

ESTTA Tracking number: **ESTTA754796**

Filing date: **06/27/2016**

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

Proceeding	92062543
Party	Defendant Tropical Tobacco, Inc.
Correspondence Address	STEWART L GITLER WELSH FLAXMAN & GITLER LLC 2000 DUKE STREET , SUITE 100 ALEXANDRIA, VA 22314 UNITED STATES mail@iplawsolutions.com
Submission	Other Motions/Papers
Filer's Name	Stewart L Gitler
Filer's e-mail	mail@iplawsolutions.com, gitler@iplawsolutions.com
Signature	/Stewart L Gitler/
Date	06/27/2016
Attachments	motion to quash.compressed.pdf(647711 bytes)

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

In the Matter of Trademark Registration No.: 4,183,397
Mark: MOMBACHO
Registered: July 31, 2012

_____)	
MOMBACHO CIGARS S.A.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062543
)	
TROPICAL TOBACCO, INC.,)	
)	
Respondent.)	
_____)	

**RESPONDENT’S MOTION TO QUASH PETITIONER’S NOTICE OF DEPOSITION
OF STEWART GITLER UNDER 37 CFR 120(f)**

Respondent, TROPICAL TOBACCO, INC. (hereinafter, “Tropical”), hereby moves for an order quashing the Notice of Deposition of Stewart Gitler, Respondent’s Trial Counsel. The Notice amounts to harassment and should be quashed on the grounds that materials sought to be produced are attorney-client privileged and/or constitute attorney work product in that they were prepared through confidential and privileged discussions with Respondent. The proposed deposition of Respondent’s Trial Counsel is unnecessary in that any information sought by Petitioner can be discovered in the depositions of Paul Palmer and Josefa Vega, employees of Respondent, who are scheduled to be deposed on July 7, 2016 and July 8, 2016. (See attached Notices) Accordingly, there is a less invasive or alternative means for Petitioner to obtain relevant information.

The Notice of Deposition gives no details or facts as to what Petitioner hopes to uncover by the deposition of Respondent’s Trial Counsel and as such the Notice of Deposition appears to be pure

harassment and should be quashed under 37 DFR 2.120(f) to protect attorney-client confidentiality and work product. Attached is a copy of the Notice of Deposition sent for Stewart Gitler.

Trial Counsel, Stewart Gitler, has no knowledge regarding the inner workings of the Respondent's company, other than being the Counsel handling various trademark filings and the current proceeding on their behalf.

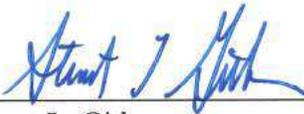
There is no possible utility other than harassment for the Notice of Deposition.

All conversations conducted between Stewart Gitler and Respondent are attorney-client privileged and therefore there is no reason for the Deposition.

CONCLUSION

Petitioner has failed to show any need for the deposition and in view of such the Notice of Deposition should be quashed. Proper discovery of non-privileged information can be adequately obtained by Petitioner through the depositions of Paul Palmer and Josefa Vega.

Respectfully submitted,

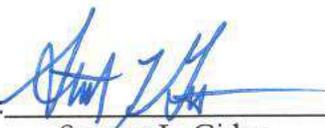
By: 
Stewart L. Gitler
Howard N. Flaxman John L. Welsh
WELSH FLAXMAN & GITLER LLC
2000 Duke Street, Suite 100
(703)920-1122
mail@iplawsolutions.com
ATTORNEYS FOR RESPONDENT

Date:

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing RESPONDENT'S MOTION TO QUASH PETITIONER'S NOTICE OF DEPOSITION OF STEWART GITLER, was served on Counsel for Petitioner, by U.S. first-class mail and email, postage prepaid, 6/27/2016, 2016, to:

Peter S. Sloane
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601

By: 

Stewart L. Gitler

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

In the Matter of Registration No. 4,183,397

-----X		:
MOMBACHO CIGARS S.A.,		:
	Petitioner,	:
		:
	v.	:
		:
TROPICAL TOBACCO, INC.,		:
	Respondent.	:
-----X		:

Cancellation No. 92062543

PETITIONER'S NOTICE OF DEPOSITION OF STEWART GITLER

TO ALL PARTIES AND COUNSEL OF RECORD:

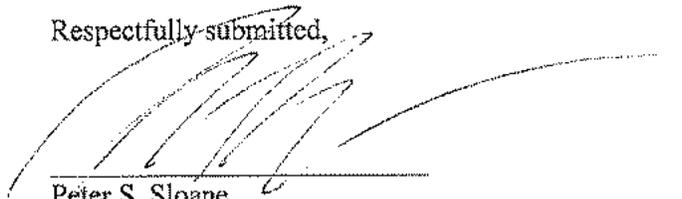
PLEASE TAKE NOTICE THAT Petitioner, Mombacho Cigars S.A. ("Petitioner"), by and through its attorneys, Leason Ellis LLP, pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 404, Rule 2.120 of the Trademark Rules of Practice, and Rule 30 of the Federal Rules of Civil Procedure, will take the deposition upon oral examination of Stewart Gitler at the location and on the date and time indicated:

Deponent Name	Location	Date and Time
Stewart Gitler	Veritext Legal Solutions One Biscayne Tower 2 South Biscayne Blvd., Suite 2250 Miami, FL 33131	July 7, 2016 at 10:00am

The deposition will continue from day to day until completed and will be taken upon oral examination before an officer authorized by law to administer oaths and will be recorded by stenographic means. You are invited to attend and cross-examine.

Date: June 27, 2016
White Plains, New York

Respectfully submitted,



Peter S. Sloane
Cameron S. Reuber
Lauren Sabol

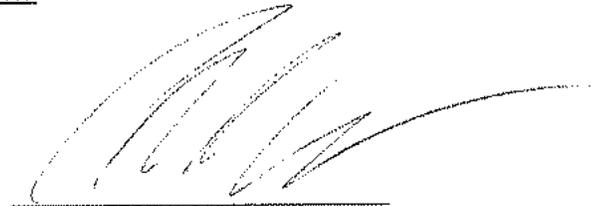
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 288-0022

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **PETITIONER'S NOTICE OF DEPOSITION OF STEWART GITLER** was served upon counsel for Respondent, this 27th day of June, 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
WELSH FLAXMAN & GITLER LLC
200 Duke Street, Suite 100
Alexandria, VA 22314
gitler@iplawsolutions.com

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over a horizontal line.

Peter S. Sloane

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

In the Matter of Registration No. 4,183,397

-----X	:	
MOMBACHO CIGARS S.A.,	:	
Petitioner,	:	Cancellation No. 92062543
v.	:	
TROPICAL TOBACCO, INC.,	:	
Respondent.	:	
-----X		

PETITIONER'S NOTICE OF DEPOSITION OF JOSEFA VEGA

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT Petitioner, Mombacho Cigars S.A. ("Petitioner"), by and through its attorneys, Leason Ellis LLP, pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 404, Rule 2.120 of the Trademark Rules of Practice, and Rule 30 of the Federal Rules of Civil Procedure, will take the deposition upon oral examination of Josefa Vega at the location and on the date and time indicated:

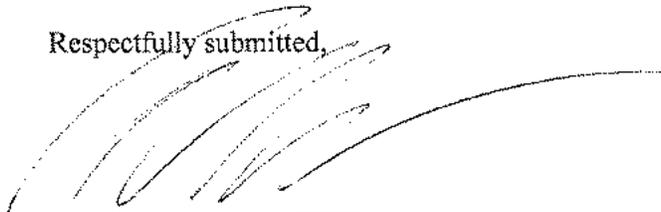
Deponent Name	Location	Date and Time
Josefa Vega	Veritext Legal Solutions One Biscayne Tower 2 South Biscayne Blvd., Suite 2250 Miami, FL 33131	July 7, 2016 at 1:00 p.m.

The deposition will continue from day to day until completed and will be taken upon oral examination before an officer authorized by law to administer oaths and will be recorded by stenographic means. A certified Spanish-English translator will also be present for the

deposition. You are invited to attend and cross-examine.

Date: June 27, 2016
White Plains, New York

Respectfully submitted,



Peter S. Sloane
Cameron S. Reuber
Lauren Sabol

LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 288-0022

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **PETITIONER'S NOTICE OF DEPOSITION OF JOSEFA VEGA** was served upon counsel for Respondent, this 27th day of June, 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
WELSH FLAXMAN & GITLER LLC
200 Duke Street, Suite 100
Alexandria, VA 22314
gitler@iplawsolutions.com

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over a horizontal line.

Peter S. Sloane

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

In the Matter of Registration No. 4,183,397

-----X	:	
MOMBACHO CIGARS S.A.,	:	
Petitioner,	:	Cancellation No. 92062543
v.	:	
TROPICAL TOBACCO, INC.,	:	
Respondent.	:	
-----X		

PETITIONER’S NOTICE OF DEPOSITION OF PAUL PALMER

TO ALL PARTIES AND COUNSEL OF RECORD:

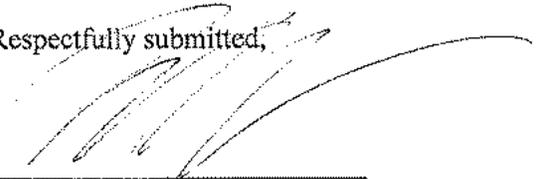
PLEASE TAKE NOTICE THAT Petitioner, Mombacho Cigars S.A. (“Petitioner”), by and through its attorneys, Leason Ellis LLP, pursuant to the Trademark Trial and Appeal Board Manual of Procedure § 404, Rule 2.120 of the Trademark Rules of Practice, and Rule 30 of the Federal Rules of Civil Procedure, will take the deposition upon oral examination of Paul Palmer at the location and on the date and time indicated:

Deponent Name	Location	Date and Time
Paul Palmer	Veritext Legal Solutions One Biscayne Tower 2 South Biscayne Blvd., Suite 2250 Miami, FL 33131	July 8, 2016 at 10:00 a.m.

The deposition will continue from day to day until completed and will be taken upon oral examination before an officer authorized by law to administer oaths and will be recorded by stenographic means. You are invited to attend and cross-examine.

Date: June 27, 2016
White Plains, New York

Respectfully submitted,



Peter S. Sloane
Cameron S. Reuber
Lauren Sabol

LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 288-0022

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **PETITIONER'S NOTICE OF DEPOSITION OF PAUL PALMER** was served upon counsel for Respondent, this 27th day of June, 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
WELSH FLAXMAN & GITLER LLC
200 Duke Street, Suite 100
Alexandria, VA 22314
gitler@iplawsolutions.com



Peter S. Sloane