were due, he sought an extension of time in which to file Registrant's discovery responses. However, Mr. Barritt knew well that he would not get permission from Petitioner to have an extension² and also knew that the Board would not grant him such an extension because there were no grounds for requesting it. Thus Mr. Barritt filed the instant motion with the true sole intent of having these proceedings suspended, and thus gaining the effective extension of time to

¹ This follows from the simple logic that if Mr. Barritt had completed the discovery responses by November 16th he would have served them on Petitioner that day rather than drafting and filing the instant Motion instead.

² Not that Mr. Barritt bothered to ask Petitioner for an extension, but Registrant was very clear in earlier submissions and correspondence that it intends to give no extensions to Petitioner (and denied it did or would ever have given the 12 day extension Petitioner thought it had in March), thus it would be unreasonable to expect Petitioner to grant that which Registrant so ardently itself refuses to give.

respond to Petitioner's discovery responses that he sought, but otherwise had no way to obtain. This is an abuse of process, and Petitioner trusts that in fairness and equity, given the Board's lack of tolerance of far less serious purported infractions by Petitioner, that the Board will show Registrant that it will not tolerate such abuse of process by denying the suspension of proceedings sought, and thus denying this devious attempt to gain an illegitimate extension of time to file discovery responses.

We know that Registrant's true real intention in filing the instant motion was to gain an effective extension of time to serve its discovery responses due November 30, 2015 because: (a) Mr. Barritt is a very experienced trademark attorney and knows very well that the Board rarely grants default, summary judgments except in very specific circumstances (none of which exist here) because the Board rightly prefers all cases to be heard on their merit if possible. Indeed, Registrant had already tried to gain a summary judgment earlier in these proceedings on substantially similar grounds, and was already denied such judgment (b) We also know that Mr. Barritt did not really believe that the only recourse he had to gain additional responses to Registrant's discovery requests was to file a motion to compel discovery. We know this, because for several reasons, including the fact that Mr. Barritt only wrote to Petitioner once on October 13, 2015, to attempt to clarify what Registrant was seeking. By any reasonable measure, Petitioner's further amended discovery responses and other clarifying responses via email and letter of or about October 19, 2015, were clear genuine attempts by Petitioner to fully meet all the requirements set out by Registrant. Yet, Registrant did not respond to these new discovery responses by Petitioner, instead he waited an entire month to November 17, 2015 to include his handful of additional requests for further response in the instant motion rather than write to Petitioner in October making the same requests. Mr. Barritt knew, or should have known, that had he asked for these additional discovery clarifications shortly after October 19, 2015 then Registrant would have received full satisfaction of all its discovery requirements shortly thereafter (as is proven by their being sent promptly in response to this motion).

In other words, Registrant had an obligation to reasonably exhaust all amicable attempts to resolve any discovery dispute with Petitioner before resorting to wasting the Board's and Petitioner's time with a motion to compel that which was easy to ask for without resorting to a motion. Indeed, it is a requirement that a

party make all reasonable attempts to resolve any discovery dispute with the other party before resorting to filing a motion to compel. And in this case, Mr. Barritt made no attempt whatsoever to respond to Petitioner's October 19th further amended responses by clarifying that Registrant was seeking yet further corrections or amendments. In any event, filing a motion to compel discovery does not toll time for discovery responses.

SUSPECT TIMING OF REGISTRANT'S MOTION

Petitioner further draws to the attention of the Board the highly suspect timing of Registrant's motion, coming as it did on the same day that Registrant knew that it was about to receive all document production that it had requested, which evidence in turn proves beyond reasonable doubt that Petitioner should prevail in this action. Petitioner sent an email to Registrant in the morning of November 17, 2015, the same day that Registrant filed the instant motion stating that Petitioner had just sent to Registrant a bundle of 852 pages of documents that fully satisfy Registrant's discovery requests (Exhibit 1 hereto). As Registrant confirms in its motion, it was clearly warned in the letter Petitioner wrote on October 5, 2015 (Exhibit 2) that because Registrant had been successful in denying Petitioner the right to object to discovery requests on such grounds as their being overly broad or burdensome, that therefore it would take Petitioner some time to identify, copy, and number all documents in preparation for serving them on Registrant:

"... this process will of necessity take time -- not least since you have successfully prevented us from objecting on legitimate grounds of a given request being overly burdensome or beyond scope which in turn means what you have requested is potentially exceedingly voluminous and will be time consuming to gather and copy before sending to you."

Registrant was also on notice, and well aware, that a considerable percentage of the documents Registrant had requested be produced by Petitioner have their source in Petitioner's licensee, Velocity Micro, and that it was proving more time consuming than had been originally anticipated to get Velocity Micro to produce the said documents so that they could be then served on Registrant. Indeed, it was well known to Registrant and to the Board that in order to compel Velocity Micro to produce the required documents so that Petitioner could then produce them to Registrant, Petitioner had to resort to serving subpoenas on Velocity Micro to compel production (see Exhibit 3).

Registrant was also fully aware, through regular updates from Petitioner and Petitioner's counsel, that the process of gaining the subpoena documents from Velocity Micro was ongoing during October and November

2015, and that it had been necessary to delay the deposition of V elocity Micro's President until after November 17, 2015 in order to receive said documents from V elocity Micro and serve them on Petitioner before the deposition takes place. As can be seen from the email exchanges attached between Razer's counsel (Mr. Barritt) and Edge's counsel (Mr. J ensen), Razer did not object upon being informed that the documents would take yet further time to be produced or that the deposition was delayed to potentially late November or even later (E xhibit 4)³. Indeed, Mr. Barritt, on behalf of Registrant, was apparently quite happy to have the production of documents and subsequent deposition occur after the period November 16 - November 27, 2015, since he indicates that this period he will not be available to attend the deposition with the clear implication that he is available to receive documents and attend the deposition after November 27th.

Registrant thus did not communicate with Petitioner or Petitioner's counsel after the short email of October 23, 2015 and gave no warning whatsoever that it intended to file the instant motion. Mr. Barritt also did not protest the delays in gaining the documents from V elocity Micro and therefore the delays in serving them on Registrant -- on the contrary, from his only email in over a month Mr. Barritt gives the clear impression of being entirely at ease with the fact that he may not receive the documents or attend the planned deposition until at least late November.

In the event, the deposition was cancelled because V elocity Micro's President produced a declaration that covered the key points which Petitioner had wished to be addressed at deposition. Promptly upon receiving the extensive document production from V elocity Micro, Petitioner went about printing it and numbering it, collating it and packing it for service on Registrant and integrating it with Edge's own documents into a coherent logical single bundle rather than sending documents to Razer piecemeal. This discovery, including with other documents produced by Petitioner itself, was thus collated into a 852 page bundle that was served on Registrant on November 17, 2015, and Registrant was notified that morning to expect the voluminous bundle shortly, via Certified Mail.

³ Petitioner is placed in a position whereby it believes it has no option other than to exhibit correspondence between its counsel and itself in order to prove that Razer's counsel made no contact with either Petitioner or Petitioner's counsel after October 23, 2015. However, in exhibiting this correspondence Petitioner expressly reserves all its rights of client-attorney privilege, and does not waive any such rights. Exhibit of this one email exchange does not represent a waiver of privilege since this one email is necessary to show the Board that Mr. Barritt said one thing to Petitioner and its counsel, and another thing to the Board.

The service of the 852 page bundle of discovery on Registrant on November 17, 2015 thus removed all of the grounds that Registrant might even remotely have had the right to argue the instant motion on. Certainly, as of November 17th, Registrant could no longer argue that Petitioner had failed to produce any documents, or had failed in any other significant way in respect to the discovery process. In Registrant's best case, assuming it had filed the motion shortly before receiving notice of service of documents, then Registrant should still have withdrawn its motion given it was now moot. Yet, when Petitioner wrote to request that Registrant withdraw its motion (Exhibit 5), Registrant refused to do so (Exhibit 6).

PETITIONER'S RESPONSES TO REGISTRANT'S OPENING REMARKS

Petitioner was required by the Board's September 25, 2015 ruling to serve amended discovery responses on Registrant within 20 days, and Petitioner timely served said amended responses on Registrant on October 5, 2015 (see Exhibit 2). Registrant responded on October 13, 2015 stating that it had issues with Petitioner's amended discovery responses (Exhibit 7), and Registrant requested Petitioner address the issues by October 20, 2015. In a timely manner, on October 19, 2015, Petitioner wrote to Registrant and served revised versions of the amended discovery responses which addressed all of Registrant's concerns (Exhibit 8).

Petitioner received no further correspondence at all from Registrant after supplying the revised amended discovery responses. Since Registrant did not object to Petitioner's addressing of Registrant's concerns, Petitioner had a right to assume that what it had done had indeed successfully dealt with all of Registrant's concerns. Again, to be clear, Registrant did not write to Petitioner after its communication on October 15, 2015 in which it demanded issues be addressed by October 20th (and Petitioner did fully address all those issues by October 19th). Thus when Registrant states in the opening of its motion "Although Edge Games has served responses ... they are still woefully inadequate and clearly demonstrate Edge Games' determination to not cooperate in discovery and to deny Razer the information to which it is entitled." it is conveniently omitting mention that it failed to tell Edge it was still not satisfied with the responses.

One would reasonably have expected Registrant to respond to Petitioner's further amended discovery responses served October 19, 2015 with further objections if it had any -- but this did not happen. Rather, by

its silence on the issues, Registrant gave a clear impression that Petitioner had fully addressed all of Registrant's concerns to its satisfaction.

Petitioner will return to the remaining opening issues below, but suffice to say at this juncture that Petitioner sees no reasonable grounds whatsoever for suspending these proceedings (which have already been grossly delayed), or for limiting the evidence Petitioner may rely on in any way, or for granting Registrant the right not to timely respond to Petitioner's second set of discovery requests (which Registrant is woefully overdue responding to), and certainly cannot see any reasonable grounds for Registrant to request judgment and thus deny Petitioner the right to a hearing on the merits.

RESPONSE TO MOTION FOR JUDGMENT

A. Edge Games Has Not Failed To Produce Critical Information

Contrary to what Registrant alleges, Petitioner believes it has made clear that (1) what the relationship is between Edge Games and its licensees and assignors; (2) that adequate and acceptable quality control measures are in place with all Petitioner's licensees; (3) how goodwill was assigned to Edge Games for the marks assigned to it. Based on the fact Registrant is saying for the first time in this motion that it did not find the October 19th amended responses adequate, Petitioner accordingly served yet further amended responses on Registrant on December 5, 2015 along with a letter requesting withdrawal of this motion (Exhibit 9).

For avoidance of doubt, Petitioner states again here that the relationship between Edge Games and each of its licensees is that of licensor (Edge) and licensee (the licensee) and that there is no other legal relationship between the parties. Petitioner is at a loss to know how else to respond to Registrant on this question since it seems self-evidence what the relationship is between a licensee and a licensor. As to quality control, Petitioner has affirmed that adequate and acceptable quality control mechanisms exist between Edge Games and each of its licensees, that includes but is not limited to, the ability and right to regularly check on the quality of the goods and services being used in association with the licensed mark to ensure the quality is maintained by licensee. These mechanisms vary, but include the licensee supplying Edge Games with representative samples of the goods in question, Petitioner being able to check the goods by making sample

purchased, and by checking on quality at store level, and by monitoring (or being supplied by licensee with) sample product reviews by the media that confirm the sustained and maintained quality.

As to how the goodwill was assigned by assignors, in each case Edge Games believes it has been clear (but for the avoidance of doubt affirms here) that goodwill has been assigned by way of an inter-parties agreement in each case, and with due consideration being given, and with all right, title, interest and goodwill associated with the assigned mark in question being assigned to Petitioner since assignors first use of the mark.

In Petitioner's October 5, 2015 letter it did speak of starting to produce documents "shortly," but there were justifiable and understandable legitimate delays in production that Registrant was kept well informed of as Petitioner found it was more difficult than anticipated to gain production of the documents concerned from Velocity Micro (that there would be delays was forewarned in the October 5, 2015 letter, and Registrant was informed of delays into late November in gaining documents from Velocity Micro, which delays at the time Registrant did not object to or indicate it did not find acceptable. Also, Petitioner's goal was to create a single integrated bundle of documents that included both licensee documents and Petitioner's own documents rather than giving documents to Razer piecemeal. Razer did not indicate any objection to this and thus Petitioner believed it was an acceptable method of production. However, such points became moot when, on November 17, 2015, Registrant was served with 852 pages of documents that was responsive to all of its discovery requests insofar as it was possible for Petitioner to respond and produce.

As to the references to "trade secret" information, Petitioner believes it made clear to Registrant that it fully understands how to file and serve such confidential and trade secret documents, and indeed has done so and intends to continue doing so (this is made clear in the Further Amended Discovery Responses of December 5). That is, when producing documents by service on Registrant on November 17, 2015, Petitioner was careful to separate those documents to be considered confidential and trade secret from the balance of the documents, and placed said documents in separate envelopes. Similarly, when the time comes to file Petitioner's evidence with the USPTO, Petitioner is aware of the process by which the public filing will be appropriately redacted, and the confidential and trade secret documents will be filed so that only the Board

can see them. In other words, With its production served on Registrant on November 17, 2015, Petitioner has met all of its requirements of discovery and of Registrant's requests (certainly since November 17, 2015 Registrant has not made any contact with Petitioner to suggest that what was served on Registrant did not fully meet all its requirements and all of its discovery requests, or that the methods used by Petitioner did not fully meet all the TTAB and USPTO requirements for service or filing of confidential or trade secret documents. To be clear, while Petitioner's responses made reference to objection on the basis of confidentiality and/or trade secret, Petitioner did in fact produce (and appropriately mark) documents that are regarded as confidential or trade secret. And, again, Registrant did not object to Petitioner's further amended discovery responses prior to this motion, thus giving Petitioner to believe that the revised wording in regard to the objections was now acceptable to Registrant. As to Registrant's suggestion that Petitioner relied on wording of responses to Interrogatories 12(a) and (f), Petitioner can only state again what Registrant knows well, namely that Dr Tim Langdell is the sole person with knowledge about Petitioner documents and thus these statements do reflect a thorough review of all company documents before responses were provided.

Registrant did indeed give Edge Games an opportunity to correct and further amend its responses by way of the letter sent to Edge Games on October 13, 2015. And indeed, Edge Games did fully respond to Registrant on October 19, 2015, correcting and amending everything that Petitioner believed registrant was asking to be corrected and amended. And, again, Registrant never responded to the corrections and amendments that Petitioner did on or about October 19, 2015, giving Petitioner to believe that the revised responses and corrections were now acceptable to Registrant. If Registrant believed that Edge Games had not adequately responded to it on the issue of producing information or documents allegedly protected as trade secret then Petitioner can only note again that Registrant failed to make the point to Petitioner at the time, and indeed has not communicated with Petitioner since before it sent Registrant the corrections and further amendments on October 19, 2015.

To be clear, Edge Games has committed to producing, and has produced, all documents that it can produce which it considers confidential or trade secret, and has provided all such information to Registrant too, and has clearly labeled all such documents as trade secret and further indicated that as such Razer's

counsel may review the documents itself but not show its client any of the documents. And, again, when the time comes for Edge Games to file any documents with the Board, then Petitioner intends to follow fully all guidelines for the submission and filing of such confidential and trade secret documents.

As to any document not so far produced by Edge Games which has been designated by Edge Games as trade secret, then in that case the document(s) in question have clauses in them stating that they cannot be produced except under court order (see Exhibit 10 -- which is hereby filed so that the Board may view it, but for obvious reasons Registrant may not see it until it gains such a court order). Registrant has now had some 2-3 years in which to gain a court order so that such document(s) so designated may then be produced, but Razer has taken no steps at all toward gaining such a court order. Accordingly, on legal advice, Petitioner is within its right to produce the document to the Board but not to the Registrant until or unless Registrant first gains a court order.

In the case of the license agreement between Edge Games and Velocity Micro, Registrant now has declarations by Mr. Copeland of Velocity and by Edge Games' CEO, which confirm all the key terms of the license agreement such that Registrant has all the information it needs to make any argument regarding the license. The fact remains, as Mr. Copeland's declaration confirms, there is a valid and sustaining (not "naked") license that has been in place at all relevant times, under which all right, title, interest and goodwill arising from Velocity's use of the mark EDGE for game computers in U.S. commerce vests in and inures to Edge Games. These declarations also make clear that there have always been at all pertinent times acceptable legitimate quality control provisions in place between Velocity and Edge Games.

As to Registrant's sudden mention of it now not finding Petitioner's responses to certain Interrogatories acceptable, Petitioner again notes that when it served Registrant with the amended and corrected Interrogatory responses on October 19, 2015, Registrant did not at the time continue any objection or continue any criticism. Indeed, by not responding to Petitioner on or after October 19th, and by never communicating again with Petitioner since October 13, 2015, Registrant gave Petitioner the justifiable impression that its new further amended discovery responses were now entirely acceptable to Registrant. In any event, Petitioner has now addressed all those issues in the new responses (Exhibit 9).

Regardless of the objections sustained in Petitioner's responses to the list of Interrogatories given by Registrant on page 5 of its motion, which objections Petitioner notes that Registrant never responded at the time indicating they did not find acceptable, the fact is that on November 17, 2015 Petitioner produced all documents necessary to fully address these interrogatories, including numerous pages of documents marked as confidential and/or trade secret, which completely dealt with all of these concerns expressed by Registrant in this part of its motion. Petitioner did also supply a privilege log, which in turn dealt successfully with the balance of the interrogatory responses that Registrant now objects to.

As to Registrant's allegation that Edge Games has failed to produce settlement agreements, documents relating to sanctions or finding of fact, etc, Petitioner notes that (a) the confidential and trade secret documents currently in Petitioner's custody or control were produced on November 17, 2015 with the sole exception of any document that indicates it cannot be produced except under court order. As to documents relating to sanctions or findings of fact, while it was unclear what Registrant was referring to, as far as Petitioner can see Registrant has already itself produced all such documents -- documents that it gained from the public record -- which means it is duplicative for Petitioner to also be required to go to the expense, time and trouble of producing the exact same documents again.

As to the delay in producing documents, Petitioner notes that in Registrant's own footnote in its motion on page 5 it confirms "...a reasonable delay for information and documents from licensees was understandable." That is, Registrant acknowledged and accepted that such documents and information would be delayed, and as indicated above was clearly willing to wait until at least after November 27, 2015 for such information and documents. Thus by serving all said documents -- along with some documents produced by Edge Games itself -- as a single integrated numerated bundle on November 17, 2015, Petitioner was producing documents in the timescale that Registrant had indicated was acceptable to it (not least since the bulk of the documents produced were, as Petitioner warned they would be, those produced to Edge Games by Velocity, which Registrant said it was entirely happy to wait for and which were produced within the timeframe indicated by Edge and by Edge's counsel, attorney Jensen).

As to Petitioner's further amended response to Interrogatory 12(f), Petitioner sustains that it believes its response to be accurate. While there have been opinions made by certain people in certain legal forums, Petitioner believes that to the best of its recollection each were just that -- opinions or suspicions -- and not findings of fact per se. As Registrant is quick to point out, it itself has already produced many such documents that it believes show findings of fact, etc, and it should surely be left to trial for the parties to submit their arguments as to why they do or do not show actual findings of fact rather than just opinions. Edge Games believes it has thus fully complied with the Board's rules in all these areas, and that Registrant is in danger of trying to litigate the case in discovery rather than just seeking appropriate production.

As to Razer's allegation on page 6 of the motion that Edge Games had not produced any documents, this may have possibly been technically true at the particular moment the motion was drafted. But within the same day Razer had confirmation that Edge Games had produced 852 pages of documents (far more than Razer have produced to Edge), and that these documents met as fully as possible all the discovery requests made by Razer. As to Razer's allegations regarding failure to provide information and documents in readiness and preparation for the (then) planned deposition of Velocity Micro's President, Copeland, this is not true. Petitioner and its counsel, attorney Jensen, kept Razer fully informed at all times regarding the originally scheduled October 26 deposition. As Registrant is fully aware, and as the attached Exhibits prove, Razer was clearly informed that the deposition had to be postponed because Edge's counsel was meeting resistance from Velocity to produce the information and documents that Edge had committed to provide to Razer when Edge has them in its possession.

Razer was thus not placed at any disadvantage whatsoever. Indeed, as Edge's counsel's communications to Razer's counsel Barritt show, Edge was carefully postponing the deposition until all the anticipated information and documents could be obtained from Velocity, then provided to Razer, and then give Razer sufficient time to consider these documents before attending the deposition. This was all made clear to Razer, so in no sense at all was Razer disadvantaged nor was any information or document withheld. In the event, because Velocity were able to produce a comprehensive declaration of all the salient points of this case (validity of the license, existence of proper quality control mechanisms, sizable multi-million dollar

continuous sales of EDGE products in the time in question, etc) it was decided it was not necessary to go forward with a deposition at this time, which in turn saved both Razer and Edge on costs and time that would otherwise have been expended.

As to the allegation regarding any failure to produce documents at Razer's office at a time and date requested, Petitioner responds that any such request was unreasonable since Razer was fully aware that as at any such date Edge was still awaiting such documents to be produced by Velocity, and hence Edge could not produce what it did not at that time possess. When Edge gained possession of such documents, they were processed as swiftly as reasonably possible, and promptly served on Razer on November 17, 2015. And, again, Edge made clear that it would produce all such information and documents to Razer ahead of any deposition so that Razer would not be disadvantaged. Edge is thus not in any reasonable or fair sense in breach of the Board's September 25, 2015 Order.

As to Razer's other comments about how long it took Edge to produce any documents other than those which were sourced from its licensees, Petitioner believes this is now moot since Razer was served with such documents on November 17, 2015, the same day that it filed this instant motion. The Board extended Razer's deadline for discovery to December 30, 2015 specifically to enable Razer to receive and have time to further act on discovery from Edge Games. By producing its documentary evidence, including that which is designated trade secret -- on November 17, 2015, Razer thus has around 6 weeks in which to consider the produced evidence and take such action it may feel is justified accordingly. But filing a motion just as it knew it was receiving 852 pages of documents, and refusing to withdraw the instant motion and re-file a new more appropriate one (if it felt there was any basis for now filing a motion at all) has only lead to Razer causing the Board and Edge Games extra work, time, effort and costs, unnecessarily.

B. Edge Games' Has Not Failed to Cooperate

Edge Games has never, ever, "bullied" anyone regarding alleged EDGE mark infringements, thus for Registrant to suggest Edge Games has done so, and allege "egregiously," is outrageous and patently untrue. What is true is that Razer and others in a similar position who have infringed Edge Games' trademark rights have resorted to saying they feel "bullied" when in fact all that Edge Games has ever done is file legitimate

actions to enforce its trademark rights. And, in fairness to Edge Games, Petitioner has won nearly all of those actions before the TTAB and in other venues since or about 1990 (we believe that in about 25 actions before the Board, Edge has prevailed in all but about 2 or 3), which in itself is some proof that the allegations of bullying are simply unfounded defamatory statements made by parties launching ad hominem attacks once they realize that they do not have the law or the facts on their side in the argument. Petitioner thus suggests it is clear that this is precisely what Razer is doing here. Note, Razer itself is not suggesting that Edge Games has ever bullied it (because it never did), or sought to intimidate it. Such wild statements are without merit and solely designed to attempt to persuade the Board not to hear this case on its merits.

A. On the contrary, as Edge Games showed, Registrant did fail/refuse to participate in a Discovery Conference. What Registrant wishes the Board to overlook is that it took Edge Games from August 2014 until February 2015 to get Razer to properly participate in discovery and to produce even one page of documents. Razer thus waited less long for production of first documents from when they first propounded discovery than Edge Games was made to wait for Razer to start production -- or at worse case, both parties had similar delays in production and thus neither one should be singled out for penalty or sanction.

B. To this day, Edge Games stands by its statement of law in the case Razer cites here. Edge Games was very careful to put in square brackets the wording that Edge believed (and research supported) was a justifiable alternative wording that clarified what the law states. To this day, Edge Games is certain that if fairly reconsidered, the Board would now see that Edge did not attempt to twist the law, rather Edge's rewording in the traditional and accepted manner of using square brackets was a legitimate real attempt to make the law clearer than the original language (which Edge believes may have been from the late 1800s or early 1900s when language was used differently?). While Edge was admonished, Petitioner sincerely believes that admonishment was unfair and misplaced since what Edge did was legitimate and reasonable given the clear use of square brackets that signaled to the Board that these words were invented by Edge, not presented as if they were part of the original citation.

C. It must be born in mind in reviewing this ad hominem attack by Razer based on the 2010 case involving Electronic Arts that (a) the court's Opinion was just that, an opinion: there were no findings of fact

as Razer wishes to mislead the Board into believing there were, and (b) the court's opinion was essentially vacated anyway by the Final Judgment and settlement between the parties that had as a core term that neither Edge Games nor its CEO Langdell, were to be considered to be guilty of any wrong doing whatsoever -- not guilty of fraud on the USPTO, nor of any other wrongdoing. Indeed, the 2008 Federal Court Ruling in the Velocity Micro matter ruled that Edge Games and Langdell did not commit fraud on the USPTO, and that all of Edge Games' U.S. trademarks are entirely legitimate and were legitimately obtained. Indeed, the existence of the 2008 Federal Court Ruling that contradicted the court's 2010 opinion referenced by Razer is precisely one of the reasons the parties settled rather than going to trial.

(1) This was not a finding of fact, it was merely an observation by the court based on only considering Electronics Arts side of the case and the court admitted the jury at trial (since it was a jury trial) might find completely differently once all the evidence and facts are before the court.

(2) Again, this was merely an opinion expressed by the court based only on hearing Electronic Arts side of the case, and without the court hearing any of the merits or reviewing the evidence. Indeed, since the Federal Court had ruled in December 2008 that Edge Games had at all times made legitimate use of its mark in commerce, the opinion made by the Court made no sense and went contrary to prior court rulings in favor of Edge Games.

(3) This was an opinion based on the court having one side of the case only -- later Edge Games produced documentary proof of its license arrangement with Marvel which in turn proved that Marvel's Vice President, Walter Bard, had committed perjury in his declaration to that court.

(4) This was merely opinion based on Electronic Arts presenting highly modified evidence and without Edge Games having the opportunity to correct the court's misunderstanding. In fact, EA entered fraudulently created artwork into the proceedings in order to try to prove that Edge had committed fraud. Whereas in fact it was later proven that it was EA who committed fraud in manipulating the evidence presented to that court.

(5) This was opinion based on the court only hearing EA's version of events and not considering Edge's evidence that proved there was no fraud. And, again, the 2008 Velocity Micro Federal Court ruling determined Edge had not committed fraud on this or any other USPTO filing.

(6) This again was pure conjecture and opinion on the part of the court, with the court only hearing EA's side of events. The final order in that case stated neither Edge Games nor Langdell committed any wrongdoing (fraud on the USPTO or otherwise) and the 2008 Federal Court ruled the same.

(7) The proceedings never reached even the start of the Discovery period, let alone to trial, so this comment by the court was highly irregular since the court had none of the evidence before it and only EA's self-serving argument. Again, the Federal Court in 2008 ruled that Edge Games had had legitimate sales of its GAMER'S EDGE mark products and the San Francisco Federal Court had no standing or jurisdiction to re-try the same facts and evidence again in 2010 that had been tried and ruled on the merits in December 2008.

(8) All of this was merely opinion, none of it was finding of fact. Moreover, it was all self-serving statements by EA. No evidence was ever produced that showed Langdell ever materially mislead the court or made any false statement. And again, the Stipulation behind the Final Order included in part a finding that Langdell and Edge were not guilty of any wrongdoing (Exhibit 11), and Razer know this was the outcome when they deliberately, and misleadingly, quote from this early opinion that was later replaced by the Final Order. Edge did not produce any evidence and hence the court only saw the highly twisted version of events that EA wished the court to see.

(9) Again, this was opinion, and in any event the 2008 Federal Court ruling in favor of Edge Games had already proved that Langdell's assertions in his declaration were neither misleading nor false.

(10) There was no evidence of deceit, there was no finding of fact of any deceit, and the proceedings ended with Langdell being found not to be guilty of any wrongdoing, including any misrepresentation or falsehoods. And again the 2008 Federal Court ruling showed that there was no deceit and that what was represent to that court in 2010 had already been ruled to be true by the 2008 court (it was the same issues, same facts, same evidence).

(D) Petitioner has previously protested against Razer having the right to introduce evidence from overseas proceedings, and Petitioner repeats that protest again now. It should be born in mind, if the Board permits any quotes or documents from the UK proceedings, that Edge Games was not permitted to have any legal representation at the 10-day Trial in London in December 2010. Accordingly, without legal representation, Edge Games was not able to put on an adequate defense. Edge Games' attempts to present the facts were twisted and placed out of context by opposing counsel (of which there were on most days, 5), which in turn permitted the UK Court to become very misled on key facts and evidence before it.

(1) In fact, the "story" about the computer disk evidence was fully supported by testimony by Edge Games' expert, but the court overlooked this fact when issuing its summary and decision. The disk use explanation was not "absurd" when one took into account what was actually before the court.

(2) This was a simple case of one person's word against another. Edge Games said it had sent certain emails, and Future Publishing said it did not receive them. Given that it is well known that emails sent are not always safely received, the suggestion that they were not received did not prove they were not sent. Indeed, in the Appeal Edge Games provided electronic evidence that the emails in question were indeed sent. Evidence presented on Appeal also showed conclusively that no disk had been concocted, they were all entirely genuine.

(3) Again, it was one person's word against another's and the court was in error to opine thus.

(4) This was patently not true, and arose because the UK Court failed to understand that Edge Games actually has a number of licensees, all of which having all goodwill arising from their use vesting in Edge. Thus when properly considered, nothing on Edge's website was remotely misleading.

(E) Petitioner responds:

(1) The parties differ on this. Edge says it is clear what it alleged is true.

(2) In fact they were found to be valid. So Edge spoke truly here, too.

(3) Not true -- the evidence is before this Board, and at trial the Board will see for itself that in the Stipulation behind the Final Order there is a clause in the associated documentation that states neither Edge nor Langdell are to be considered to have been found guilty of any wrongdoing. That is a simple fact, and a

truth that Edge will show at trial. Also, the court did not make prior "findings" it offered opinions based on considering virtually no evidence, and only a 15 minute argument presented by one side (EA).

(4) This falsehood has been surely beaten to death by now: Although the motion was filed with a certificate of service, it was never actually served on Razer. In the few hours following it being filed online, and Edge decided not to go ahead with its motion, and therefore did not go ahead with serving it. It is permitted by standard practice for a party to state that it has served a document and then actually serve it within 24 hours. Here, Edge did not actually go ahead and serve it, and as Razer itself admitted, it never received the motion so that proved it was never actually served and thus Edge/Langdell spoke honestly and truthfully.

(F) Petitioner notes in response to this section of Registrant's motion, that the 2008 Federal Court action before the Virginia Court was ruling entirely in Edge Games favor, with Edge and its CEO Langdell not being found to have done anything wrong (there was at one point an order for sanctions, but the Final Order - - which is already in evidence in this case -- has a clause specifically vacating that order).

(1) This was a simple clerical error by an attorney working for Edge who was later replaced due to his continuing clerical errors.

(2) This again was due to clerical errors by the attorney, and is one reason why the order for sanctions was readily vacated by the court when it was made clear that it was simple error, and not any intention to mislead the court.

(3) This again was entirely reversed by the Final Order which was entirely in favor of Edge Games/Edge Interactive, and replaced and voided these earlier comments by the court that took place at a time when the court lacked the full facts and evidence. Yet again, then, Razer is deliberately quoting out of context from documents that were later reversed, voided or vacated, solely in order to defame Edge and its CEO, as part of its ad hominem attack.

(4) This misunderstanding by the court was later cleared up, as was evidenced by the Final Order being ruled entirely in favor of Edge and Langdell.

(G) Again, this is citing an overseas case that should be outside the scope of these proceedings. And again, this is also quoting out of context purely to try to make Edge and/or Langdell look bad. The fact is that Edge redacted Copeland's email in question and made clear to the court it had redacted it, but when Copeland was asked if it was the exact same email he honestly responded that it was not purely because it was redacted. When these true facts are known, it is clear this is out of context and does not, and should not, reflect badly on Edge or Langdell. Petitioner also notes that Copeland has supplied a declaration in these proceedings which is entirely supportive of Edge Games in this dispute with Razer.

(H) As to Board is aware, having heard all this same argument by Razer before, the parties differ on these issues and Petitioner believes that at trial the Board will see that Petitioner's version of events is in fact the correct one:

(1) Edge Games did not make any false statement, as Petitioner will show at trial.

(2) This issue was fully dealt with in prior submissions considered by the Board. Edge did not intentionally make any false statement.

(I) As the Board is aware, the parties disagree on this and Petitioner states that the email was indeed sent, but the issue was rendered moot when Petitioner withdrew the email in question from evidence in this case (and does not intend to reintroduce it into evidence, unless of course Registrant persists at trial in trying to make Edge Games look bad by these false allegations and ad hominem attacks).

C. Edge Games Has Adhered To The Rules As Far As It Is Aware

Edge did review the indicated sections and as far as it is aware is in compliance, having met all of its discovery obligations. As has been shown above, with the 852 pages of discovery served on Registrant on November 17, 2015, including documents correctly designated as confidential or trade secret, all of these criticisms by Razer were rendered moot either before this motion was filed, or within a couple of hours of it being filed. And yet Razer has persisted in this motion, knowing most -- indeed surely all -- of its allegations were rendered moot and yet has persistently refused to withdraw the motion when asked.

Edge noted the mechanism for producing protected documents and has followed that guidance, insofar as any of Edge's responses to discovery requests suggested otherwise, in fact Edge has shown that it knows and has followed the mechanism for producing such documents.

D. PETITIONER'S RESPONSE TO REQUEST FOR FINAL JUDGMENT

The simple fact is that Edge Games has produced the documents that Registrant requested, and did so in the timeframe that it indicated to Registrant that it would and which Registrant did not protest at the time the timing of. Discovery is still ongoing in these proceedings, and indeed Registrant was granted until the end of December to continue to pursue discovery and production from Petitioner. Moreover, when Petitioner produced its 852 pages of documents on November 17, 2015, discovery was still ongoing and thus the production was timely and within the discovery period. While there have been delays, caused almost entirely by Petitioner's licensee Velocity Micro being slow to produce documents, they have been delays that Registrant both knew about and did not protest at the time. Indeed, again, Petitioner notes that in the last communication received from Razer to Edge's legal counsel, Razer's counsel indicated he would not be available until after November 27, 2015 to receive and consider any documentary evidence and/or attend the (then) anticipated deposition of Copeland. It thus makes no sense having provided dates after November 27th to receive documents and attend a deposition, that Razer should have filed the instant motion 10 days earlier on the 17th, basing a motion for judgment in sizable part on the non-receipt of documents Razer had agreed to wait for until beyond November 17th.

Petitioner Edge Games followed to the letter the Order made by the Board in September, and timely served amended discovery responses on Razer. Registrant objected to some of responses, and gave Edge until October 20th to re-serve amended and correct responses. Edge then timely served said amended and corrected responses on October 19, 2015. From that date to the present day Registrant did not communicate with Petitioner to indicate that it did not deem the revised discovery responses acceptable -- on the contrary, Registrant's silence having received the further amended responses was quite reasonably taken by Petitioner as acceptance of the new responses.

II. Since Edge Games Has Already Fully Complied With Discovery Production, And Has Responded Fully To All Requests, Razer's Request To Compel Is Moot; No Reasonable Basis For Edge To Be Stopped From Entering Any New Evidence Not Yet Produced.

All the requested information and documents have been produced with the exception of document(s) that stipulate in them that a court order is required before they can be produced in any action such as this one. Razer is entirely within its right to seek such a Court Order, but until and unless Razer does so, Edge should not be penalized in any way for not producing a document that specifically states it cannot be produced except by court order. Edge has otherwise produced all the requested documents in its custody and control, although of course has not agreed to limit the evidence on which it will rely on at trial to just the documents requested by Registrant; Edge Games reserves (and hereby preserves) the right to present at trial any evidence has not been requested in discovery by Razer.

A. Razer's Alleged "Good Faith Effort To Resolve The Dispute"

While Razer state that they sought to resolve what they are terming the discovery dispute with their October 13, 2015 letter, what Razer fail to acknowledge is that Edge Games gave its good faith best effort to comply with absolutely everything that Razer asked for in that letter. Thus as far as Edge Games knew, it had successfully addressed all concerns raised by Razer, since Razer did not object in any way to Edge's further amended responses of October 19, 2015 and failed to contact Edge at all since October 13th, which in turn gave the understandable impression that Razer were now satisfied with the amended responses. Edge has made reasonable efforts to comply with Board rules and with every reasonable request made of it by Razer. Thus the depiction of Edge as an entity trying to avoid its discovery obligations is neither accurate nor remotely fair. Again, Edge Games served a very large bundle of 852 documents on Razer on November 17, 2015, which was a mixture of regular discovery and documents designated as Trade Secret, completely in accord with Board rules and guidelines for discovery.

Razer yet again suggests that Edge Games failed in some way to provide certain information and documents to it by October 19, 2015 in preparation for the (then) anticipated deposition scheduled for October 26, 2015. But this is deliberately misleading to the Board since as Razer knows well, that deposition was postponed specifically because Velocity failed to produce the documents that Edge had hoped to be able to supply to Razer on October 19th. And Razer then (see the attached exhibits) agreed to wait until after

November 27, 2015 when Razer's counsel would once again have availability, for Razer to receive the documents and attend the deposition. Thus this point, which Razer seems intent on making much of, is an entirely "non point" that is without any merit at all given what actually took place between the parties, and what was agreed either explicitly or implicitly.

Razer seeks to make much of what it keeps referring to as the "nine month delay" from when it propounded discovery to when Edge Games started to produce documents. But the Board should please bear in mind that up to mid September, Edge Games had served what it understood to be entirely valid objections to Razer's requests, which in turn meant that Edge was not obliged to start producing documents until the objections had been dealt with. Only commencing with the Board's mid-September Order did that situation change, and even then it was not until October that the Order required Edge to serve its amended responses, following which it would be reasonable to commence production. Which takes us to the communications exchanged between the parties from early to mid October, which all clarified that Razer understood there would be delays in production, largely caused by Velocity not being forthcoming with the requested documents. There was thus in real terms no nine month delay. However, there was a real delay of at least seven months from when Edge propounded its discovery in Razer in August 2014 and the time that Razer finally produced the first page of documents in 2015. There is thus a notable instance here of the Pot calling the Kettle black.

B. Edge's Response To Razer's Relief Requested

Edge sincerely believed it had met all Registrant's requests for further corrections and amendments to discovery responses in its October 19, 2015 submissions to Registrant. Registrant failed to respond giving any indication that this was not the case. Registrant states for the first time in this motion that it did not find those October 19th responses adequate, so Edge served yet further revised discovery responses on Petitioner on December 5, 2015 (see Exhibit 9) which fully satisfy everything that Registrant was seeking. There is thus no need for the Board to compel discovery responses as the motion requests, since all such additional corrections and responses have already been made (and would have been made without need for this motion, had Registrant bothered to ask Petitioner in October after it received the October 19th amendments).

Edge Games served 852 pages of evidence on Razer on November 17, 2015 which includes a declaration by Velocity's President Copeland, and which when coupled with the pertinent law in this case proves beyond all reasonable doubt that Edge Games is entitled to judgment in its favor in these proceedings. The evidence proves beyond all reasonable doubt that: (a) Velocity has a valid license agreement with Edge that has acceptable and valid quality control provisions; (b) Edge, through its licensees, have sold several tens of millions of dollars of the same type of goods as Razer, using the same mark EDGE, continuously in U.S. commerce, in all the period pertinent in this case prior to Razer's application for the instant registration and prior to Razer's first use of the mark. If the Board consider this case on its merits, then, there will be no reasonable doubt that Edge Games should prevail and Razer's registration should be canceled. It would thus be a travesty of justice if Razer were permitted a default judgment in this case without it being heard on the merits, with all evidence and argument by both sides being properly and fully considered. Permitting a matter to be fully heard on its merits is a basic tenet of the Federal Rules of Civil Procedure (See Johnston Pump/General Valve, Inc. v. Chromalloy Am. Corp., 13 USPQ2d 1719, 1720 (TTAB 1989); see also Thrifty Corp. v. Bomax Enters., 228 USPQ 62, 63 (TTAB 1985).

III. Response to Request for Suspension

The true reason Registrant filed this motion was obviously to seek suspension of proceedings as a mechanism to gain an extension of time to respond to Petitioner's discovery requests, since Registrant knew that it would not gain such an extension by any other legitimate means. Registrant's attorney is very experienced, and knew, or should have known, that there was no realistic prospect of prevailing on a motion for summary judgment having already been denied such motion before, and knowing the Board's very proper insistence on each case being heard on its merits except in rare circumstances (not present here). Similarly, Registrant did not even bother to follow up with Petitioner to gain the further discovery responses it apparently was seeking, and instead waited an entire month from when Petitioner served Registrant with its best effort further amended discovery responses. And then, rather than indicate to Petitioner that Registrant still did not find them adequate, instead only stated this in the instant motion. Registrant knew, or should

have known, that it could easily have gained those additional amendments from Petitioner by simply asking for them in October.

For all Registrant's accusations against Petitioner of gameplaying or misleading the Board, this was gameplaying by Registrant pure and simple: it is an attempt to "work the system" in order to gain an extension of time to serve discovery responses that Registrant desired but knew it could not gain other than by filing a meritless motion in the hope of triggering a suspension of time that would then give it the extension of time it sought. The Board had already used its discretion to be more lenient to Registrant than Petitioner by terminating discovery for Petitioner in October, but granting Registrant extension of discovery to December 30, 2015. Registrant was (and is) under no time pressure to complete discovery since there is no reason to believe it cannot complete it comfortably before December 30th (and, indeed, discovery is likely complete for Registrant now as of the latest production and responses). And in any event, given how lenient the Board has been in granting discovery extensions to Registrant, it could reasonably expect to have an extension of discovery beyond late December if it desired it and had valid grounds for requesting it.

Registrant cannot argue -- not legitimately or without being clearly disingenuous -- that it "had to" file the instant motion in order to compel discovery responses from Petitioner. The parties were in open amicable dialog about remaining discovery issues, and all Registrant had to do was communicate with Petitioner to get the balance of its requests met fully (as is proven by them being met fully the moment Petitioner understood what additional clarifications Registrant was seeking -- which clarifications Registrant failed to provide to Petitioner from October 19 to November 17, rather than continuing the amicable dialog that the parties were in during October).

Trademark Rule 2.120(e)(2), CFR 2.120(e)(2), clearly states that filing a motion to compel does not toll time for a party to respond to any outstanding discovery requests:

" The filing of a motion to compel shall not toll the time for a party to respond to any outstanding discovery requests"

The filing of a potentially dispositive motion, other than a motion to compel discovery, also does not automatically suspend proceedings (see TBMP 513.03); proceedings are only suspended on the

Board's order. While the Board may usually suspend proceedings on a potentially dispositive motion (such as a motion for summary judgment), this is at the Board's discretion and neither party should assume that suspension will automatically be granted by the Board. Indeed, TBMP 510.03(a) states:

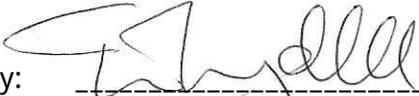
" On a case-by-case basis, the Board may find that the filing of a potentially dispositive motion provides a party with good cause for not complying with an otherwise outstanding obligation, for example, responding to discovery requests."

Since this is the second time Registrant has filed a motion for summary judgment as a way to get out of the case being heard on its merits, it knew or should have known that it would not likely prevail on the motion. It was clearly filed solely with the purpose of using the wording of TBMP 510.03 as an illegitimate mechanism to try to toll time for responding to discovery requests, and that is not a purpose of a motion for summary judgment that should ever be sanctioned by the Board.

Conclusion.

Registrant should be denied its motion to compel discovery since all of its discovery requests have been fully met already. Registrant did not need to resort to motion to acquire any additional responses or clarifications: all it had to do was ask for them. Registrant should also be denied its motion for summary judgment since there are no valid grounds for such a ruling and the Board should permit this case to be heard on its merits. Finally, the Board should deny Registrant its request for suspension and sanction Registrant for trying to use the mechanism of a motion for summary judgment as a way to toll time for discovery response when this is not an approved use of such motions, and should be frowned upon by the Board.

Respectfully submitted:

By: 
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Date: November 7, 2015

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

EDGE GAMES, INC.	}	
	}	
Petitioner,	}	Cancellation No. 92058543
	}	
v.	}	Mark: EDGE
	}	
RAZER (ASIA-PACIFIC) PTE LTD	}	Registration No. 4,394,393
	}	
Registrant	}	
	}	
-----	}	

CERTIFICATE OF SERVICE

It is hereby certified that on December 7, 2015 a true copy of the foregoing PETITIONER'S EDGE GAMES, INC.'S OPPOSITION TO REGISTRANT RAZER (ASIA-PACIFIC) PTE LTD'S MOTION FOR JUDGMENT, OPPOSITION TO MOTION TO COMPEL DISCOVERY AND OPPOSITION TO MOTION TO SUSPEND PROCEEDINGS (WITH EXHIBITS) was deposited in the U.S. mail, certified, postage prepaid, addressed to:

Keith A. Barritt Esq
Fish & Richardson P.C.
P.O. Box 1022
Minneapolis, MN 55440-1022

Signature: /s/ Cheri Langdell