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

Proceeding	92062808
Party	Defendant Compass Minerals America Inc.
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Attachments	SURE PAWS Registrants Status Report.pdf(94355 bytes)

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

GAIA ENTERPRISES, INC.,)	
Petitioner,)	
)	
v.)	
)	
COMPASS MINERALS AMERICA INC.,)	Cancellation No.: 92062808
Registrant.)	Serial No.: 85/009,174
)	Reg. No.: 3,963,355
)	Mark: SURE PAWS
)	Filed: April 8, 2010
)	Registered: May 17, 2011
)	Class: 01

REGISTRANT'S STATUS REPORT REGARDING THE FEDERAL LITIGATION

There is currently pending in the U.S. District Court for the District of Kansas a civil action between the Petitioner and the Registrant, specifically Case No. 2:16-cv-02175 (the "Civil Action"). All counts in the Civil Action relate to the validity and scope of Gaia's rights in and to the SAFE PAW and SAFE PAW and Design marks, which marks are the basis of this Cancellation Proceeding.

Petitioner filed a Motion to Dismiss and/or Stay the Civil Action (the "Motion to Dismiss"), and then filed a Status Report herein attaching a copy of said motion, and reiterated to this tribunal the false statement made to the District Court in the Civil Action, to wit: "a resolution of the TTAB proceeding will resolve all issues in this case," and Petitioner then urges the TTAB to continue the pendency of this cancellation proceeding.

Registrant has now filed in the Civil Action its Opposition to the Motion to Dismiss (the "Opposition"), a copy of which is attached hereto as Exhibit A. The arguments set forth in Petitioner's Status Report are facially false and disingenuous, as none of the counts in the Civil Action stand or fall based on the cancellation (or not) of Registrant's SURE PAWS registration.

Petitioner's grounds for dismissal are not strong and are not likely to succeed as set forth in Registrant's Opposition. Accordingly, Registrant requests the TTAB stay the pendency of this cancellation proceeding in accordance with its earlier filed motion seeking such relief.

Respectfully submitted,

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Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

COMPASS MINERALS AMERICA INC.,

Plaintiff,

v.

GAIA ENTERPRISES, INC.,

Defendant.

CASE NO. 2:16-CV-02175

JUDGE JULIE A. ROBINSON

MAGISTRATE JUDGE
GERALD L. RUSHFELT

**PLAINTIFF’S BRIEF IN OPPOSITION
TO DEFENDANT’S MOTION TO DISMISS AND/OR STAY IN THE ALTERNATIVE**

Plaintiff Compass Minerals America Inc. (“Compass Minerals”) hereby opposes the Motion to Dismiss and/or Stay in the Alternative, ECF No. 12 (the “Motion”) filed by Defendant Gaia Enterprises, Inc. (“Gaia”).

I. INTRODUCTION

Gaia has alleged that Compass Minerals’ use of its trademarks infringes trademark rights that Gaia claims to have, and Gaia has demanded compensation from Compass Minerals as restitution for such alleged confusingly similar use. Under any read of the trademark laws of the United States, such a fact pattern establishes a claim for trademark infringement. In response to those allegations, Compass Minerals has sought relief in this Court that it does not infringe any rights that Gaia may have and that Gaia is not entitled to any relief from Compass Minerals. And on the basis of these allegations, which Gaia does not dispute, Compass Minerals has asserted facts that establish a case or controversy within the meaning of the Declaratory Judgment Act and Article III of the United States Constitution. The discretionary factors also weigh in favor of this Court exercising jurisdiction. Thus, Gaia’s Motion should be denied.

The cancellation action that Gaia filed in the Trademark Trial and Appeal Board (“TTAB”), (which has been stayed), is not a basis upon which to stay or dismiss this action. Unlike the TTAB, this Court can adjudicate and issue relief concerning *all* of the issues between the parties, whereas adjudication by the TTAB will only lead to piecemeal litigation, even if Gaia were successful in that forum. And such a result will unfairly prejudice Compass Minerals. In view of what Gaia is alleging, Compass Minerals is entitled to a full and complete adjudication of all rights and remedies which will be denied should this Court decline to exercise jurisdiction. A stay of these proceedings is unwarranted for similar reasons.

For these reasons, and as set forth below, this Court should deny Gaia’s Motion in its entirety.

II. RELEVANT FACTS

Compass Minerals is a leading producer of salts, minerals, plant nutrients, and deicing products, including pet-friendly deicing products sold under its SAFE STEP® and SURE PAWS® trademarks used in combination. Complaint, ECF No. 1, at ¶1. Compass Minerals owns United States Trademark Registration No. 1,070,471 for its SAFE STEP® trademark, and United States Trademark Registration No. 3,963,355 for its SURE PAWS® trademark. *Id.* at ¶¶16-17, 20-21. Compass Minerals only uses its SURE PAWS® mark in combination with its SAFE STEP® mark. *See Id.* at ¶23. As a result of Compass Minerals’ long, extensive, widespread, and substantially exclusive use of the SAFE STEP® and SURE PAWS® trademarks, consumers have come to associate the combined use of the SAFE STEP® and SURE PAWS® marks exclusively with Compass Minerals, and the trademarks used in combination have developed significant and valuable goodwill. *Id.* at ¶¶24-25.

Gaia manufactures and sells a deicing product under an alleged SAFE PAW trademark that competes directly with Compass Minerals' SAFE STEP® SURE PAWS® product. *Id.* at ¶27. Gaia owns United States Trademark Registration No. 4,156,873 for an alleged trademark consisting of a graphic depiction of the word "SAFE PAW" juxtaposed with a drawing of a paw print of an animal. *Id.* at ¶¶30, 32. Gaia also owns United States Trademark Registration No. 4,288,928 for an alleged "SAFE PAW" standard character mark. *Id.* at ¶33.

On December 9, 2015, Gaia filed a Petition to Cancel Compass Minerals' SURE PAWS® trademark with the TTAB. *Id.* at ¶37. Gaia claims in the Petition to Cancel that "Registrant's SURE PAWS mark, when applied to the Registrant's goods, creates a false and misleading suggestion of a connection with the Petitioner's SAFE PAW marks creating a likelihood of consumer confusion as to the source of Petitioner's goods such that consumers are likely to believe that Respondent is the source of said items." *Id.* at ¶39. Gaia further asserts in the Petition to Cancel that consumers are "likely to be confused when seeing the similarity of the products," and that the SAFE STEP® mark, when used in conjunction with the SURE PAWS® mark, will likely "cause even more customer confusion" with Gaia's alleged SAFE PAW mark. *Id.* at ¶41. Gaia's Petition to Cancel also asserts that Compass Minerals "copied" Gaia's allegedly "unique plastic bottle design . . . with the intention of usurping the goodwill and markets developed by [Gaia]." *See* Complaint, ECF No. 1, Exhibit I, Petition to Cancel, at ¶5.

Following the filing of Gaia's Petition to Cancel, counsel for Gaia communicated to counsel for Compass Minerals that Gaia's dispute with Compass Minerals regarding the SURE PAWS® mark cannot be resolved without the payment of money or the provision of other consideration by Compass Minerals beyond the cessation of use of the SURE PAWS®

trademark and the cancellation of the SURE PAWS® trademark registration. *Id.* at ¶42. Gaia has also demanded that Compass Minerals’ stop using its SURE PAWS® mark. *Id.* at ¶43.

Gaia was careful not to send a cease and desist letter to Compass Minerals in an attempt to evade jurisdiction. But, as made plain by the allegations in the Complaint, Gaia has called into question Compass Minerals’ rights to use its registered trademarks and accused Compass Minerals of infringement and unfair competition. *See Id.* at ¶¶39, 41, 44, 47-48, 61-62, Exhibit I at ¶5. And Gaia has made threats and demands regarding money damages and injunctive relief arising out of Compass Minerals’ use of its own registered trademarks. Such conduct gives rise to the relief that Compass Minerals seeks.

III. ARGUMENT

A. Legal Standard--Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)

Dismissal pursuant to Rule 12(b)(1) is only appropriate if the Court lacks subject matter jurisdiction over the claims. Rule 12(b)(1) challenges are generally presented in one of two forms: “[t]he moving party may (1) facially attack the complaint’s allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests.” *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074 (10th Cir. 2004) (quoting *Maestas v. Lujan*, 351 F.3d 1001, 1013 (10th Cir. 2003)). When resolving a facial attack on the allegations of subject matter jurisdiction, the Court “must accept the allegations in the complaint as true.” *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995).

Gaia presents no evidence to challenge subject matter jurisdiction, nor does it challenge the veracity of the facts set forth in the Complaint. Rather, Gaia’s Motion purports to facially attack the factual allegations in the Complaint by arguing that those facts are insufficient to

establish jurisdiction. But such an attempt ignores the fact that Compass Minerals is entitled to the benefit of all inferences from the allegations in the Complaint when the Court evaluates Gaia's Motion. And, against this standard, Gaia's Motion should be denied.

B. This Court Should Exercise Declaratory Judgment Jurisdiction

To establish declaratory judgment jurisdiction, the “suit must be ‘definite and concrete, touching the legal relations of parties having adverse legal interests,’ must be ‘real and substantial’ and ‘admit of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.’” *Surefoot LC v. Sure Foot Corp.*, 531 F.3d 1236, 1244 (10th Cir. 2008) (citing *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126, 127 S. Ct. 764 (2007); *Aetna Life Inc. Co. of Hartford v. Haworth*, 300 U.S. 227, 240-41, 57 S. Ct. 461 (1937) (internal quotation marks modified). “Put differently, ‘the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’” *Id.* (citing *MedImmune*, 549 U.S. at 127; *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510 (1941)). There is no question that the dispute between Gaia and Compass Minerals is real and substantial and that the parties have adverse legal interests.

1. Compass Minerals Has Established Declaratory Judgment Jurisdiction

The allegations in Compass Minerals' Complaint – which must be taken as true for purposes of this Motion – establish that declaratory judgment jurisdiction exists in this case.

First, Gaia's cancellation action against Compass Minerals' registration expressly alleges that Compass Minerals SURE PAWS® mark “creates... a likelihood of consumer confusion as

to the source of [Gaia]’s goods such that consumers are likely to believe that [Compass Minerals] is the source of said items.” Complaint, ECF No. 1, at ¶¶39. Gaia is claiming likelihood of confusion, the touchstone of a claim for trademark infringement. And there can be no dispute as to the existence of such a claim since Gaia has also sought both injunctive and monetary relief from Compass Minerals. *See Id.* at ¶¶42-43. As set forth in the Complaint, and as discovery will show, Gaia demanded that Compass Minerals’ stop using its SURE PAWS® mark. *Id.* at ¶43. And, Gaia’s counsel has communicated to Compass Minerals’ counsel that Gaia’s dispute with Compass Minerals regarding the SURE PAWS® mark cannot be resolved without the payment of money or the provision of other consideration by Compass Minerals beyond the cessation of use of the SURE PAWS® trademark and the cancellation of the SURE PAWS® trademark registration. *Id.* at ¶42.

When faced with similar facts, courts in this Circuit have held that declaratory judgment jurisdiction exists. *See, e.g., Icon Health & Fitness, Inc. v. Relax-a-cizor Prods.*, 2012 U.S. Dist. LEXIS 64583 (D. Utah May 4, 2012) (finding that a single cease and desist letter sent to the declaratory judgment plaintiff’s customer regarding the plaintiff’s product, coupled with the plaintiffs’ allegations that it was using the mark at issue and did not believe the mark was infringing, were sufficient to establish declaratory judgment jurisdiction); *Water Pik, Inc. v. Med-Systems*, 2011 U.S. Dist. LEXIS 27631 (D. Colo. Mar. 8, 2011) (finding that a TTAB opposition alleging that the declaratory judgment plaintiff’s mark will cause confusion was sufficient to establish declaratory judgment jurisdiction, when the defendant also previously filed a lawsuit in Wisconsin but dismissed the action without prejudice before the complaint was served); *Floyd's 99 Holdings, LLC v. Woodrum*, 2009 U.S. Dist. LEXIS 24271 (D. Colo. Mar. 24, 2009) (finding that a cancellation proceeding, coupled with the parties’ history of

confrontation concerning their competing marks and the owner's prior threat of litigation in a single cease and desist letter, were sufficient to establish declaratory judgment jurisdiction).

Gaia argues that the fact of the cancellation action against Compass Minerals' SURE PAWS® registration, standing alone, cannot establish declaratory judgment jurisdiction. However, as set forth in the Complaint, the cancellation action is merely one of several facts demonstrating jurisdiction in this case. Other facts establishing jurisdiction include Gaia's demands that Compass Minerals cease using its SURE PAWS® mark and the demand for money or other compensation from Compass Minerals. Complaint, ECF No. 1, at ¶¶42-43. The Court must consider all of these facts together in assessing whether there is a live controversy between the parties. *See Surefoot*, 531 F.3d at 1245 (citing *Medimmune*, 127 U.S. at 127; *Maryland Cas.*, 312 U.S. at 273).

Gaia's claims about Compass Minerals' request to cancel Gaia's alleged trademark are similarly misplaced. While Gaia claims that Compass Minerals cannot establish declaratory judgment jurisdiction solely by requesting that Gaia's trademark registration be cancelled, even a cursory glance at the Complaint reveals that Compass Minerals has not merely brought a claim for cancellation, it also has asserted a bona fide claim seeking a declaration of non-infringement. Compass Minerals seeks affirmative relief from this Court that it is not infringing any right that Gaia claims to have. The case law above establishes that these allegations are more than adequate to establish that there is a case or controversy between the parties.

Finally, there can be little doubt that this Court would have subject matter jurisdiction pursuant to 15 U.S.C, § 1051 *et. seq.* if Gaia were suing Compass Minerals for trademark infringement based on the same facts. And on this basis, declaratory judgment jurisdiction is also proper. *See Surefoot*, 531 F.3d at 1245 (confirming that declaratory judgment jurisdiction

was proper by asking whether jurisdiction would be proper had the parties been reversed and the court were faced with a straightforward infringement suit).

For these reasons, Compass Minerals respectfully submits that declaratory judgment jurisdiction exists in this case.

3. Discretionary Factors Weigh in Favor of Exercising Jurisdiction

Once jurisdiction is established, the Court must consider a number of discretionary factors to determine whether the case warrants the Court's attention. *See State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979, 983 (10th Cir. 1994). Those factors are:

1. Whether a declaratory judgment action would settle the controversy;
2. Whether it would serve a useful purpose in clarifying the legal relations at issue;
3. Whether the declaratory remedy is being used merely for the purpose of 'procedural fencing' or 'to provide an arena for a race to *res judicata*';
4. Whether use of a declaratory judgment action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction;
5. Whether there is an alternative remedy which is better or more effective.

Id.

All of these factors weigh in favor of exercising jurisdiction in this case. First, unlike the stayed cancellation action pending in the TTAB, this litigation will resolve all of the issues raised by the set of facts presented and clarify the legal relations between the parties. In fact, resolution in this Court will be far more efficient than in the TTAB. The only issue before the TTAB is whether Compass Minerals has a right to a trademark registration. Thus, the TTAB proceeding will not determine: (1) whether Compass Minerals is infringing Gaia's marks, (2) whether Compass Minerals may continue using its own marks, (3) whether Gaia is entitled to the

monetary compensation it has sought from Compass Minerals, or (4) whether Compass Minerals is infringing any protectable unregistered trade dress Gaia claims to own. Indeed, these issues are beyond the jurisdiction of the TTAB. *See, e.g.*, TBMP § 102.01 (“The Board is empowered to determine only the right to register The Board is not authorized to determine the right to use, nor may it decide broader questions of infringement or unfair competition.”); *Board of Trustees of University of Alabama v. Pitts*, 107 U.S.P.Q.2d 2001, 2022 (T.T.A.B. 2013) (noting that TTAB has no jurisdiction to consider questions of infringement or unfair competition); *General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 U.S.P.Q.2d 1584, 1591 (T.T.A.B. 2011) (noting that the TTAB has no authority to determine the right to use, or the broader questions of infringement, unfair competition, damages or injunctive relief); *McDermott v. San Francisco Women’s Motorcycle Contingent*, 81 U.S.P.Q.2d 1212, 1216 (T.T.A.B. 2006) (“[T]he Board’s jurisdiction is limited to determining whether trademark registrations should issue or whether registrations should be maintained; it does not have authority to determine whether a party has engaged in criminal or civil wrongdoings.”), *aff’d unpub’d*, 240 Fed. Appx. 865 (Fed. Cir. July 11, 2007), *cert. den’d*, 552 U.S. 1109 (2008).

However, this Court can adjudicate all of these issues. *See, e.g.*, 15 U.S.C. § 1114 (providing federal civil action for infringement of registered marks); 15 U.S.C. § 1116(a) (vesting authority in district courts to grant injunctive relief for trademark infringement); 15 U.S.C. § 1117 (vesting authority in district courts to grant monetary relief in trademark infringement cases); 15 U.S.C. § 1125(a) (providing federal civil action for unfair competition and infringement of unregistered trademarks and trade dress). These are determinations that Compass Minerals needs in order to make future business decisions. Moreover, these are answers Gaia seeks as well, as Gaia likely will try to use any likelihood of confusion

determination from the TTAB cancellation proceeding in a later district court infringement action against Compass Minerals.

Nor is there any issue as to a state's jurisdiction. The underlying law is federal trademark law. Further, there is no alternative remedy which is better or more effective. The only colorable alternative in this case is the TTAB, which does not have jurisdiction to resolve all of the issues between the parties. *See, e.g.*, TBMP § 102.01.

Compass Minerals is struck by the irony that Gaia claims that this Court should decline jurisdiction pursuant to the third factor because Compass Minerals has engaged in "procedural fencing" by attempting to bypass adjudication in the TTAB. *See* Motion, at 7. Compass Minerals submits that it is in fact Gaia – not Compass Minerals – that is engaged in procedural fencing by attempting to force Compass Minerals to engage in piecemeal litigation over one set of operative facts in multiple venues.

The crux of the instant dispute is whether Compass Minerals' use of its trademarks is causing a likelihood of confusion with Gaia's alleged rights to its "SAFE PAW" marks. Yet, Gaia has filed suit in the TTAB, which cannot adjudicate claims of infringement and looks only at what is in Compass Minerals' registration, not at how consumers perceive the mark. And any holding by the TTAB that does not include an analysis as to how consumers perceive the mark will force the parties to then later re-litigate that issue in a district court at additional time and expense to all involved and both the courts and the TTAB. Compass Minerals submits that Gaia is well aware of the need for multiple successive determinations that will have the effect of prolonging resolution, which is why it chose to bring its claims first in the TTAB, even though the TTAB is not the best forum for those claims, particularly in view of Gaia's demand for

compensation and injunctive relief. This Court should disallow such procedural fencing by exercising declaratory judgment jurisdiction in this case.

C. This Court Should Not Stay Proceedings Pending Resolution of the TTAB Cancellation

Gaia's request in the alternative to stay this case pending resolution of the cancellation proceeding is likewise grounded in procedural fencing. Gaia argues that staying this case is appropriate because the TTAB will be addressing the likelihood of confusion question, which allegedly "will resolve all of the issues in this litigation." *See* Motion at 2, 8. But this assertion is not true.

As an initial matter, the TTAB almost always stays its proceedings in favor of district court cases, rather than the other way around. *See* MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, Fourth Edition § 32:98 (noting that stays of TTAB proceedings in favor of district court proceedings are "almost always granted if timely made"); *see also* TBMP § 510.02(a) ("Unless there are unusual circumstances, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board.").

Further, that the TTAB may weigh in on the issue of likelihood of confusion is misleading. It is very unlikely that the Board will address the issue in the context of how consumers view the mark or in relation to the marketplace realities; often times, the TTAB in a cancellation action looks only at the goods as they appear in the registration and does not engage in the issue central to use of a mark, *i.e.*, whether it is confusing to consumers. *See* MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION, Fourth Edition § 32:101 (noting that the TTAB often determines likelihood of confusion based solely on the registrations and/or applications at issue, "regardless of the actual usage of the marks in the marketplace"). And it is this very

difference on the confusion consideration that counsels against a stay, not for it. Fairness and efficiency dictate that Compass Minerals be permitted to present all relevant facts related to the likelihood of confusion question.¹

Moreover, despite Gaia's protest to the contrary, the law is clear that the cancellation proceeding will not resolve all of the issues in the litigation. As set forth above, the TTAB does not have jurisdiction over trademark infringement or unfair competition claims or the authority to determine whether a party may or may not use a trademark. *See* TBMP § 102.01. Thus, the TTAB proceeding will not determine whether Compass Minerals is infringing Gaia's marks, or whether Compass Minerals may continue using its own marks, determinations Compass Minerals needs in order to conduct business. Moreover, a cancellation action would not determine whether Gaia is entitled to the monetary compensation or other consideration it seeks.

Gaia asserts that the TTAB is "specialize[d] in resolving trademark disputes," but even if true, that is not a reason to stay a district court case involving similar issues. *See* Motion, at 2. In fact, this Court has previously declined to afford any deference to such an alleged premise. In *Hanlon Chemical Co. v. Dymon Inc.*, 18 U.S.P.Q.2d 1652 (D. Kan. 1991), the defendant asked the Court to stay proceedings pending a decision in the defendant's cancellation action against the plaintiff's trademark registration, urging that the TTAB had primary jurisdiction because of its "specialized expertise and experience." *Id.* The Court denied the motion to stay, finding that the trademark issues presented were not outside the conventional experience of judges and noting that the plaintiff was "entitled to have the infringement issue resolved promptly." *Id.*

¹ Efficiency also counsels litigating this matter in this Court because Compass Minerals would appeal any unfavorable decision in the TTAB to the district court anyway. *See* 15 U.S.C. § 1071 (affording TTAB litigants the choice of appealing to the United States Court of Appeals for the Federal Circuit on closed record of Board proceedings or a federal district court with the option of presenting additional evidence and raising additional claims).

Compass Minerals respectfully submits that it is similarly entitled to prompt and complete resolution of all the issues in this case. Accordingly, a stay of this litigation is not warranted.

V. CONCLUSION

In short, this Court has declaratory judgment jurisdiction. Gaia has threatened Compass Minerals over its use of a trademark and demanded compensation as a result. Staying this action pending resolution in the TTAB is not only inefficient, but contrary to established law in this district and the TTAB. For the reasons set forth above, this Court should deny Gaia's Motion to Dismiss and/or Stay in the Alternative in its entirety.

Dated: May 24, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2016 the foregoing **PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND/OR STAY IN THE ALTERNATIVE** was filed electronically with the Clerk of the Court using the Court's Electronic Case Filing System, which will send notification to all attorneys of record in this case.

/s/ B. Scott Eidson
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing REGISTRANT'S STATUS REPORT REGARDING THE FEDERAL LITIGATION is being sent to the TTAB via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 26th day of May, 2016, and a copy of this paper has been served upon counsel for Gaia on the same date as follows:

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