

ESTTA Tracking number: **ESTTA524238**

Filing date: **02/28/2013**

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

Proceeding	91203399
Party	Defendant E-filliate, Inc.
Correspondence Address	MARK R LEONARD DAVIS LEONARD LLP 8880 CAL CENTER DRIVE , SUITE 180 SACRAMENTO, CA 95661 3850 UNITED STATES mleonard@davisandleonard.com
Submission	Motion to Compel Discovery
Filer's Name	Mark R. Leonard
Filer's e-mail	mleonard@davisandleonard.com
Signature	/Mark R. Leonard/
Date	02/28/2013
Attachments	efiliate motion to compel.pdf (4 pages)(73638 bytes) efiliate mtc decl.pdf (41 pages)(529504 bytes)

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

ICOURIER SOFTWARE SYSTEMS LTD. Opposer, v. E-FILLIATE, INC. Applicant	Opposition No.: 91,203,399 Application No.: 85/282926 Mark: TECH & GO
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MOTION TO COMPEL DISCOVERY RESPONSES

I. INTRODUCTION

Pursuant to TBMP § 523.01, Applicant E-filliate, Inc. (“Applicant”), by its counsel, hereby opposes moves to compel responses to Applicant’s First Set of Interrogatories and responses to and opportunity to inspect documents pursuant to Applicant’s First First Set of Requests for Production of Documents. Applicant’s grounds for the motion are Opposer’s failure to provide any responses to the above discovery requests despite having been served with them over two months ago and the granting of repeated extensions to respond.

II. FACTS

On December 21, 2012 Applicant’s counsel served Opposer iCourier Software Systems Ltd’s representative in this action, Alex Mateesco, with Applicant’s First Set of Interrogatories and First Set of Requests for Production of Documents and informed Mr. Mateesco Opposer’s responses would be due to be served by January 21, 2012.

Declaration of Mark R. Leonard In Support of Motion to Compel Discovery Responses
("Leonard Decl.") ¶2, Ex. A.

On January 21, 2013, the date the discovery responses were due, Mr. Mateesco emailed Applicant's counsel requesting a 30 day extension to serve the responses. Leonard Decl. ¶3, Ex. B. Applicant's counsel granted a three week extension, until February 11, 2013, for Mr. Mateesco to serve responses. *Id.*

On February 11, 2013, the date Opposer's responses were due, Mr. Mateesco once again emailed me to request an additional two week extension. Leonard Decl. ¶4, Ex. C. On the same day Applicant's counsel replied granting his request to serve responses by February 25. *Id.*

On February 25, 2013, the latest deadline, Mr. Mateesco emailed Applicant's counsel requesting an additional extension of 30 days to serve the discovery responses. Leonard Decl. ¶5, Ex. D. On February 26, 2013 Applicant's counsel replied granting an extension until March 4, 2013 to serve the responses. *Id.* On February 27, 2013 Applicant's counsel reviewed the scheduling order for the present case and saw that Opposer's testimony period would begin on March 1, 2013. Leonard Decl. ¶5. Applicant's counsel therefore emailed Mr. Mateesco stating that Applicant's counsel would need responses served by February 28, 2013. Leonard Decl. ¶5, Ex. D.

As of 5:45 pm PST on February 28, 2013 Mr. Mateesco has not responded to Applicant's counsel's February 26 or February 27 emails nor provided any discovery responses. Leonard Decl. ¶6. Applicant's counsel believes that his granting of Mr. Mateesco's repeated requests for extensions of time to serve discovery responses and his failure to respond to Applicant's counsel's last two emails after informing him

Applicant’s counsel would file a motion to compel responses constitutes a good faith effort to resolve this dispute pursuant to TBMP § 408.01(c). *Id.* As Opposer is not represented by counsel in this matter, Applicant’s counsel believes Opposer will only provide responses subject to an order from the Board compelling Opposer to do so.

III. ARGUMENT

TBMP § 523.01 provides, *inter alia*, that “a motion to compel is available in the event of a failure to provide...discovery requested by means of...interrogatories, and requests for production of documents and things.” TBMP § 523.01. Opposer has had Applicant’s discovery requests for over two months and yet, despite the granting of repeated extensions, has failed to provide any responses or documents. Opposer has also failed to respond to Applicant’s counsel’s last two emails which informed Opposer Applicant would file the instant motion if responses were not provided. Applicant believes an order from the Board compelling Opposer to provide responses and the opportunity to inspect documents is necessary to obtain such discovery responses.

IV. CONCLUSION

For the reasons set forth above, Applicant respectfully requests the Board to grant its motion to compel discovery responses.

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Respectfully submitted,

E-FILLIATE, INC.

By its attorneys,

Date: February 28, 2013

By: /Mark R. Leonard/

Mark R. Leonard

DAVIS & LEONARD, LLP

8880 Cal Center Dr., Suite 180

Sacramento, CA 95826

Telephone: (916) 362-9000

mleonard@davisandleonard.com

Certificate of Service

Applicant's counsel hereby certify that a true and complete copy of the foregoing Motion to Compel Discovery Responses has been served on iCourier Software Systems Ltd. by emailing said copy on February 28, 2013 to: Alex Mateesco, alex@techandgo.com, info@techandgo.com.

/Mark R. Leonard/

Mark R. Leonard

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

ICOURIER SOFTWARE SYSTEMS LTD. <p style="text-align:center">Opposer,</p> <p style="text-align:center">v.</p> E-FILLIATE, INC. <p style="text-align:center">Applicant</p>	Opposition No.: 91,203,399 Application No.: 85/282926 Mark: TECH & GO
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**DECLARATION OF MARK R. LEONARD IN SUPPORT OF MOTION TO
COMPEL DISCOVERY RESPONSES**

I, Mark R. Leonard, declare as follows:

1. I am an attorney with Davis & Leonard, LLP. I am licensed to practice law in the State of California, and as such I am a member of the State Bar of California. I am the attorney for the Applicant in the above-referenced opposition action. I have personal knowledge of the facts stated in this declaration, unless stated otherwise, and if called as a witness could and would competently testify to them.

2. On December 21, 2012 I served Opposer’s representative in this action, Alex Mateesco, with Applicant’s First Set of Interrogatories and First Set of Requests for Production of Documents. True and correct copies of these discovery requests and accompanying email are attached hereto as Exhibit A.

3. On January 21, 2013, the date the discovery responses were due, Mr. Mateesco emailed me requesting a 30 day extension to serve the responses. I granted a

three week extension, until February 11, 2013, for Mr. Mateesco to serve responses.

True and correct copies of the above exchange of emails are attached hereto as Exhibit B.

4. On February 11, 2013, the date Opposer's responses were due, Mr. Mateesco once again emailed me to request an additional two week extension. On the same day I replied granting his request to serve responses by February 25. True and correct copies of the above exchange of emails are attached hereto as Exhibit C.

5. On February 25, 2013, the latest deadline, Mr. Mateesco emailed me requesting an additional extension of 30 days to serve the discovery responses. On February 26, 2013 I replied granting an extension until March 4, 2013 to serve the responses. On February 27, 2013 I reviewed the scheduling order for the present case and saw that Opposer's testimony period would begin on March 1, 2013. I therefore emailed Mr. Mateesco stating that I would need responses served by February 28, 2013. True and correct copies of the above exchange of emails are attached hereto as Exhibit D.

6. As of 6:00 pm PST on February 28, 2013 Mr. Mateesco has not responded to my February 26 or February 27 emails nor provided any discovery responses. I believe that my granting of Mr. Mateesco's repeated requests for extensions of time to serve discovery responses and his failure to respond to my last two emails after informing him I would file a motion to compel responses constitutes a good faith effort to resolve this dispute pursuant to TBMP §408.01(c). As Opposer is not represented by counsel in this matter, I believe Opposer will only provide responses subject to an order from the Board compelling Opposer to do so.

Being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and any equivalent statute or regulation, and that such willful false statements may jeopardize the of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom, I declare that I am properly authorized to execute this declaration as the attorney for E-filliate, Inc. in this matter, that the facts set forth in this declaration are true; and that all statements in this declaration re made of my own knowledge and are true.

Date: February 28, 2013

By: /Mark R. Leonard/
Mark R. Leonard
DAVIS & LEONARD, LLP
8880 Cal Center Dr., Suite 180
Sacramento, CA 95826
Telephone: (916) 362-9000

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Declaration of Mark R. Leonard in Support of Motion to Compel Discovery Responses been served on iCourier Software Systems Ltd. by emailing said copyon February28, 2013 to: Alex Mateesco,alex@techandgo.com, info@techandgo.com.

/Mark R. Leonard/
Mark R. Leonard

EXHIBIT “A”

Mark Leonard

From: Mark Leonard
Sent: Friday, December 21, 2012 5:37 PM
To: alex@techandgo.com; info@techandgo.com
Subject: Discovery Requests
Attachments: efilliate rogs set one.pdf; efilliate doc requests set one.pdf

Mr. Mateesco,

Attached please find discovery requests for the TECH & GO opposition. Your responses will be due on January 21, 2013.

Mark Leonard
Davis & Leonard, LLP
8880 Cal Center Drive, Suite 180
Sacramento, CA 95826
916-362-9000 voice
916-362-9066 fax
mleonard@davisandleonard.com e-mail
www.davisandleonard.com

CONFIDENTIALITY NOTICE

This message is intended only for the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited, and you are requested to please notify us by telephone and delete this message immediately. Thank you for your cooperation.

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

ICOURIER SOFTWARE SYSTEMS LTD. Opposer, v. E-FILLIATE, INC. Applicant.	Opposition No.: 91,203,399 Application No.: 85/282926 Mark: TECH & GO
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**APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER
ICOURIER SOFTWARE SYSTEMS LTD**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Applicant E-filliate, Inc. ("Applicant"), hereby serves Applicant's First Set of Interrogatories to be answered by Opposer iCourier Software Systems Ltd ("Opposer"), under oath, said answers to be served upon Applicant within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

INSTRUCTIONS AND DEFINITIONS:

For purposes of these Interrogatories, the following definitions and instructions shall apply:

Instructions

1. These Interrogatories are continuing and require supplemental responses under Rule 26 of the Federal Rules of Civil Procedure.
2. Whenever subsections are used in these Interrogatories, You are to provide the information requested by each Interrogatory as it applies to each subsection.

3. If You consider any of the information required by way of answer to any Interrogatory herein to be confidential business information, You are required to furnish such information subject to the Board's Standard Protective Order.

4. If any privilege is claimed with respect to any Document or communication, identify the Document or communication (as directed in paragraph 8 of the Definitions), and state the privilege claimed and the basis therefor.

Definitions

1. The terms "You," "Your" and "Opposer" refer to and include iCourier Software Systems Ltd and all of its partnerships, subsidiaries, divisions and related business organizations, as well as its directors, officers, partners, agents, employees, representatives and attorneys.

2. The term "E-filiate Mark" refers to the mark for which Applicant has applied for federal registration, serial number 85/282926.

3. The term "entity" refers to and includes natural persons, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, trusts, estates, governments (and agencies thereof), quasi-public entities and all other forms of specifically identifiable legal entities.

4. The term "date" means the exact day, month and year if ascertainable; only if not ascertainable, then the closest approximation that can be made thereto in terms of months and years, seasons or relation to other events or matters.

5. The terms "Document" and "record" have the broadest meaning which can be ascribed to them pursuant to Federal Rule of Civil Procedure 34, including electronically stored information. Among other things, the terms "Document" and

“record” mean the final form and all drafts and revisions of any kind of written or graphic matters, original or reproduced copy, however produced or reproduced, of any kind and of every kind, and all copies thereof which are different in any way from the original, regardless of whether designated “confidential,” “privileged” or otherwise restricted. Without limiting the generality of the foregoing, the terms “Document” and “record” also include information stored or maintained on, or which could be reproduced from film, microfilm, computer printout, computer e-mail systems of all types, magnetic tape, cassette, phonographic disc, videotape, or similar means, and objects such as stationery, business cards, advertisements, brochures, purchase and sale Documents, boxes and packages, and e-mail communications.

6. The terms “identify” and “identity,” with respect to a natural person, require that the Interrogatory response include the full name of such person, the present or last known address including street, city, state and zip code, the employment of such person at the time referred to in the Interrogatory response, including the name and address of the employer, and the present employment, if different from the previously-listed employment.

7. The terms “identify” and “identity,” with respect to an entity other than a natural person, require that the Interrogatory response include the full name or title of the entity, the present or last known address of such entity including street, city, state and zip code and the form or organization of the entity.

8. The terms “identify” and “identity,” with respect to a Document (regardless of whether any claim of privilege is asserted), require that the following information be provided as to such Document:

- a. The general character of the Document (e.g., a letter, memorandum, contract, e-mail, etc.);
- b. The date it bears or, if undated, the date upon which it was written or otherwise created;
- c. The identity of the person who wrote, authored or otherwise created or generated it;
- d. A summary of the subject matter of the Document;
- e. The name and address of the present or last known custodian of the Document; and
- f. The date upon which the Document, or a copy thereof, was received by You or came to Your attention.

9. The singular form of a word (e.g., “Document” or “person”) shall also refer to the plural, and words used in the masculine, feminine or neuter gender refer to and include all genders.

10. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within the Interrogatory all information which might otherwise be construed as outside its scope.

11. The terms “trademark” and “mark” include source identifiers used in connection with products and/or services unless the contrary meaning is clear from the context, and specifically include service marks, word marks, company names, tradenames, logos, trade dress and color combinations.

12. The term “iCourier Mark” refers to any and all of the marks cited by Opposer in its opposition as a basis for opposing Applicant’s registration of its mark, including Application No. 85/402345.

INTERROGATORIES

1. State all facts upon which You claim that the iCourier Marks, and any of them, have priority over the E-filliate Mark in the United States.

2. Identify all documents that You claim support Your contention that the iCourier Marks, and any of them, have priority over the E-filliate Mark in the United States.

3. Identify all witnesses that have any knowledge of Your contention that the iCourier Marks, and any of them, have priority over the E-filliate Mark in the United States.

4. State all facts upon which You claim that the E-filliate Mark is likely to cause confusion in the United States with any of the iCourier Marks, specifically stating, with respect to each alleged instance of confusion:

- a. the date of each instance;
- b. the nature of each instance;
- c. the identity of all persons involved; and
- d. the identity of all products and/or services involved.

5. Identify all documents that You claim support Your contention that the E-filliate Mark is likely to cause confusion with any of the iCourier Marks in the United States.

6. Identify all witnesses that have any knowledge of that the E-filliate Mark is likely to cause confusion with any of the iCourier Marks in the United States.

7. Describe the channels of trade in the United States in which any and all of the iCourier Marks are advertised, distributed, or offered for sale.

8. Describe in detail each product and/or service on which Opposer has used the iCourier Marks in the United States from the date of first use to the date of Opposer's responses to these interrogatories.

9. For each product and/or service on which Opposer currently uses the iCourier Marks in the United States, state the date the Opposer Mark was first used in commerce in connection with each product and/or service.

10. With respect to each of the products and/or services on which Opposer has used the iCourier Marks in the United States, state the annual sales in the United States by state or region in units and dollars from the date of first use to the date of Opposer's responses to these interrogatories.

11. State the annual advertising and promotional costs expended by Opposer in the United States for Opposer's products and/or services used in connection with the iCourier Marks from the date of first use to the to the date of Opposer's responses to these interrogatories.

12. With respect to each product and/or service on which Opposer has used the iCourier Mark in the United States, describe in detail the channels of distribution by which the products and/or services of Opposer reach the ultimate user or consumer, including, without limitation:

- a. the identity of the manufacturer or source of the product and/or service;
- b. the type of sales (e.g. wholesale, retail, direct mail, etc.);
- c. the retail outlets or other channels of distribution in the United States in which Opposer's products and/or services are or will be offered to the customer or ultimate user or any other manner of distribution by which Opposer's products and/or services are or will be offered to the customer or the ultimate user;
- d. the types of persons or entities in the United States who are known to be purchasers and/or users of Opposer's products and/or services;
- e. the title or position of the person within Opposer's customers in the United States to whom sales efforts are directed.

13. Identify the names and addresses of Opposer's customers in the United States for any of the products and/or services used in connection with the iCourier Marks from the date of first use to the to the date of Opposer's responses to these interrogatories.

14. Identify all persons to whom Opposer has licensed the iCourier Marks.

15. Describe in detail the conditions under which sales are made to Opposer's customers in the United States for each product and/or service used in connection with the iCourier Marks.

16. Describe in detail the pricing structure, including, without limitation, the initial sales price or fees, for each product and/or service used in connection with the iCourier Marks in the United States.

17. Identify any concurrent use or consent agreements between Opposer and any third party in connection with the iCourier Marks, or any variations thereof, in whole or in part.

18. Describe in detail any market study or survey regarding the iCourier Marks and/or the E-filliate Mark or any variations thereof, ever conducted by or on behalf of Opposer or any other party.

19. Identify each advertising agency, public relations firm, brochure designer, telemarketer, and other third party employed, affiliated or requested by Opposer which furnished or is furnishing to Opposer services with respect to the sale, advertising and promotion of the iCourier Marks in the United States and the dates during which such services have been or are being performed.

20. Describe each and every method of advertising Opposer uses in the United States to advertise the services or products Opposer sells, advertises, or offers in connection with the iCourier Marks.

21. Identify each person whom Opposer expect to call as a witness in this proceeding, whether as an expert witness or otherwise, and state for each person his/her background and qualifications (if applicable), the subject matter upon which he/she is expected to testify, the substance of the facts and opinions to which he/she is expected to testify, and the grounds for each opinion that he/she is expected to give.

22. Identify each person who furnished any information used in answering these interrogatories, and identify all Documents consulted to obtain information to answer the foregoing Interrogatories and where no information or only partial

information is given in such answers, a description of the efforts made to locate information needed to answer.

23. Identify each location or web page, by URL, where “Opposer's TECH AND GO Mark has been featured online commencing prior to the Applicant's filing date” as alleged in Paragraph 10 of Your Notice of Opposition.

24. State all facts You contend support the allegation in Paragraph 17 of Your Notice of Opposition that “Applicant's goods are likely to be offered in trade channels and markets closely related to those of opposer.”

25. State all facts You contend support the allegation in Paragraph 21 of Your Notice of Opposition that “Opposer has invested considerable efforts and resources in developing the TECH AND GO brand and in promoting and advertising its services and products with consumers.”

26. State all facts You contend support the allegation in Paragraph 24 of Your Notice of Opposition that “Opposer does not believe Applicant had a bona fide intent to use its applied for mark on the goods in the application.”

E-FILLIATE, INC.

By its attorneys,

By: Mark R. Leonard/
Mark R. Leonard
DAVIS & LEONARD, LLP
8880 Cal Center Dr., Suite 180
Sacramento, CA 95826
Telephone: (916) 362-9000
mleonard@davisandleonard.com

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Applicant's First Set of Interrogatories has been served on iCourier Software Systems Ltd. by emailing said copy on December 21, 2012 to: Alex Mateesco, alex@techandgo.com, info@techandgo.com.

/Mark R. Leonard/
Mark R. Leonard

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

ICOURIER SOFTWARE SYSTEMS LTD. Opposer, v. E-FILLIATE, INC. Applicant.	Opposition No.: 91,203,399 Application No.: 85/282926 Mark: TECH & GO
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**APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO OPPOSER ICOURIER SOFTWARE SYSTEMS LTD**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Applicant, E-filliate, Inc. ("Applicant"), hereby serves Applicant's First Set of Requests for Production of Documents to be answered by Opposer iCourier Software Systems Ltd ("Opposer"), and produce all requested documents and things at Applicant's undersigned counsel's offices at Davis & Leonard LLP, 8880 Cal Center Drive Suite 180, Sacramento, California 95826 within the time provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

INSTRUCTIONS AND DEFINITIONS:

For purposes of these Requests, the following definitions and instructions shall apply:

Instructions

1. These Requests are continuing and require supplemental responses under Rule 26 of the Federal Rules of Civil Procedure.

2. Whenever subsections are used in these Requests, You are to provide the information requested by each Request as it applies to each subsection.

3. If You consider any of the information required by way of answer to any Request herein to be confidential business information, You are required to furnish such information subject to the Board's Standard Protective Order.

4. If any privilege is claimed with respect to any document or communication, identify the document or communication (as directed in paragraph 8 of the Definitions), and state the privilege claimed and the basis therefor.

Definitions

1. The terms "You," "Your" and "Opposer" refer to and include iCourier Software Systems Ltd and all of its partnerships, subsidiaries, divisions and related business organizations, as well as its directors, officers, partners, agents, employees, representatives and attorneys.

2. The term "E-fillicate Mark" refers to the mark for which Applicant has applied for federal registration, serial number 85/282926.

3. The term "entity" refers to and includes natural persons, corporations, partnerships, proprietorships, joint ventures, unincorporated associations, trusts, estates, governments (and agencies thereof), quasi-public entities and all other forms of specifically identifiable legal entities.

4. The term "date" means the exact day, month and year if ascertainable; only if not ascertainable, then the closest approximation that can be made thereto in terms of months and years, seasons or relation to other events or matters.

5. The terms “document” and “record” have the broadest meaning which can be ascribed to them pursuant to Federal Rule of Civil Procedure 34, including electronically stored information. Among other things, the terms “document” and “record” mean the final form and all drafts and revisions of any kind of written or graphic matters, original or reproduced copy, however produced or reproduced, of any kind and of every kind, and all copies thereof which are different in any way from the original, regardless of whether designated “confidential,” “privileged” or otherwise restricted. Without limiting the generality of the foregoing, the terms “document” and “record” also include information stored or maintained on, or which could be reproduced from film, microfilm, computer printout, computer e-mail systems of all types, magnetic tape, cassette, phonographic disc, videotape, or similar means, and objects such as stationery, business cards, advertisements, brochures, purchase and sale documents, boxes and packages, and e-mail communications.

6. The terms “identify” and “identity,” with respect to a natural person, require that the Request response include the full name of such person, the present or last known address including street, city, state and zip code, the employment of such person at the time referred to in the Request response, including the name and address of the employer, and the present employment, if different from the previously-listed employment.

7. The terms “identify” and “identity,” with respect to an entity other than a natural person, require that the Request response include the full name or title of the entity, the present or last known address of such entity including street, city, state and zip code and the form or organization of the entity.

8. The terms “identify” and “identity,” with respect to a document (regardless of whether any claim of privilege is asserted), require that the following information be provided as to such document:
- a. The general character of the document (e.g., a letter, memorandum, contract, e-mail, etc.);
 - b. The date it bears or, if undated, the date upon which it was written or otherwise created;
 - c. The identity of the person who wrote, authored or otherwise created or generated it;
 - d. A summary of the subject matter of the document;
 - e. The name and address of the present or last known custodian of the document; and
 - f. The date upon which the document, or a copy thereof, was received by You or came to Your attention.
9. The singular form of a word (e.g., “document” or “person”) shall also refer to the plural, and words used in the masculine, feminine or neuter gender refer to and include all genders.
10. The words “and” and “or” shall be construed conjunctively or disjunctively as necessary to bring within the Request all information which might otherwise be construed as outside its scope.
11. The terms “trademark” and “mark” include source identifiers used in connection with products and/or services unless the contrary meaning is clear from the

context, and specifically include service marks, word marks, company names, trade names, logos, trade dress and color combinations.

12. The term “iCourier Mark” refers to any and all of the marks cited by Opposer in its opposition as a basis for opposing Applicant’s registration of its mark, including Application No. 85/402345.

REQUESTS FOR PRODUCTION

1. Any and all documents identified in the answers to Applicant’s first set of interrogatories.

2. Any and all Documents and things showing use of the iCourier Marks in the United States, or any of them, by Opposer or by any licensee of Opposer.

3. Any and all Documents that pertain to distribution of products and/or services in the United States in association with the iCourier Marks, or any of them, or by any licensee of Opposer.

4. Any and all Documents and things showing advertising or promotion of the mark iCourier Marks, or any of them, in the United States by Opposer or by any licensee of Opposer.

5. Any and all Documents referring or relating to all enforcement of Opposer's alleged exclusive rights in the United States in the iCourier Marks, or any of them.

6. Any and all Documents that pertain to or evidence Opposer's ownership of the iCourier Marks, and any of them, and its rights therein.

7. All documents relating to, referring to, or evidencing possible trademark conflicts arising out of Opposer's advertising, display, or sales of any products and/or services under the iCourier Marks in the United States and any of the E-filliate Marks.

8. All documents evidencing, referring to, or relating to, in whole or in part, conversations, telephone calls, correspondence, or other instances in which any person has manifested a belief that the products and/or services offered or sold by E-filliate were from Opposer or otherwise associated with, sponsored by, or licensed by Opposer.

9. All documents evidencing, referring to, or relating to, in whole or in part, conversations, telephone calls, correspondence, or other instances in which any person has manifested a belief that the products and/or services offered or sold by Opposer was from E-filliate or otherwise associated with, sponsored by, or licensed by E-filliate.

10. All documents evidencing, referring to, or relating to, in whole or in part, misdirected mail, phone calls, or other communications, correspondence, or documents of any type received by Opposer where the apparently-intended recipient was E-filliate.

11. All documents evidencing the types and classes of persons or entities in the United States who actually or potentially use or purchase the products and/or services advertised, marketed, offered or sold by Opposer in connection with the iCourier Marks, including but not limited to:

a. The types of customers for whom the products and/or services are intended to be used;

b. The types of customers to which the products and/or services are marketed directly;

c. Each type of group or person who is or will be exposed to and/or able to use the products and/or services, regardless of whether the products/services are marketed directly to or designed specifically for that group or person; and

d. All potential users that Opposer intends to give the ability to use the products/services in the future.

12. Representative samples of advertising and/or promotional materials used in connection with Opposer's products and/or services in the United States, including but not limited to brochures, direct mail pieces, leaflets and/or trade show display materials, that display the iCourier Marks.

13. All documents evidencing annual sales of each product and/or service Opposer sells in the United States in connection with the iCourier Marks, from the date of first use to the present.

14. All summaries and/or tabulations of Opposer's records and documents showing the advertising and promotional costs in connection with Opposer's products and/or services used in the United States in connection with the iCourier Marks from the date of first use to the present. If such summaries and/or tabulations are unavailable, produce all documents from which such costs can be ascertained.

15. At least one specimen of each advertisement, brochure, purchase order, trade show display materials or other direct marketing materials bearing the iCourier Marks that has been exposed to actual or potential purchasers in the United States for Opposer's products and/or services.

16. All documents relied upon by Opposer in preparation of Opposer's Answers to Petitioner's First Set of Interrogatories concurrently served.

17. All documents, including but not limited to search reports, evidencing, referring to, or relating to any investigation or search made by Opposer or on Opposer's behalf to determine the availability of the iCourier Marks for use as service mark and/or trademark.

18. All documents, including but not limited to search reports, evidencing, referring to, or relating to any investigation or search made by Opposer or on Opposer's behalf to determine the registrability of the iCourier Marks for any of Opposer's products and/or services.

19. All documents, including but not limited to search reports, evidencing, referring to, or relating to any investigation or search made by Opposer or on Opposer's behalf to determine the extent to which others may be using the same or a similar name or mark in any way.

20. Any and all documents, including but not limited to any and all surveys, reports, studies, database searches, search reports, evidencing, referring to, or relating to Opposer's creation, conception, selection, adoption, and/or test marketing of the iCourier Marks in connection with any product and/or service.

21. Any and all documents that evidence the first use in the United States of the iCourier Marks in the United States for each of the products and/or services described in Your trademark Application No. 85/402345.

22. Any and all documents that evidence the first use in commerce in the United States of the iCourier Marks for each of the products and/or services described in Your trademark Application No. 85/402345.

23. All documents submitted by Opposer to, or received by Opposer from, any federal, state or local agency or the foreign equivalent of such agency, in connection with any registration or application to register any iCourier Mark as a mark or related marks, logos, or slogans.

24. At least one specimen of each catalog, catalog sheet, product sheet, price list and other documents that show the prices for each product and/or service used in connection with the iCourier Marks in the United States from the date each of the iCourier Marks was adopted to the present.

25. All product write-ups and publicity in the United States (whether solicited or unsolicited) and all press releases referring or relating to any product sold or service offered by Opposer under or in connection with the iCourier Marks.

26. A summary and/or tabulation of Opposer's records and documents showing, on an annual basis, the sales by dollars and units of Opposer's products and/or services offered in the United States used in connection with the the iCourier Marks. If such summaries and/or tabulations are unavailable, produce all documents from which such sales can be ascertained.

27. All documents evidencing, referring to, or relating to any third-party use of, or intention to use, the iCourier Marks, or any variation thereof, as a mark, logo, slogan, or tagline.

28. All documents evidencing, referring to, or relating to the channels of distribution for the products and/or services Opposer has used in connection with the iCourier Marks in the United States, including but not limited to documents sufficient to identify any and all distributors, retail outlets and mail order catalogs in which Opposer's products appear.

29. All documents evidencing Opposer's customers for any products and/or services used in connection with the iCourier Marks in the United States, including the name and address for each customer.

30. All documents evidencing, referring to, or relating to every objection made by Opposer to the use by others of any trademark or service mark believed by Opposer to be confusingly similar to the iCourier Marks or any variations thereof.

31. All documents evidencing, referring to, or relating to the conditions under which sales are made to Opposer's customers in the United States for each product and/or service used in connection with the iCourier Marks.

32. All documents evidencing, referring to, or relating to any concurrent use or consent agreements between Opposer and any third party in connection with the iCourier Marks, or any variations thereof.

33. All documents evidencing, referring to, or relating to any market study or survey regarding the iCourier Marks or any variations thereof, ever conducted by or on behalf of Opposer or any other party.

34. All documents that you contend evidence any actual confusion arising out of Applicant's use of the E-filliate Mark.

35. All documents that you contend evidence any likelihood of confusion arising out of Applicant's use of the E-filliate Mark.

36. All documents, including but not limited to any and all license and consent agreements, evidencing, referring to, or relating to the use, registration, licensing, or restriction of use of the iCourier Marks.

37. All documents evidencing, referring to, or relating to the consideration of any plan or intent, to expand the products and/or services to be offered in connection with the iCourier Marks.

38. All documents evidencing, referring to, or relating to any discontinuation or interruption of use by Opposer of the iCourier Marks in connection with any product and/or service of Opposer.

39. All documents sufficient to identify each employee of Opposer, advertising agency, public relations firm, or other person who was employed or retained by Opposer or who otherwise assisted Opposer in the design, creation, conception, selection, adoption, test marketing and/or use, selection and/or decision to use the iCourier Marks.

40. All documents evidencing, referring to, or relating to Opposer's knowledge, discovery, or awareness of the E-filliate Mark.

41. All documents constituting any communications evidencing, referring to, or relating to the design, creation, conception, selection, adoption, test marketing and/or use, selection and/or decision to use the iCourier Marks between Opposer and any advertising agency, public relations firm, or other third party who was employed by Opposer or otherwise assisted Opposer in the design, creation, conception, selection, adoption, test marketing and/or use, selection and/or decision to use the iCourier Marks.

42. A copy of any and all expert witness reports prepared for Opposer, including all drafts of such reports, in connection with this Opposition, and all documents on which Opposer's expert witness(es) is expected to rely in giving testimony in this Opposition.

43. A copy of all documents given to, and any communications with, Opposer's expert witness(es).

44. All documents identified in Your initial disclosures in this proceeding.

E-FILLIATE, INC.

By its attorneys,

By: /Mark R. Leonard/

Mark R. Leonard

DAVIS & LEONARD, LLP

8880 Cal Center Dr., Suite 180

Sacramento, CA 95826

Telephone: (916) 362-9000

mleonard@davisandleonard.com

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Applicant's First Set of Requests for Production of Documents has been served on iCourier Software Systems Ltd. by emailing said copy on December 21, 2012 to: Alex Mateesco, alex@techandgo.com, info@techandgo.com.

/Mark R. Leonard/

Mark R. Leonard

EXHIBIT “B”

Mark Leonard

From: info@techandgo.com
Sent: Monday, January 21, 2013 8:25 PM
To: Mark Leonard
Subject: Request for a 30 day extension of time to file responses

Dear Mr. Leonard,

ICOURIER SOFTWARE SYSTEMS LTD. would like to request a 30 day extension of time for filing its responses to the documents you submitted to us.

Our current deadline was for the 21st of January and completing the responses has been taking a bit longer than I had anticipated, on top of which I was involved in a car accident which has slowed me down a bit. If you would kindly reply by email letting me know if this 30 day extension of time would be possible, I would very much appreciate it.

Yours Truly,
Alex Mateesco
President
TECH AND GO

Mark Leonard

From: Mark Leonard
Sent: Tuesday, January 22, 2013 11:18 AM
To: 'info@techandgo.com'
Subject: RE: Attached document

Mr. Mateesco,

My client will agree to a 15 day extension for service of the discovery responses and responsive documents provided that you also grant it a 15 day extension for its responses. Accordingly, your responses would be due February 5 and my client's February 14. Please confirm your acceptance of this offer and please note that extensions of this nature are NOT filed with the TTAB. I will be filing a correction with the TTAB for the last discovery extension you erroneously filed with the TTAB as that filing incorrectly extended other deadlines in the action.

Mark Leonard
Davis & Leonard, LLP
8880 Cal Center Drive, Suite 180
Sacramento, CA 95826
916-362-9000 voice
916-362-9066 fax
mleonard@davisandleonard.com e-mail
www.davisandleonard.com

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From: info@techandgo.com [mailto:info@techandgo.com]
Sent: Monday, January 21, 2013 8:47 PM
To: Mark Leonard
Subject: Attached document

Dear Mr. Leonard,

Attached , please find our request document.

Yours Truly,
Alex Mateesco

Mark Leonard

From: Mark Leonard
Sent: Sunday, January 27, 2013 5:54 PM
To: info@techandgo.com
Subject: RE: Attached document

Provided you provide responsive documents along with the discovery responses, my client will agree to a three week extension. Accordingly, your responses and documents must be received by my office by February 11.

From: info@techandgo.com [info@techandgo.com]
Sent: Wednesday, January 23, 2013 5:26 PM
To: Mark Leonard
Subject: RE: Attached document

Dear Mr. Leonard,

We can agree to return the courtesy, but would your client be willing to agree to 3 weeks, with your client being granted the same?

Please advise if that would be acceptable.

Also, thank you for the clarification and correction regarding the extension that was filed.

Yours truly,
Alex Mateesco

----- Original Message -----

Subject: RE: Attached document
From: Mark Leonard <mleonard@davisandleonard.com<mailto:mleonard@davisandleonard.com>>
Date: Tue, January 22, 2013 12:18 pm
To: "info@techandgo.com<mailto:info@techandgo.com>" <info@techandgo.com<mailto:info@techandgo.com>>

Mr. Mateesco,

My client will agree to a 15 day extension for service of the discovery responses and responsive documents provided that you also grant it a 15 day extension for its responses. Accordingly, your responses would be due February 5 and my client's February 14. Please confirm your acceptance of this offer and please note that extensions of this nature are NOT filed with the TTAB. I will be filing a correction with the TTAB for the last discovery extension you erroneously filed with the TTAB as that filing incorrectly extended other deadlines in the action.

Mark Leonard
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8880 Cal Center Drive, Suite 180
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mleonard@davisandleonard.com<<mailto:mleonard@davisandleonard.com>> e-mail

www.davisandleonard.com<<http://www.davisandleonard.com>>

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From: info@techandgo.com<<mailto:info@techandgo.com>> [<mailto:info@techandgo.com>]

Sent: Monday, January 21, 2013 8:47 PM

To: Mark Leonard

Subject: Attached document

Dear Mr. Leonard,

Attached , please find our request document.

Yours Truly,

Alex Mateesco

EXHIBIT “C”

Mark Leonard

From: info@techandgo.com
Sent: Monday, February 11, 2013 3:39 PM
To: Mark Leonard
Subject: RE: Attached document

Dear Mr. Leonard,

I have been sick with a bad flu this week and will need a bit more time to work on the materials you sent. I also need to locate a drive with some materials you requested. I would like to request if your client can accomodate a two week extension to have this sent over. I am willing to grant the same.

Please advise.

Yours truly
Alex Mateesco

----- Original Message -----

Subject: RE: Attached document
From: "Mark Leonard" <mleonard@davisandleonard.com>
Date: Sun, January 27, 2013 6:53 pm
To: "info@techandgo.com" <info@techandgo.com>

Provided you provide responsive documents along with the discovery responses, my client will agree to a three week extension. Accordingly, your responses and documents must be received by my office by February 11.

From: info@techandgo.com [info@techandgo.com]
Sent: Wednesday, January 23, 2013 5:26 PM
To: Mark Leonard
Subject: RE: Attached document

Dear Mr. Leonard,

We can agree to return the courtesy, but would your client be willing to agree to 3 weeks, with your client being granted the same?

Please advise if that would be acceptable.

Also, thank you for the clarification and correction regarding the extension that was filed.

Yours truly,
Alex Mateesco

----- Original Message -----

Subject: RE: Attached document
From: Mark Leonard <mleonard@davisandleonard.com><mailto:mleonard@davisandleonard.com>>

Date: Tue, January 22, 2013 12:18 pm

To: "info@techandgo.com<mailto:info@techandgo.com>" <info@techandgo.com><mailto:info@techandgo.com>>

Mr. Mateesco,

My client will agree to a 15 day extension for service of the discovery responses and responsive documents provided that you also grant it a 15 day extension for its responses. Accordingly, your responses would be due February 5 and my client s February 14. Please confirm your acceptance of this offer and please note that extensions of this nature are NOT filed with the TTAB. I will be filing a correction with the TTAB for the last discovery extension you erroneously filed with the TTAB as that filing incorrectly extended other deadlines in the action.

Mark Leonard
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916-362-9000 voice
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mleonard@davisandleonard.com<mailto:mleonard@davisandleonard.com> e-mail
www.davisandleonard.com<http://www.davisandleonard.com>

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From: info@techandgo.com<mailto:info@techandgo.com> [mailto:info@techandgo.com]
Sent: Monday, January 21, 2013 8:47 PM
To: Mark Leonard
Subject: Attached document

Dear Mr. Leonard,

Attached , please find our request document.

Yours Truly,
Alex Mateesco

Mark Leonard

From: Mark Leonard
Sent: Monday, February 11, 2013 5:18 PM
To: 'info@techandgo.com'
Subject: RE: Attached document

Fine, your responses and documents must be received by my office by February 25 and my client's responses will be due March 6.

-----Original Message-----

From: info@techandgo.com [mailto:info@techandgo.com]
Sent: Monday, February 11, 2013 3:39 PM
To: Mark Leonard
Subject: RE: Attached document

Dear Mr. Leonard,

I have been sick with a bad flu this week and will need a bit more time to work on the materials you sent. I also need to locate a drive with some materials you requested. I would like to request if your client can accomodate a two week extension to have this sent over. I am willing to grant the same.

Please advise.

Yours truly
Alex Mateesco

----- Original Message -----

Subject: RE: Attached document
From: "Mark Leonard" <mleonard@davisandleonard.com>
Date: Sun, January 27, 2013 6:53 pm
To: "info@techandgo.com" <info@techandgo.com>

Provided you provide responsive documents along with the discovery responses, my client will agree to a three week extension. Accordingly, your responses and documents must be received by my office by February 11.

From: info@techandgo.com [info@techandgo.com]
Sent: Wednesday, January 23, 2013 5:26 PM
To: Mark Leonard
Subject: RE: Attached document

Dear Mr. Leonard,

We can agree to return the courtesy, but would your client be willing to agree to 3 weeks, with your client being granted the same?

Please advise if that would be acceptable.

Also, thank you for the clarification and correction regarding the extension that was filed.

Yours truly,
Alex Mateesco

----- Original Message -----

Subject: RE: Attached document

From: Mark Leonard <mleonard@davisandleonard.com><mailto:mleonard@davisandleonard.com>>

Date: Tue, January 22, 2013 12:18 pm

To: "info@techandgo.com<mailto:info@techandgo.com>" <info@techandgo.com><mailto:info@techandgo.com>>

Mr. Mateesco,

My client will agree to a 15 day extension for service of the discovery responses and responsive documents provided that you also grant it a 15 day extension for its responses. Accordingly, your responses would be due February 5 and my client's February 14. Please confirm your acceptance of this offer and please note that extensions of this nature are NOT filed with the TTAB. I will be filing a correction with the TTAB for the last discovery extension you erroneously filed with the TTAB as that filing incorrectly extended other deadlines in the action.

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www.davisandleonard.com<http://www.davisandleonard.com>

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From: info@techandgo.com<mailto:info@techandgo.com> [mailto:info@techandgo.com]
Sent: Monday, January 21, 2013 8:47 PM
To: Mark Leonard
Subject: Attached document

Dear Mr. Leonard,

Attached , please find our request document.

Yours Truly,
Alex Mateesco

EXHIBIT “D”

Mark Leonard

From: info@techandgo.com
Sent: Monday, February 25, 2013 8:42 PM
To: Mark Leonard
Subject: Request for additional time re docs.
Attachments: image.jpg

Dear Mr. Leonard,

ICOURIER SOFTWARE SYSTEMS LTD. would like to request a 30 day extension of time for filing its responses and the documents submitted by Applicant.

I am still working on completing documents and finding a few materials, and would need more time to consult with lawyer to review it's responses and documents.

As a courtesy, I am willing to grant the same extension to your client.

I am attaching a copy of the motion if we need it as a jpg

Yours Truly,
Alex Mateesco
President
TECH AND GO

Mark Leonard

From: Mark Leonard
Sent: Wednesday, February 27, 2013 3:29 PM
To: 'info@techandgo.com'
Subject: RE: Request for additional time re docs.

Mr. Mateesco,

In reviewing the schedule for the case I see that your trial period begins this Friday. Accordingly, I must have your responses and documents by tomorrow, February 28. My client's responses to your discovery will be served March 6, per our agreement to your previous extension.

Mark Leonard
Davis & Leonard, LLP
8880 Cal Center Drive, Suite 180
Sacramento, CA 95826
916-362-9000 voice
916-362-9066 fax
mleonard@davisandleonard.com e-mail
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From: Mark Leonard
Sent: Tuesday, February 26, 2013 10:49 AM
To: 'info@techandgo.com'
Subject: RE: Request for additional time re docs.

Mr. Mateesco,

The discovery requests were served on you on December 21, over two months ago, and you have already been granted three extensions. My client will extend the deadline to receive your responses and documents until March 4 and my clients responses will be due March 13. If I have not received your responses and documents by March 4 I will file a motion to compel and my client will oppose any motion by you to further extend the deadlines.

Mark Leonard
Davis & Leonard, LLP
8880 Cal Center Drive, Suite 180

Sacramento, CA 95826
916-362-9000 voice
916-362-9066 fax
mleonard@davisandleonard.com e-mail
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From: info@techandgo.com [mailto:info@techandgo.com]
Sent: Monday, February 25, 2013 8:42 PM
To: Mark Leonard
Subject: Request for additional time re docs.

Dear Mr. Leonard,

ICOURIER SOFTWARE SYSTEMS LTD. would like to request a 30 day extension of time for filing its responses and the documents submitted by Applicant.

I am still working on completing documents and finding a few materials, and would need more time to consult with lawyer to review it's responses and documents.

As a courtesy, I am willing to grant the same extension to your client.

I am attaching a copy of the motion if we need it as a jpg

Yours Truly,
Alex Mateesco
President
TECH AND GO