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

Proceeding	92058621
Party	Plaintiff Thru, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In the Matter of Registration No. 4,478,345 DROPBOX**

<b>THRU INC., Petitioner,</b>	§	
	§	
v.	§	<b>Cancellation No. 92058621</b>
	§	
<b>DROPBOX, INC., Registrant.</b>	§	

TO THE HONORABLE TRADEMARK TRIAL AND APPEAL BOARD

**THRU INC.’S REPLY TO DROPBOX, INC.’S OPPOSITION TO THRU INC.’S MOTION  
FOR PARTIAL SUMMARY JUDGMENT DENYING REGISTRANT’S FIRST, THIRD,  
FOURTH, FIFTH AND SIXTH AFFIRMATIVE DEFENSES**

Petitioner THRU INC. (“Thru”) in reply to DROPBOX, INC.’S (“Dropbox”) opposition to Thru’s partial summary judgment motion striking certain affirmative defenses pleaded by Dropbox, would respectfully show the Board as follows:

First Affirmative Defense

The First Affirmative Defense is that the Petition for Cancellation fails to set forth facts sufficient to entitle Petitioner to the relief sought.

The Petition states clearly that Thru contends that before any priority date to which the trademark of Registration No. 4,478,345 is entitled, Thru had used and acquired rights to the trademark DROPBOX used by Thru for its services. The Petition further alleges that use of the registered trademark for the services of Registration No. 4,478,345 would be likely to cause confusion, or otherwise violate Section 2(d).

These allegations constitute a short and plain statement of Petitioner’s claim. If true, they entitle Petitioner to the relief sought. Petitioner is not required, in its Petition,

to provide all the facts supporting its claim. That is why the proceedings include discovery. If the facts alleged in the petition are correct Dropbox will be entitled to cancellation of Registration No. 4,478,345.

#### Third, Fourth, Fifth and Sixth Affirmative Defenses

Each of these essentially seeks to foreclose the Petition to Cancel on the grounds of delay. The Petition was, however, filed on the date Registration No. 4,478,345 issued. There was no delay: the Petition could not have been filed sooner and so the above affirmative defenses, each of which requires a finding of unreasonable delay on the part of the Petitioner should be stricken now, as a matter of law.

As to laches, the Third Affirmative Defense, Registrant argues that its defense could apply because it has alleged "Petitioner was aware of Registrant's use of the DROPBOX mark prior to the close of opposition period" citing *Jansen Enters, Inc. v. Rind*, 85 U.S.P.Q.2d 1104, 1114 (TTAB 2007). Registrant's application and its publication for opposition did not constitute constructive notice of its trademark use. In the absence of actual notice, the date of registration is the operation date for calculating laches. *Id.*

As to the Fourth, Fifth and Sixth Affirmative Defenses of waiver, acquiescence and equitable estoppel, Petitioner has in every communication with Registrant maintained that its rights in DROPBOX were superior to those of Registrant. During the eighteen month period referred to by the Registrant, its application was being opposed by others who claimed superior rights in the mark DROPBOX. Petitioner reasonably awaited the outcome of those proceedings. In any event, between March 31, 2011 (the

close of the opposition period) and February 4, 2014) (the date the registration was granted) Petitioner had no available remedy before this Board.

Summary

Contrary to Registrant's contentions, it is not Petitioner that seeks to delay and burden the Board. Rather, it is Registrant who continues to press affirmative defenses that have no basis in law or fact given the undisputed facts of the present case.

The Board should strike the Affirmative Defenses and order the petition to proceed, focused on the real issue, which of the parties has priority of right to the mark DROPBOX.

Dated: September 8, 2014

Respectfully submitted,

/s/ John M. Cone

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ATTORNEY FOR PETITIONER  
THRU INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of September 2014, a true and correct copy of the foregoing document was served via U.S. First Class Mail, postage prepaid on:

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/s/ John M. Cone \_\_\_\_\_  
John M. Cone