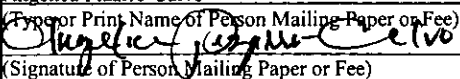


**IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial Nos. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

<p>Intuit Inc.,                    Opposer,                    v.  Interlink Electronics, Inc.,                   Applicant.</p>	<p>Consolidated Opposition Nos. 91/124,742 and 91/124,758</p>
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Express Mail mailing label No. <u>EV518442625US</u>
Date of Deposit: <u>July 18, 2006</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.
<u>Angelica Pizarro-Calvo</u>
(Type or Print Name of Person Mailing Paper or Fee)

(Signature of Person Mailing Paper or Fee)

**OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF  
APPLICANT'S TESTIMONY PERIOD**

Opposer, Intuit Inc., hereby opposes Applicant's Motion for Extension of Testimony Period ("this Motion" or "Applicant's Motion") and requests that the Trademark Trial and Appeal Board ("the Board), pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and TBMP 509.01(a), deny Applicant's motion to extend Applicant's testimony period. As grounds for its opposition to Applicant's Motion, Opposer submits that Applicant has failed to show good cause why an extension should be granted because Applicant waited until the day before the end of its testimony period to compile information regarding its use of the challenged trademarks INTUITOUCH and INTUIVISION. Such conduct constitutes lack of diligence and negligent

disregard of the Board's January 30, 2006 and January 31, 2006 orders setting the testimony periods in the consolidated opposition proceeding and should result in a denial of Applicant's request for additional time.

### **Statement of Facts**

On January 30, 2006 and January 31, 2006, the Board issued its scheduling orders, setting the testimony periods in the above-captioned consolidated opposition proceeding. Applicant was given from May 30, 2006 to June 29, 2006 to submit its evidence during Applicant's testimony period.

By Applicant's own admission, in April 2006 and prior to the opening of Applicant's testimony period, Applicant's counsel was advised that Applicant's business people were unable to agree on terms of settlement with Opposer's business people. Applicant's Motion ¶2, attached hereto as Exhibit A. Moreover, on or about April 27, 2006, Applicant's CEO, E. Michael Thoben III, refused to consent to a request made by a manager at Opposer, to extend Opposer's testimony period on the ground that the dispute had dragged out for too long. Declaration of Todd A. Santos in Support of Opposer's Opposition to Applicant's Motion for Extension of Testimony Period ¶4 ("Santos Decl."), attached hereto as Exhibit B. Opposer understood that Applicant was no longer interested in extending the parties' deadlines to allow for further settlement discussions and that Applicant instead was prepared to move forward with the consolidated opposition proceeding. Santos Decl. ¶4.

On May 1, 2006, Opposer timely filed its testimony evidence, as acknowledged by Applicant. Applicant's Motion ¶3.

On May 22, 2006, counsel for Applicant contacted counsel for Opposer and noted that Applicant's testimony period ended in June. At such time, counsel for Applicant did *not* request Opposer's consent for extension of such testimony period. *See* Declaration of Linda G. Henry, Esq. in Support of Opposer's Opposition to Applicant's Motion for Extension of Testimony Period ¶2 ("Henry Decl."), attached hereto as Exhibit C.

On June 16, 2006, counsel for Applicant contacted counsel for Opposer and requested Opposer's consent to a sixty-day extension of time for Applicant's testimony period. Henry Decl. ¶3. Opposer's counsel did not provide its consent because Opposer's counsel had understood in April that Applicant was no longer interested in settling the opposition. Henry Decl. ¶4. Therefore, an extension of time for Applicant's testimony period would not have been justified, as it would have only served to prejudice Opposer and delay proceedings at the Trademark Trial and Appeal Board.

On June 29, 2006, Applicant filed testimony in the form of a Notice of Reliance Pursuant to Rule 2.122(e) on Official Records and a Notice of Reliance Pursuant to Rule 2.122(e) on Printed Publications.

### **Arguments**

TBMP 509.01(a) provides that a motion to extend the testimony period must set forth with particularity the facts said to constitute good cause for the requested extension. Moreover, "a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor." TBMP 509.01(a); Fed. R. Civ. P. 6(b). To show good cause, a party must not be guilty of negligence or bad faith in seeking the extension.

*Luemme Inc. v. D.B. Plus Inc.*, 53 U.S.P.Q.2d 1758 (TTAB 1999); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303 (TTAB 1987).

Applicant has requested an extension of Applicant's testimony period on the grounds that it has not had sufficient time to compile relevant information regarding Applicant's use of the challenged trademarks INTUITOUCH and INTUIVISION. The opposition proceedings began on November 28, 2001. Therefore, Applicant has had almost five years to compile relevant information regarding its use of the challenged trademarks INTUITOUCH and INTUIVISION. It is unclear why Applicant did not use at least some of this time to compile the relevant information.

Applicant seems to blame its delay on compiling this information on Opposer, stating that Opposer's denial of Applicant's request in late May 2006 for an extension of time to Applicant's testimony period was "baseless." See Applicant's Motion ¶6. However, parties to an opposition proceeding are under no duty to provide consent to requests for extensions of time. Moreover, in this case, Opposer did not consent to Applicant's request (which was made on June 16, 2006, not late May 2006) for an extension of time because there was no good cause for the extension request. In April, Applicant had already made it clear that the parties were unable to agree on the terms of settlement and Opposer understood that Applicant was no longer interested in extending the parties' deadlines to allow for further settlement discussions and that Applicant instead was prepared to move forward with the consolidated opposition proceeding. See Applicant's Motion ¶2, Santos Decl. ¶4, and Henry ¶4. Accordingly, no good cause existed for an extension of time for Applicant's testimony. The extension of time would have only served to prejudice Opposer and delay proceedings at the Trademark Trial and Appeal Board.

In addition, in Applicant's Motion, Applicant suggests that it did not compile

relevant information regarding its use of the challenged trademarks INTUITOUCH and INTUIVISION because “all indications had pointed toward settlement of the consolidated oppositions.” See Applicant’s Motion ¶ 4. This excuse is completely ridiculous. It was Applicant who broke off settlement negotiations and insisted in April 2006 that the parties immediately move forward with the opposition proceedings. See Santos Decl. ¶4.

Specifically, on or about April 27, 2006, it was Applicant who refused to consent to Opposer’s request for an extension of Opposer’s testimony period because, according to Applicant, the dispute had dragged out for too long. Santos Decl. ¶4 . Further, Applicant made it clear to Applicant’s own counsel in April 2006 that Applicant’s business people were unable to agree on terms of settlement with Opposer’s business people. See Applicant’s Motion ¶2. Accordingly, it makes no sense for Applicant to state now that it had no time to compile relevant information regarding use of the INTUITOUCH and INTUIVISION marks because it was trying to settle the dispute. Applicant has provided no details as to why it was unable to compile information regarding its use of the INTUITOUCH and INTUIVISION marks during the months of April, May, and June. Nor has Applicant provided any details as to any settlement negotiations during such months.

When Applicant stated that the opposition had dragged out for too long, Applicant should have taken action to compile relevant information regarding use of the challenged trademarks to file during its upcoming testimony period. Applicant offers no explanation as to why it did not start to compile such information after Applicant insisted to Opposer that the opposition proceedings had dragged out for too long. Frankly, it is impossible to understand why Applicant did not try to gather such information, *especially* when it was Applicant who insisted

that the proceedings immediately move forward by refusing to consent to an extension of time for Opposer's testimony period. Applicant's failure to compile such information merely adds up to inexcusable neglect and lack of diligence.

In addition, Applicant provides no explanation as to why it waited until the day before its testimony period closed to request the extension. However, Applicant's own delay does not constitute good cause for the requested extension of time. *See, Fairline Boats plc v. New Howmar Boats Corp.*, 59 U.S.P.Q.2d 1479, 1480 (TTAB 2000) (waiting until the commencement, or later, of the testimony period to identify its witnesses – and the resulting inability to schedule those witnesses for testimony due to conflicting schedules – does not constitute good cause for the requested extension).

Further, Applicant's grounds for its motion to extend Applicant's testimony period do not constitute good cause. Applicant cites the parties' history of extensions of time and suspensions in the opposition, the most recent of which is over one year ago, as its reason for its current request for an extension of time to take and file testimony. However, "even if the parties had been discussing settlement of this matter, the mere existence of such negotiations or proposals, without more, would not justify [the] delay in proceeding with testimony." *Fairline Boats*, 59 U.S.P.Q.2d at 1480. In *Fairline*, no circumstances were set forth to show any expectation that proceedings would not move forward during settlement negotiations. *Fairline Boats*, 59 U.S.P.Q.2d at 1480. Similarly, Applicant has set forth no circumstances to show any reasonable expectation that proceedings would not move forward.

As in *Fairline*, Applicant in this case has provided no reasons to justify its delay in compiling testimony other than to state that when the parties *had been* in settlement negotiations,

the parties *had* each stipulated to extension requests. However, Applicant has made it clear that as of April 2006 its business people were unable to agree to terms of settlement with Opposer's business people. Applicant's Motion ¶2. Accordingly, there were no current settlement negotiations.

Even assuming that the parties were currently in settlement negotiations, however, there was no current reasonable expectation that the proceedings would not move forward during such settlement negotiations. In April 2006, Applicant refused to consent to Opposer's request for an extension of time for Opposer's testimony period and, thereby, required that Opposer move forward with the proceedings during the alleged settlement negotiations. In other words, even if we assume that the parties were currently in settlement negotiations, Applicant expected that Opposer immediately move forward with filing its testimony, specifically, and with the opposition, in general. Therefore, there could be no reasonable expectation on the part of Applicant that the opposition would be suspended or deadlines extended simply because it was now Applicant's deadline at issue.

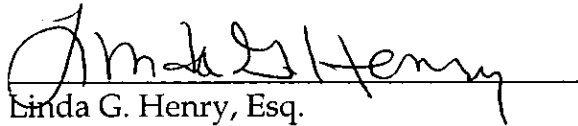
Moreover, it was Applicant who stated that the dispute had dragged out for too long. Santos Decl. ¶4. Therefore, Applicant cannot now be heard to say that it had a reasonable expectation that proceedings would not move forward.

Instead, Applicant's failure to compile relevant information regarding its use of the challenged trademarks during its assigned testimony period was caused entirely by circumstances wholly within Applicant's own reasonable control. Applicant's lack of diligence in failing to compile such information does not constitute excusable neglect and Applicant's delay tactics should not be rewarded by allowing Applicant to delay the proceedings and prejudice Opposer.

Accordingly, Applicant's motion to extend its testimony period should be denied and Applicant's testimony period should be deemed as closed.

Respectfully submitted,

Dated: July 18, 2006

A handwritten signature in cursive script, appearing to read "Linda G. Henry", is written over a horizontal line.

Linda G. Henry, Esq.  
Attorneys for Opposer  
Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, California 94041  
(650) 988-8500



PROOF OF SERVICE BY MAIL

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date set forth below, I served the following: **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF APPLICANT'S TESTIMONY PERIOD** on the interested parties in this action by placing a copy thereof in a sealed envelope and placing the envelope for collection and mailing at the above address, following ordinary business practices, addressed as follows:

Mark A. Cantor, Esq.  
Anessa O. Kramer, Esq.  
Brooks & Kushman P.C.  
1000 Town Center  
Twenty-Second Floor  
Southfield, Michigan 48075

I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the U.S. Postal Service. This correspondence would be deposited with the U.S. Postal Service this same day in the ordinary course of business. I declare under the penalties of perjury that the above is true and correct, and that this declaration was executed at Mountain View, California this 18 day of July 2006.

  
Angelica Pizarro-Calvo

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OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF  
APPLICANT'S TESTIMONY PERIOD  
Consolidated Opp. Nos. 91/124,742 and 91/124,758

**EXHIBIT A**

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

In the matter of  
Trademark Application on Serial No. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

Intuit Inc.,	)	
	)	
Opposer,	)	
vs.	)	Consolidated Opposition Nos.
	)	91/124,742 and 91/124,758
Interlink Electronics, Inc.,	)	
Applicant.	)	
	)	

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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**APPLICANT'S MOTION FOR  
EXTENSION OF TESTIMONY PERIOD**

Applicant, Interlink Electronics, Inc., respectfully moves the Trademark Trial and Appeal Board (hereinafter "the Board") to extend Applicant's testimony period and all subsequent dates established in accordance with Rule 2.128(a)(1) of the Trademark Rules of Practice for a period of thirty (30) days from the ruling on the present motion, and reset the remaining dates thereafter.

The grounds for this motion are as follows:

1. The parties have been engaged in settlement discussions on and off for several years.
2. In late April 2006, Applicant's counsel was advised that Applicant's business people were unable to agree on terms of settlement with Opposer's business people.

3. On May 1, 2006 Opposer filed three notices of reliance pursuant to Rule 2.122(d), (e), and 2.120(e).

4. Because this matter has been pending for nearly five years with little substantive activity on the part of Opposer, Applicant suddenly found itself with little time to compile relevant information regarding its use of the challenged trademarks INTUITOUCH and INTUIVISION. Previously, all indications had pointed toward settlement of these consolidated oppositions.

5. Counsel for Applicant contacted counsel for Opposer in late May 2006 to seek consent to an extension of Applicant's testimony period. For reasons not fully understood by Applicant's counsel, Opposer's counsel denied this extension request.

6. The denial of consent by Opposer's counsel appears to be baseless given that Applicant has consented to every extension requested by Opposer for nearly four years (see Opposer's Stipulated Motion to Extend and Reset Testimony Periods dated August 9, 2002; Opposer's Stipulated Motion to Extend and Reset Testimony Periods dated September 11, 2002; Opposer's Stipulated Motion to Extend and Reset Testimony Periods dated November 26, 2002; Opposer's Stipulated Motion to Consolidate Cases and Suspend Proceeding dated February 10, 2003; Opposer's Stipulated Motion to Extend and Reset Testimony Periods dated July 15, 2004; and Opposer's Stipulated Motion to Suspend dated June 27, 2005).


7. Given the parties' long history of agreeing to extensions of time and suspensions of the oppositions, Opposer cannot now be heard to say that this request for extension of merely thirty days causes any prejudice to Opposer.

8. Applicant has shown good cause for this extension request given that it has negotiated a settlement in good faith with Opposer for several years and that settlement discussions broke down very suddenly near the opening of Opposer's testimony period.

For the reasons stated above, Applicant submits that the extension of time sought by this motion is fully warranted and should be granted.

Respectfully submitted,

**BROOKS & KUSHMAN P.C.**

By: 

MARK A. CANTOR (P32661)

ANESSA O. KRAMER (P63986)

1000 Town Center

Twenty-Second Floor

Southfield, Michigan 48075

(248) 358-4400

*Attorneys for Applicant*

Dated: 6/28/06

**CERTIFICATE OF SERVICE**

I certify that I served:

**APPLICANT'S MOTION FOR EXTENSION OF  
TESTIMONY PERIOD**

on 6/28/06 by:

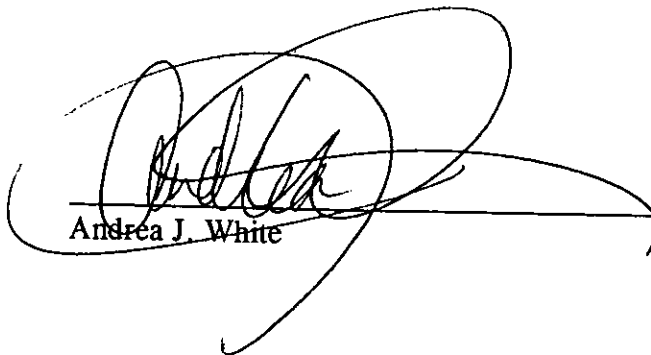
delivering

mailing (via First-Class mail)

a copy to:

Sally M. Abel  
Linda G. Henry  
FENWICK & WEST LLP  
801 California Street  
Mountain View, CA 94041

*Attorneys for Opposer*



Andrea J. White

**EXHIBIT B**

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

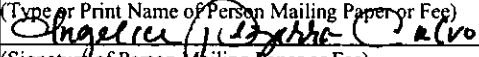
In the Matter of Application Serial Nos. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

Intuit Inc.,  
                    Opposer,

v.

Interlink Electronics, Inc.,  
                    Applicant.

Consolidated Opposition Nos.  
91/124,742 and 91/124,758

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<u>Angelica Pizarro-Calvo</u>
(Type or Print Name of Person Mailing Paper or Fee)

(Signature of Person Mailing Paper or Fee)

**DECLARATION OF TODD SANTOS IN SUPPORT OF  
OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF  
APPLICANT'S TESTIMONY PERIOD**

I, Todd Santos, declare as follows:

1. I am the IP Program Manager at Intuit Inc. I make the following statements based upon my own personal knowledge and belief, if called as a witness, I could and would testify competently to the facts set forth herein.
2. This declaration is made in support of Opposer's Opposition to Applicant's Motion for Extension of Applicant's Testimony Period.
3. I have contacted E. Michael Thoben III, CEO of Interlink Electronics, Inc., on a few occasions to discuss potential settlement of the dispute between Intuit Inc. and Interlink Electronics, Inc. regarding the INTUITOUCH and INTUIVISION trademarks.



with those conversations, the parties previously agreed to several extensions of time to prosecute the oppositions.

4. I understand that in its Applicant's Motion for Extension of Applicant's Testimony Period, Interlink is claiming that all indications had pointed toward settlement of the oppositions. This is false. On or about April 27, 2006, I had a telephone conversation with Mr. Thoben to attempt to continue our discussions regarding potential settlement of the trademark dispute and to request his consent to an extension of time beyond the April 30, 2006 deadline for Intuit Inc. to file its testimony. I asked Mr. Thoben whether he would consent to extending the opposition proceedings in order to provide the parties with more time to pursue settlement negotiations without further escalation of the dispute and the costs to both parties. Mr. Thoben refused my request for this extension of time, stating that the dispute had dragged out for too long. I recall no further contact with Mr. Thoben or any other Interlink representative since then. Based on my conversation with Mr. Thoben, it was my understanding that Interlink was no longer interested in extending the parties' deadlines to allow for further settlement discussions and that Interlink was prepared to move forward with the opposition proceedings.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed this 18th day of July 2006, at Mountain View, California.

  
Todd Santos

PROOF OF SERVICE BY MAIL

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date set forth below, I served the following: **DECLARATION OF TODD SANTOS IN SUPPORT OF OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF APPLICANT'S TESTIMONY PERIOD** on the interested parties in this action by placing a copy thereof in a sealed envelope and placing the envelope for collection and mailing at the above address, following ordinary business practices, addressed as follows:

Mark A. Cantor, Esq.  
Anessa O. Kramer, Esq.  
Brooks & Kushman P.C.  
1000 Town Center  
Twenty-Second Floor  
Southfield, Michigan 48075

I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the U.S. Postal Service. This correspondence would be deposited with the U.S. Postal Service this same day in the ordinary course of business. I declare under the penalties of perjury that the above is true and correct, and that this declaration was executed at Mountain View, California this 18 day of July 2006.

  
\_\_\_\_\_  
Angelica Pizarro-Calvo

**EXHIBIT C**

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

In the Matter of Application Serial Nos. 76/035,136 and 76/035,135  
Marks: INTUITOUCH and INTUIVISION

Intuit Inc.,

Opposer,

v.

Interlink Electronics, Inc.,  
Applicant.

Consolidated Opposition Nos.  
91/124,742 and 91/124,758

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Date of Deposit: July 18, 2006

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Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

Angelica Pizarro-Calvo

(Type or Print Name of Person Mailing Paper or Fee)



(Signature of Person Mailing Paper or Fee)

**DECLARATION OF LINDA G. HENRY IN SUPPORT OF OPPOSER'S OPPOSITION  
TO APPLICANT'S MOTION FOR EXTENSION OF  
APPLICANT'S TESTIMONY PERIOD**

I, Linda G. Henry, declare as follows:

1. I am an attorney at law admitted to practice in the courts of the State of California. I am Senior Counsel in the law firm of Fenwick & West LLP, counsel for Opposer Intuit Inc. ("Intuit") in this Opposition proceeding. I make the following statements based upon my own personal knowledge and belief, and if called as a witness, I could and would testify competently to the facts set forth herein.

2. On May 22, 2006, Mark A. Cantor, counsel for Applicant, telephoned me. In our telephone conversation, Mr. Cantor noted that the testimony period for his client, Interlink

Electronics, Inc., (“Interlink”) ended in June. It is my recollection that he did not request consent to an extension of time for his client’s testimony period.

3. On June 16, 2006, Anessa O. Kramer, counsel for Applicant, telephoned me. In our telephone conversation, she requested Opposer’s consent to a sixty-day extension of time for Applicant’s testimony period.

4. I informed Ms. Kramer that I could not provide such consent as I was not authorized by Opposer to provide such consent. I explained that it was my understanding that her client had not provided consent to Intuit’s request to an extension of time beyond the April 30, 2006 deadline for Intuit’s testimony period and that I believed that it was Intuit’s understanding that Interlink was no longer interested in settling the dispute.

I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct. Executed this 18th day of July 2006, at Mountain View, California.

  
Linda G. Henry

PROOF OF SERVICE BY MAIL

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date set forth below, I served the following: **DECLARATION OF LINDA G. HENRY IN SUPPORT OF OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF APPLICANT'S TESTIMONY PERIOD** on the interested parties in this action by placing a copy thereof in a sealed envelope and placing the envelope for collection and mailing at the above address, following ordinary business practices, addressed as follows:

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Angelica Pizarro-Calvo