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Filing date: **01/29/2020**

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

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|------------------------|---|
| Proceeding | 91241359 |
| Party | Plaintiff Pollard Banknote Limited |
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| Submission | Reply in Support of Motion |
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| Signature | /dte/ |
| Date | 01/29/2020 |
| Attachments | Reply.pdf(251043 bytes) |

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|-----------------------------------|---|-------------------------|
| Pollard Banknote Limited, | : | |
| | : | |
| Opposer | : | Opposition No. 91241359 |
| | : | (Parent) |
| | : | Opposition No. 91244073 |
| v. | : | Opposition No. 91244076 |
| | : | Opposition No. 91244195 |
| IGT Global Solutions Corporation, | : | Opposition No. 91244726 |
| IGT Corporation, IGT | : | Opposition No. 91247268 |
| | : | |
| Applicant. | : | |

REPLY IN CONNECTION WITH MOTION TO EXTEND OPPOSER'S DISCOVERY
PERIOD AND ALL SUBSEQUENT TRIAL DATES

Opposer, Pollard Banknote Limited, submits this Reply in connection with Opposer's Motion to Extend Opposer's Discovery Period and All Subsequent Trial Dates ("Opposer's Motion"). 15 TTABVUE. Applicant IGT's Response to Opposer's Motion to Extend Discovery Period and All Subsequent Trial Dates ("Applicants' Response"), 17 TTABVUE, includes arguments that are contrary to the established facts and an improper request to extend Discovery for Applicants.

Opposer objects to Applicants' request that discovery be extended for both parties. This request was submitted after the discovery period had closed for Applicants. "Where the time for taking required action, as originally set or as previously reset, has expired, a party desiring to take the

required action must file a motion through ESTTA to reopen the time for taking that action." *TBMP* §509.01(b)(1). Applicants have not filed a motion to reopen discovery for Applicants.

If the Board considers that Applicants filed a proper motion to reopen (by construing Applicants' Response as a proper motion), Applicants were required to demonstrate excusable neglect for reopening the discovery period for Applicants. *TBMP* §509.01(b)(1). "A party moving to reopen its time to take required action must set forth with particularity the detailed facts upon which its excusable neglect claim is based; mere conclusory statements are insufficient." *TBMP* §509.01(b)(1). Applicants have set forth no facts, much less any detailed facts, that would establish excusable neglect. Applicants' only statement on this issue is "If Opposer believes there is good cause for it to be allowed to make additional decisions regarding discovery, including possibly initiating additional discovery, IGT should not be denied a fair opportunity to respond and to evaluate its own discovery needs in view of whatever additional actions Opposer may take." 17 TTABVUE 4. Applicants have failed to present any facts or authority to support this statement. Further, this statement does not establish good cause or excusable neglect. Accordingly, the Board should not grant Applicants' request to

extend discovery for both parties.

Opposer has demonstrated good cause for an extension of Opposer's Discovery Period. In Applicants' argument opposing Opposer's Motion, Applicants admit the facts that show that Applicants' delay denied Opposer the opportunity to study Applicants' discovery responses prior to the deadline to take follow-up discovery. Applicants claim they timely served responses to Opposer's discovery requests on November 17, 2019¹. However, Applicants did not produce any documents on November 15, 2019. Opposer contacted Applicants on November 18, 2019 concerning the documents. Applicants never responded to Opposer's November 18, 2019 email. Applicants admit that documents were not served until December 9, 2019; December 13, 2019; and December 23, 2019. 17 TTABVUE 3.

The trial schedule in place when Opposer served discovery set December 25, 2019 as the last day of discovery. This date was extended to December 26, 2019, due to the Christmas holiday. *TBMP* §112. Accordingly, any written discovery must have been served by November 26, 2019. *TBMP* §406.01. Applicants admitted that they delayed the production of documents until after the deadline to serve written discovery.

¹ Applicants served responses on November 15, 2019, but incorrectly stated November 17, 2019 in Applicants' Response.

17 TTABVUE 3. This action prevented Opposer from studying the documents prior to the opportunity to serve follow-up discovery. Applicants further admitted that additional documents were served on December 23, 2019, three days before the close of discovery. (Opposer notes that two of the three days were federal holidays², giving Opposer essentially one working day between the service of Supplemental Responses and documents and the close of discovery.) It is clear that Applicants' delay denied Opposer the opportunity to take follow-up discovery.

Finally, Applicants argue that "IGT's responses came at the end of the discovery period as a result of Opposer's timing in initiating discovery, not due to any delay, objection or obstruction by IGT." 17 TTABVUE 4. This argument directly contradicts the facts. IGT delayed the production of documents until after the deadline to serve written discovery and produced documents "on a rolling basis," 17 TTABVUE 3, up until December 23, 2019. (Opposer is unaware of any Board Rule, Federal Rule or legal precedent that allows a party to produce documents "on a rolling basis.") Applicants failed to respond to Opposer's November 18, 2019 email, 15 TTABVUE 10, concerning

² On December 17, 2019, the White House issued an Executive Order closing agencies of the federal government on December 24, 2019.

the documents. Applicants did not produce any documents, or even advise when documents would be produced until responding to Opposer's November 26, 2019 letter, 15 TTABVUE 25-29, on the deadline Opposer set, December 9, 2019, which was twenty-four days after Applicants' discovery was due and thirteen days after the deadline for serving written discovery.

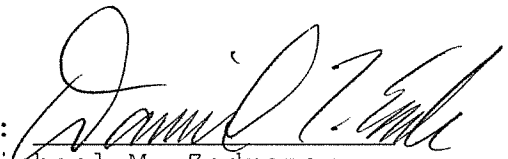
The facts, as both parties have admitted, demonstrate that Opposer served discovery with sufficient time to receive responses, study those responses and serve follow-up discovery, if necessary. The facts, as both parties have admitted, also demonstrate that Applicants delayed the production of documents until after the deadline to serve written discovery and produced documents "on a rolling basis" up to December 23, 2019, three days before the close of discovery. The facts also demonstrate that Applicants have established no basis for an extension of discovery for both parties. Accordingly, Opposer submits that good cause has been shown for an extension of the Discovery Period for Opposer only, and requests that the Board grant Opposer's Motion.

Respectfully submitted,

Pollard Banknote Limited

Date: January 29, 2020

By:


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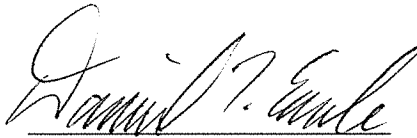
(703) 684-5600

CERTIFICATE OF SERVICE

It is hereby certified that this REPLY IN CONNECTION WITH MOTION TO EXTEND OPPOSER'S DISCOVERY PERIOD AND ALL SUBSEQUENT TRIAL DATES has been served upon Applicant, by emailing a copy thereof to:

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this 29th day of January, 2020.


Daniel T. Earle