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Filing date: **01/30/2017**

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

Proceeding	91221093
Party	Plaintiff P3 International Corp.
Correspondence Address	JAMES A POWER JR POWER DEL VALLE LLP 233 WEST 72ND STREET NEW YORK, NY 10023 UNITED STATES jp@powerdel.com
Submission	Motion for Discovery Sanctions
Filer's Name	James A. Power Jr
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Signature	/jpower/
Date	01/30/2017
Attachments	Sanctions Motion.pdf(43595 bytes) Sanctions Decl.pdf(28154 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

P3 INTERNATIONAL CORP.,)	
)	
Opposer,)	Consolidated Oppositions No.
)	
v.)	91-221093
)	91-221702
)	
P3 INGENIEURGESELLSCHAFT MBH,)	
)	
Applicant.)	

**MOTION FOR JUDGMENT SUSTAINING OPPOSITION
AND TO DISMISS COUNTERCLAIMS WITH PREJUDICE**

Opposer P3 International Corp. moves the Board for entry of an order, pursuant to 37 CFR 2.120(h)(1) and FED.R.CIV.P. 37(b)(2)(A), entering judgment sustaining the oppositions consolidated herein and dismissing with prejudice applicant's counterclaims seeking to cancel opposer's involved registrations, on the grounds that applicant has made no effort to comply with the Board's November 30, 2016 order compelling applicant to answer opposer's interrogatories and to comply with opposer's requests for the production of documents served February 11, 2016, and has declined otherwise to participate in discovery in these proceedings.

Opposer, on February 11, 2016, served its initial disclosures pursuant to FED.R.CIV.P. 26(a)(1)(A) and, along with that, a first set of interrogatories and document requests. Order, Paper # 18; Declaration, Paper # 17. Applicant did not respond. *Id.*

Applicant defaulted in responding to opposer's discovery, without serving objections, and defaulted in responding to opposer's motion to compel. *Id.* Applicant has failed to provide any interrogatory answer, document production or other disclosure since the Board's November 30, 2016 order that it comply within 30 days, *viz.*, by December 30, 2016. Power Decl. ¶ 2. Moreover, Applicant did not serve initial disclosures nor did it conduct any discovery before the discovery period closed on May 13, 2016. *Id.* ¶ 3. It does not appear that applicant is

interested in defending these oppositions or pursuing its counterclaims.

The Board, in its November 30, 2016 order, admonished applicant that, in the event it fails to serve full responses to opposer's discovery, remedy would lie in a motion for sanctions. 37 CFR 2.120(h); TBMP 411.05. The Board has the authority to strike the pleadings of the noncomplying party, to dismiss its claims, and to grant judgment in favor of the movant, FED.R.CIV.P. 37(b)(2)(A), 37 CFR 2.120(h)(1), especially where such recalcitrant conduct, not to mention failure to defend or prosecute, has permeated the proceeding. *Benedict v. Superbakery, Inc.*, 665 F.3d. 1263 (Fed. Cir. 2011).

For the foregoing reasons, it is respectfully submitted that judgment be entered sustaining the oppositions and dismissing applicant's counterclaims consolidated herein.

Respectfully submitted,

New York, New York
January 30, 2017

/jpower/
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Certificate of Service

I hereby certify that, on January 30, 2017, a copy of the foregoing motion to compel was served with its supporting papers upon applicant's counsel by first class mail, postage prepaid, in an envelope addressed to:

Darren M. Geliebter, Esq.
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305 Broadway, 7th Floor
New York, New York 10007

/jpower/
James A. Power Jr

UNITED STATES PATENT AND TRADEMARK OFFICE
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DECLARATION IN SUPPORT OF OPPOSER’S MOTION FOR JUDGMENT

James A. Power Jr declares under penalty of perjury that the following statements are true and correct to the best of his knowledge and belief.

1. I am counsel for opposer in this proceeding and submit this declaration in support of opposer’s motion for judgment sustaining the opposition and dismissal of applicant’s counterclaims.
2. Applicant has not responded to opposer’s interrogatories nor its requests for the production of documents served February 11, 2016 and has, therefore, failed to comply with the Board’s November 30, 2016 order compelling it to do so.
3. Applicant did not serve an initial disclosure nor has it sought any discovery in these proceedings.

New York, New York
January 30, 2017

/jpower/
James A. Power Jr