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

Proceeding	91209226
Party	Defendant DISH Network L.L.C.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

PREMIER SYSTEMS USA, INC.,	)	Opposition No.: 91209226 (Parent)
a California corporation,	)	Opposition No.: 91211213
Opposer/Counterclaim Registrant,	)	
	)	
v.	)	
	)	
DISH Network L.L.C.	)	
a Colorado limited liability company,	)	
Applicant/Counterclaim Petitioner.	)	
_____	)	

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**APPLICANT AND COUNTERCLAIM PETITIONER DISH NETWORK L.L.C.'S  
REPLY TO OPPOSER AND COUNTERCLAIM REGISTRANT PREMIER SYSTEMS  
USA, INC.'S OPPOSITION TO DISH'S MOTION TO COMPEL**

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Applicant and Counterclaim Petitioner DISH Network L.L.C. ("DISH") files this Reply to Opposer and Counterclaim Registrant Premier Systems USA, Inc.'s ("Premier") Opposition to DISH's Motion to Compel Responses to Applicant's Third Set of Interrogatories and Second Set of Requests for Production and Appearance at a Deposition and For Sanctions (the "Response").

**I. INTRODUCTION**

Premier seeks to cast the present discovery dispute as a miscommunication between counsel, *i.e.*, as the unfortunate but common failure of counsel to reach agreement on a discovery deadline. That is not what happened here. The present discovery dispute arose because at the time the Motion was filed, Premier had not responded to discovery or stated any time frame within which it would do so. And the same is true today: as of this filing – 42 days after this motion was filed and 72 days after discovery responses were due under the rules – Premier *still* has not responded to discovery or stated the time frame within which it will do so. Premier's

brief says that it is "willing" to respond, but its actions speak louder than its words. Had Premier wanted to obviate this dispute, it simply would have served complete discovery responses at some point after DISH informed Premier – 54 days ago – that DISH intended to file this Motion. Instead, Premier still has not served discovery responses or stated when it will. Consequently, the Board must enter an order compelling Premier to respond to the outstanding discovery requests without objection and to appear at a deposition. While Premier's brief alleges "a complete willingness to discuss" discovery deadlines, its actions make clear that absent a Board order, it will continue its pattern of delay and avoidance.

## **II. ARGUMENT**

### **I. Premier's Reliance on the July 19th Agreement is Without Merit.**

Premier's excuse for failing to respond to the relevant discovery requests is that on July 19, 2017, DISH agreed to discuss a reasonable extension of the response deadline. Contrary to Premier's Response, DISH's Motion does not misrepresent the July 19<sup>th</sup> agreement, but rather fully discloses it. 69 TTABVUE 2 & Exhibit A (stating that the parties “can discuss the timing for responses”).

Premier's argument that the Board should interpret this agreement as *carte blanche* to ignore discovery obligations, and excuse Premier's complete failure to respond, is specious. Since July 19<sup>th</sup>, DISH has requested that Premier respond to the discovery requests on at least three occasions:

- On August 20, 2017, DISH sent Premier an email proposing a September 1<sup>st</sup> response deadline;
- On August 25<sup>th</sup>, DISH sent Premier a follow-up email, asking Premier for its position on the September 1<sup>st</sup> deadline; and

- On September 6, 2017, DISH sent Premier a letter stating that if Premier did not respond to the discovery requests soon, DISH would seek Board intervention. 69 TTABVUE Exhibits A & C.

In light of DISH's numerous requests for the discovery responses, including the present Motion to Compel, it is disingenuous for Premier to attempt to excuse its dilatory behavior based on a preliminary agreement entered over 90 days ago. DISH has attempted unsuccessfully to elicit Premier's responses to the discovery requests – or at a minimum, a date certain for responses – for over two months. In return, Premier has done nothing but make half-hearted attempts to meet and confer. Actions speak louder than words. Premier has had over 90 days to serve its responses, and could have mooted the present motion simply by doing so. Instead, Premier responded by summarizing the history of communications between counsel and stating that it was "open" to cooperating and providing complete discovery responses. 71 TTABVUE 2. Premier's stated willingness to meet its discovery obligations does not excuse its failure to actually fulfill them. Nor does DISH's agreement over two months ago to a reasonable extension of time give Premier license to ignore its discovery obligations *ad infinitum*.

The Board should order Premier to respond to the outstanding discovery requests and to meet and confer with DISH's counsel regarding deposition dates within five (5) days of the order.

## **II. Premier Has Forfeited Its Right To Object To The Discovery Requests On The Merits.**

Premier's delay is inexcusable, and the Board should enter an order precluding Premier from relying on any objections to DISH's discovery requests on the merits. DISH served its discovery requests over 90 days ago. Premier has not responded to the discovery or even provided a date certain by which it will respond. Premier's belated explanation for its failures

lacks merit. Premier's Response offers, for the first time, three reasons why Mr. Bates was unavailable to timely meet and confer with Mr. Saffer: Mr. Bates was on vacation; Mr. Bates double-booked his calendar; and Mr. Bates was at a work-related conference. 71 TTABVUE 4-5. Even accounting for the demands on Mr. Bates' schedule, none of the reasons offered by Premier excuse a 60 day delay in responding to a set of outstanding discovery requests, much less excuse Premier's complete failure to respond at all. Notwithstanding Mr. Bates' conflicts, Premier could have served discovery responses with a commitment to supplement as investigation continued, or at least stated a date by which responses would be served. Yet, Premier consistently has failed to do so.

DISH recognizes the importance of agreeing to reasonable extensions of discovery deadlines, but the history of this case shows that Premier's failure to respond is not the result of a miscommunication or disagreement between counsel. It is a delay tactic that prejudices DISH's ability to prepare its case. As such, the Board should find that Premier has forfeited its right to object to the discovery requests on their merits.

### **CONCLUSION**

The Board reopened discovery in this matter on July 3, 2017. Despite DISH's repeated efforts to elicit Premier's cooperation in the discovery process, the parties are no further along in discovery than they were when discovery reopened over 3 months ago. Accordingly, DISH respectfully requests that the Board enter an order that Premier must: (1) provide its discovery responses without objection to the requests on the merits and (2) confer with DISH's counsel regarding deposition dates no later than five days after such order.

Dated: October 27, 2017

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2017, a true and correct copy of the foregoing **APPLICANT AND COUNTERCLAIM PETITIONER DISH NETWORK L.L.C.'S REPLY TO OPPOSER AND COUNTERCLAIM REGISTRANT PREMIER SYSTEMS USA, INC.'S OPPOSITION TO DISH'S MOTION TO COMPEL** was served by E-mail, on all counsel or parties of record on the service list below:

s/am/  
Alla Meyer

**SERVICE LIST**

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