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

Proceeding	91240198
Party	Plaintiff Poreba Machine Tool Company LLC
Correspondence Address	NICK MARSICO HUCK BOUMA PC 1755 S NAPERVILLE ROAD #200 WHEATON, IL 60189 UNITED STATES nmarsico@huckbouma.com 630-344-1158
Submission	Opposition/Response to Motion
Filer's Name	Nick Marsico
Filer's email	nmarsico@huckbouma.com, emalnar@huckbouma.com
Signature	/Nick Marsico/
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Attachments	2019-6-11 Opposition to Motion To Dismiss.pdf(129511 bytes)

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

In re Application Serial No.:	79,196,339
Mark:	POREBA 1798
Poreba Machine Tool Company LLC Opposer, v. Fabryka Obrabiarek RAFAMET Spółka Akcyjna, Applicant.	Opposition No. 91240198

**OPPOSER’S RESPONSE TO MOTION FOR INVOLUNTARY DISMISSAL FOR
FAILURE TO TAKE TESTIMONY UNDER 37 CFR § 2.132(a) AND OPPOSER’S
MOTION TO EXTEND DISCLOSURE AND TRIAL DATES**

Poreba Machine Tool Company LLC (“Opposer”) for its Response to Applicant’s Motion for Involuntary Dismissal for Failure to Take Testimony Under 37 CFR § 2.132(a) and Opposer’s Motion to Extend Disclosure and Trial Dates, states the following:

Opposer filed its Notice of Opposition on March 19, 2018. The Conference, Discovery, Disclosure and Trial Schedule deadlines were set on March 22, 2018 with a request for oral hearing deadline set for October 3, 2019. On April 26, 2018, the Applicant filed a motion for extension of time, which was granted, that extended the previous deadlines with the request for oral hearing extended to December 16, 2019. This current schedule entered on June 14, 2018, sets forth that the Opposer’s 30-day Trial Period Ends on May 10, 2019.

Opposer is still in the process of gathering information to support its opposition. However, due to the lengthy history of the companies and the products involved, including that some of the facts relate to events that occurred in Poland several years ago, and that some of the information

resides with third parties and is difficult to gather, Opposer is seeking additional time to gather information.

In the interest of justice, Opposer seeks to have this matter resolved on the merits as opposed to a default under 2.132(a). Indeed, a ruling of this type would be inappropriate as there are issues of fact and law that need to be resolved. For example, in response to paragraphs 3 and 4 of Opposer's Notice of Opposition, the Applicant admits that the U.S. Trademark Office records reflect that applicant's distributor did indeed file the application which resulted in registration 1,864,529. Applicant also fails to deny that Opposer purchased the registration from Applicant's distributor. Additionally, in paragraph 4, Applicant admits that the U.S. Trademark Office records reflect that Opposer filed application serial number 87/827,131. As to the remainder of the allegations, the Applicant repeatedly claims to have insufficient knowledge to admit or deny these allegations.

Based on the Notice of Opposition and the Applicant's answer, Opposer has at a minimum provided prima facie evidence of the validity and ownership of its registration which should permit it to argue the merits of its opposition. *Tiffany & Co. v. Columbia Industries, Inc.*, 455 F.2d 582. Opposer is not bringing this motion for any dilatory purpose and to date has not previously requested any extensions to this matter. The Applicant can hardly argue prejudice as it previously requested and was granted an extension of the subject deadlines.

WHEREFORE, Opposer prays that the Applicant's Motion to dismiss be denied and that Opposer's Motion to Extend Disclosure and Trial Dates be granted.

Poreba Machine Tool Company LLC

By:



HUCK BOUMA PC, its attorneys
1755 S. Naperville Road, Suite 200
Wheaton, IL 60189
630-344-1158
nmarsico@HuckBouma.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S RESPONSE TO MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO TAKE TESTIMONY UNDER 37 CFR § 2.132(a) AND OPPOSER'S MOTION TO EXTEND DISCLOSURE AND TRIAL DATES has been served on attorney for Applicant Fabryka Obrabiarek RAFAMET Spółka Akcyjna by forwarding a copy to:

Szymon Gurda
CHERSKOV FLAYNIK & GURDA, LLC
123 W. Madison St. Suite 400
Chicago, Illinois 60602
United States of America

via e-mail to sgurda@cherskov.com on June 11, 2019. A paper copy of the filing was also sent.



Nick Marsico
HUCK BOUMA PC
1755 S. Naperville Road, Suite 200
Wheaton, IL 60189
630-344-1158
nmarsico@HuckBouma.com
Counsel for Opposer