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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 Email: jp@powerdel.com
Submission	Reply in Support of Motion
Filer's Name	James A. Power Jr
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Date	11/17/2017
Attachments	Sanctions Reply.pdf(48328 bytes ) Sanctions Reply Decl.pdf(28017 bytes )

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

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

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**REPLY IN SUPPORT OF MOTION FOR JUDGMENT SUSTAINING OPPOSITION  
AND DISMISSING COUNTERCLAIMS WITH PREJUDICE**

Opposer P3 International Corp. submits this memorandum and accompanying declaration in reply to applicant's October 28, 2017 response (35 TTABVUE) to opposer's motion, pursuant to 37 CFR 2.120(h)(1) and FED.R.CIV.P. 37(b)(2)(A), for judgment sustaining the oppositions consolidated herein and dismissing with prejudice applicant's counterclaims seeking to cancel opposer's involved registrations.

By order dated October 13, 2017, the Board denied applicant's August 29, 2017 motion (32 TTABVUE) for a seventh extension of time in which to respond to opposer's January 30, 2017 motion (19 TTABVUE), and directed that applicant respond to opposer's motion no later than October 27, 2017 (34 TTABVUE 4), an effective extension of 59 days beyond the extant, extended response date of August 29, 2017. The Board found that applicant, having failed to respond to opposer's discovery, defaulted in responding to opposer's motion to compel, failed to comply with the resulting discovery order, plus having failed to serve initial disclosures or any discovery of its own during the extended and now closed discovery periods, had also abused the privilege of extensions. *Id.* Yet applicant failed to comply with even this final deadline.<sup>1</sup>

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<sup>1</sup> Contrary to applicant's certificate of service filed with its October 28 response, opposer was not served with applicant's response on October 27 or at any other time. Power Reply Decl. ¶ 2. The response was filed October 28 when received by the Board. TBMP 502.02(a).

Under these circumstances, the sanction sought by opposer is not by any measure “severe” and, for that matter, can hardly be deemed merely a sanction for failure to participate in discovery. Judgment for opposer on its opposition claims and applicant’s counterclaims is commensurate with applicant’s utter failure to participate in the defense of the oppositions or prosecution of its counterclaims.

Even were applicant’s belated response entitled to any consideration (see *Melwani v. Allegiance Corp.*, 97 USPQ3d 1537, 1541 n.16 (TTAB 2010)), applicant has failed to demonstrate that its repeated neglect in meeting its deadlines was in any way excusable. While applicant vaguely refers to its counsel’s “medical” and “family” matters, no effort was made to attribute to any such matter cause for applicant’s delays, nor explanation provided for how it may have accounted for the entire ten-month delay following opposer’s motion. The “meeting of the minds” to which applicant alludes was perceived by applicant in September 2016. Yet the parties find themselves short of settlement due to applicant’s practice of approving all proposed terms but one which, when worked out, on the 30<sup>th</sup> day was followed by applicant’s objection to another to which it had previously agreed, including those applicant now describes as “onerous,” with no end in sight. And contrary to applicant’s suggestion, opposer indeed has been prejudiced by applicant’s delays and failure to engage in the litigation process by having been prevented from submitting its section 15 declarations in the registrations subject to applicant’s cancellation counterclaims and in incurring the unnecessary costs and burdens imposed by applicant’s piecemeal negotiations, which had no impact other than to delay these proceedings. Finally, opposer did not place applicant in the position in which it now finds itself, for any “tactical advantage” or other purpose. Applicant brought this predicament upon itself by failing to defend these oppositions or prosecute its counterclaims, as recognized at the September 27 telephone conference following opposer’s response (33 TTABVUE) to applicant’s latest extension request, including opposer’s discovery designed, at least in part, to elicit matters that had not been forthcoming in the settlement discussions.

Moreover, because applicant failed to submit its “cross-motion” to reopen all of its neglected periods and dates in a separate paper and, more importantly, failed to demonstrate excusable neglect (*Melwani, supra*), that request also should be denied. *Id.*; *Pioneer Inv. Svcs. Co. v. Brunswick Assoc. L.P.*, 507 U.S. 380, 395 (1993).

For the foregoing reasons, and for the reasons set out in opposer’s principal motion papers, it is respectfully submitted that judgment be entered sustaining the oppositions and dismissing applicant’s counterclaims consolidated herein, with prejudice.

Respectfully submitted,

New York, New York  
November 17, 2017

/jpower/  
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Certificate of Service

I hereby certify that, on November 17, 2017, a copy of the foregoing reply and accompanying declaration were served upon applicant’s counsel by e-mail to:

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/jpower/  
James A. Power Jr

UNITED STATES PATENT AND TRADEMARK OFFICE  
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Applicant.	)	
_____	)	

**REPLY 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 reply to applicant's response to opposer's motion for judgment sustaining the opposition and dismissing applicant's counterclaims.

2. Opposer did not receive service from applicant, by e-mail or otherwise, of its October 28, 2017 response to opposer's motion. The first and only notice of applicant's filing received by opposer resided in the Board's contemporaneous October 28 notice of that filing.

New York, New York  
November 17, 2017

/jpower/  
James A. Power Jr