

ESTTA Tracking number: **ESTTA12579**

Filing date: **07/29/2004**

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

<b>Proceeding</b>	91121151
<b>Party</b>	Defendant TBC CORPORATION
<b>Correspondence Address</b>	MARSHA G. GENTNER JACOBSON, HOLMAN PLLC 400 SEVENTH STREET, N.W. WASHINGTON, DC 20004 WASHINGTON, DC 20004
<b>Submission</b>	Request to File Brief (One-Half Hour) Out of Time
<b>Filer's Name</b>	Marsha G. Gentner
<b>Filer's e-mail</b>	mgentner@jhip.com
<b>Signature</b>	/Marsha G. Gentner/
<b>Date</b>	07/29/2004
<b>Attachments</b>	91121151 Applicant's Request to File Brief.pdf ( 3 pages ) 91121151AttachmentESTTA12530.txt ( 1 page )

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

AMERICAN HONDA MOTOR CO. INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91/121,151
	)	
TBC CORPORATION,	)	
	)	
Applicant.	)	

**REQUEST TO FILE BRIEF  
(ONE-HALF HOUR) OUT OF TIME**

Applicant TBC Corporation (“TBC”) respectfully requests that its brief on final hearing (Applicant’s “Brief”), filed less than one-half hour after the deadline for same, be accepted for filing. In support of its request, Applicant submits the following.

On July 2, 2004, Applicant’s undersigned counsel received the brief on final hearing of Opposer. Since that brief was due on June 28, 2004, Applicant’s trial brief was due July 28, 2004.<sup>1</sup> Service of Applicant’s Brief was made on Opposer, by mail, on July 28, 2004.

As of approximately 10:30 p.m. (EST) on July 28, 2004, the undersigned attempted to file Applicant’s Brief, online, through the ESTTA system. However, the system would not accept the Brief, which was in .PDF form (black and white, 300 dpi resolution, formatted for 8½x11 paper, not more than 10 MB in size), as an attachment. Although the document had been converted to .PDF format by a word processing program, as the ESTTA Technical Requirements suggest, apparently,

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<sup>1</sup> According to the docket sheet for this case on TTABVue and the U.S. Patent and Trademark (“PTO”) date stamp on the copy of Opposer’s brief posted there, the document was received by the PTO on July 1, 2004. Applicant realizes that this may not reflect the actual filing date of Opposer’s brief.

the system would not accept such a file created by the undersigned's (quite standard) word processing software—WordPerfect.<sup>2</sup> The ESTTA Technical Requirements nowhere state that a .PDF file created by Corel/WordPerfect will not be accepted. Further, prior to (and after) attempting to file the document with ESTTA, the undersigned opened and viewed the .PDF file in Acrobat, versions 4.0, 5.0 and 6.0, and experienced no difficulty in opening and reading such file, without errors or corruption. The undersigned created another .PDF copy of the document, and again attempted to file it, but the ESTTA system rejected it again.

Therefore, the undersigned scanned the document, but due to its length, this was a time consuming process. Upon completion, at about 11:30 p.m., the undersigned sought to file the document, but was unable to because her firm's network had by then denied access to all users, while routine system-wide back-up was performed. This action was previously programmed, and unknown to the undersigned, who had been advised that such back-up did not occur until 2:00 a.m. each evening. Immediately when the network connection was restored, the undersigned filed Applicant's Brief, at about 12:15 a.m., July 29, 2004. An email acknowledgment of same was received from the ESTTA system at 12:27 a.m. (see attached).

Applicant respectfully submits that under the above circumstances, Applicant's Brief, filed less than a half-hour out of time, should be accepted. The undersigned faithfully followed the instructions and Technical Requirements for ESTTA filings, and would have easily made the filing deadline, but for (still not understood) technical difficulties beyond her control. In addition, as a

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<sup>2</sup> Attempts to attach the file were returned with a message that the file was "corrupt" because it was created by Corel (the WordPerfect producer), and then an "error" message.

practical matter, the Board's access to the Brief was completely unaffected by this short delay. Further, there is no prejudice to Opposer, since the Brief timely was served on Opposer prior to the deadline for same.

**WHEREFORE**, for the foregoing reasons, Applicant respectfully requests that its brief on final hearing be accepted for filing, and considered by the Board as if timely filed.

Respectfully submitted,

TBC CORPORATION

By: 

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing REQUEST TO FILE BRIEF (ONE-HALF HOUR) OUT OF TIME was served by first-class U.S. mail, postage prepaid, this 29th day of July, 2004, upon counsel for Opposer, at the following address:

Anthony L. Fletcher  
Stacy J. Grossman  
Irene Hudson  
FISH & RICHARDSON P.C.  
45 Rockefeller Plaza, Suite 2800  
New York, NY 10111



Subject: ESTTA. Brief on Merits for Defendant confirmation receipt ID: ESTTA12530

Date: Thu, 29 Jul 2004 00:27:28 -0400 (EDT)

From: estta-server@uspto.gov

To: mgentner@jhip.com

Opposition No.: 91121151

Tracking No: ESTTA12530

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Opposition No.: 91121151 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

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If you have a technical question, comment or concern about your ESTTA submission, call (703) 308-9300 during business hours or e-mail at [estta@uspto.gov](mailto:estta@uspto.gov).

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Printable version of your request is attached to this e-mail

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ESTTA server at <http://estta.uspto.gov>

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TBC CORPORATION

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Signature: /Marsha G. Gentner/

Date: 07/29/2004

Attachments: 91121151 Applicant's Brief.pdf ( 27 pages )