ESTTA Tracking number: **ESTTA979942**

Filing date: **06/11/2019**

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

Proceeding	91243210
Party	Defendant AtSite, Inc.
Correspondence Address	MICHAEL C PETOCK PETOCK & PETOCK LLC PO BOX 856 VALLEY FORGE, PA 19482 UNITED STATES mp@petocklaw.com 610-935-8600
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Michael C. Petock
Filer's email	mp@petocklaw.com
Signature	/Michael C. Petock/
Date	06/11/2019
Attachments	MotionCompel06.089.pdf(185857 bytes) EXHIBIT A.pdf(161893 bytes) EXHIBIT B.pdf(156491 bytes) EXHIBIT C.pdf(4272255 bytes)

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ENGIE INSIGHT SERVICES INC.	]	
	]	
	]	
Opposer	]	
	]	
vs.	]	Opposition No.: 91243210
	]	Application No.: 87/532,516
ATSITE, INC.	]	Mark: INSITE
	]	Filed: July 18, 2017
Applicant	]	Published for Opposition: June 26, 2018
	]	

APPLICANT'S MOTION TO COMPEL

COMES NOW, Applicant, pursuant to TBMP 411.02 and 523 and Rule 37 of the Federal Rules of Civil Procedure, and moves to compel Opposer to comply with its discovery obligations. In support of this Motion, Applicant states as follows:

FACTUAL BACKGROUND

Applicant served its First Set of Document Requests on Opposer on December 31, 2018. See Exhibit A. On January 30, 2019, Opposer served "Opposer's Responses to AtSite, Inc.'s First Set of Document Requests" (sometimes referred to herein as "Opposer's Responses"). See Exhibit B. Opposer's Responses contained a few unsupported, boilerplate objections, all of which are without merit as explained below. Importantly, in response to each request Opposer stated: "Opposer will produce non-privileged documents and things responsive to this request." As of the filing of this Motion, and despite numerous attempts to obtain the documents Opposer agreed to provide, and almost six months since the requests were served, not a single document has been produced.

GOOD FAITH EFFORT

Applicant's counsel has requested on numerous occasions (and has generally been promised in response) the document production that is now the subject this Motion to Compel including on: February 8, 2019 (during the Rule 26f Conference); February 21, 2019; March 11, 2019; March 14, 2019; April 16, 2019 and May 21, 2019. However, still no documents have been produced.[1] Copies of relevant email correspondence between counsel is attached hereto as Exhibit C as evidence of Applicant's good faith efforts to resolve this discovery matter with resorting to Board intervention.

ARGUMENT

Applicant's First Set of Document Requests was served almost six months ago. Despite promises by Opposer to produce the requested documents, not a single document has been provided. This is especially troubling in this case where Opposer has the burden to prove that Applicant's mark is merely descriptive. See Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc., 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015). As a result of this delay, Applicant has not been able to reasonably conduct depositions, issue follow up discovery requests, or otherwise meaningfully prepare for trial.

Further, all of Opposer's Responses state that responsive documents will be produced. See Exhibit B Opposer's Responses 1-13. As shown by Exhibit C, Opposer has remained consistent over the past six months in its position that it would be producing responsive

[1] It is acknowledged that between approximately April 16, 2019 and May 21, 2019 the parties were engaged in settlement discussion that proved not fruitful.

documents. Importantly, none of Opposer's Responses state that any documents are being withheld or that no responsive documents exist. See TBMP 406.04(c): "[i]t is incumbent upon a responding party to respond to each request by stating whether or not responsive documents exist and, if so, whether they will be produced at a specified reasonable time for inspection or are being withheld based on a claim of privilege or a specified objection." See also Fed. R. Civ. P. 34(b)(2)(B) and 34(b)(2)(C); Fed. R. Civ. P. 34 Committee Notes on Rules – 2015 Amendment *("an objection to a Rule 34 request must state whether anything is being withheld on the basis of the objection"*); No Fear Inc. v. Rule, 54 USPQ2d 1551, 1555 (TTAB 2000). Accordingly, the only conclusion that can be drawn is that responsive documents exist that are simply not being produced.

It is also noted that this is not a situation of an overly burdensome request for documents. There are a total of only 13 document requests by Applicant in the entire case. As explained below all of the requests that are subject to this Motion are relevant to the claims and defenses at issue. Further, any objections that have been asserted are without merit.[2]

Regarding Request No. 1, Applicant is seeking documents that Opposer was required to identify in response to Applicant First Set of Interrogatories. Applicant's Interrogatory No. 1 is set forth below:

> **Interrogatory No. 1.**
>
> **Identify all evidence that you contend shows that Applicant's Mark is merely descriptive.**

[2] Applicant is not contesting objections as to Attorney Client Privilege/Work Product or having to do with documents not being in the "possession, custody or control" of Opposer. However, Opposer has not stated that any documents are being withheld on the basis of any objections.

Clearly, Applicant 's Request No 1 is proper being narrowly directed at documents that support Opposer's claim that Applicant's INSITE mark is merely descriptive. See TBMP 402.01 *("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case"*). Without this basic information Opposer cannot meaningfully conduct its own discovery or otherwise prepare for trial. In effect, Opposer's strategy has been to keep Applicant in the dark as to the basis for its allegations.

Regarding Request No. 2, Applicant is seeking a narrow set of documents from a limited time period relating to Opposer's selection and adoption (and attempt to register, if any) of its ENGIE INSIGHT mark. Request No. 2 is relevant because Opposer's mark contains the term (INSIGHT) which it now claims is not protectable. Opposer is entitled to review documents having to do with Opposer's selection and adoption of Opposer's mark to ascertain whether Opposer has always considered the term INSIGHT to be merely descriptive or whether there are statements made by Opposer to the contrary.

Regarding Request No. 3, Applicant is seeking documents related to trademark searches or evaluations conducted by Opposer with regard to its ENGIE INSITE mark. This request is relevant for the same reasons as Request No. 2 (i.e. such search or evaluation would likely contain evidence as to whether Opposer actually considers the term INSIGHT to be merely descriptive for the goods and services at issue). Further, Opposer alleges at Para. 22 of its Notice of Opposition that other parties use the mark INSIGHT descriptively. Accordingly, Request No. 3 is relevant to these allegations of 3rd party use.

Regarding Request No. 4, Applicant is seeking documents related to Opposer's consideration of filing a trademark application for registration of its ENGIE INSIGHT mark. For the same reasons discussed above this request is extremely relevant since the requested documents may show that Opposer has historically considered INSIGHT to be a protectable mark (i.e. not merely descriptive). Opposer's objection that this request is duplicative of Request No. 2 which calls for documents related to an "attempt to register" is without merit. This request calls for documents related to "consideration of filing a trademark application" which is different from an "attempt to register."

Regarding Request No. 5, Applicant is seeking documents related to any discussion regarding registering a mark containing the term "INSIGHT." This request is not duplicative of any other request because it calls for documents related to just the term INSIGHT, while other requests were directed at the mark ENGIE INSIGHT. Accordingly, Opposer's objections as to the Request No. 5 being duplicative is without merit.

Regarding Request No. 6, in the interest narrowing the issues for the Board's consideration, Applicant is not seeking an Order from the Board regarding Request No. 6.

Regarding Request No. 7, Applicant is seeking documents related to communications between Opposer and other persons regarding this dispute. Clearly, communications regarding this dispute would contain relevant information. Opposer's only objections to Request No. 7 are with regard to privilege and "possession, custody, or control" which objections are not disputed. Accordingly, all non-privileged, responsive documents in Opposer's possession, custody or control should be produced.

Regarding Request No. 8, Applicant is seeking documents related to confusion between Applicant's products and services rendered under its INSITE mark and Opposer's goods and services rendered under its ENGIE INSIGHT mark. Request No. 8 is highly relevant since the existence of confusion would tend to show that consumers view INSITE as a mark and not as a merely descriptive term. Accordingly, Opposer's objections as to the requested documents not being relevant is without merit. Nor is there any other similar request which would make this Request No. 8 duplicative.

Regarding Request No. 9, in the interest narrowing the issues for the Board's consideration, Applicant is not seeking an order from the Board regarding Request No. 9.

Regarding Request No. 10, Applicant is seeking all documents which Opposer contends demonstrate that Applicant's mark is merely descriptive. This request goes to the very crux of the dispute. If Opposer, who has the burden of proof in this case, is unable to produce any documents responsive to this request, Opposer's Notice of Opposition should be dismissed.

Regarding Request No. 11, Applicant is simply seeking documents referenced in Opposer's Notice of Opposition in support of its claims. For example, Opposer references in Para. 4 Fn. 2 of the Notice of Opposition: Marco Vriens & Rogier Verhulst, Marketing Research Magazine, Unleashing Hidden Insights 13, 13 (Winter 2008). Opposer should be required to produce all such documents referenced in its Notice of Opposition.

Regarding Request No. 12, Applicant is seeking documents relating to communications between Opposer (formally known as Ecova) and CleaResult (which is a company that purchased Opposer). Opposer's only objection to this request is that that it is unduly

burdensome to the extent that it requests documents and things outside the control of Opposer. Since Applicant is only requesting documents that are, in fact, in the "possession, custody or control" of Opposer, there is no valid objection to this request. Accordingly, Opposer should be required to produce all responsive documents in its possession, custody or control.

Regarding Request No. 13 and 14, Applicant is seeking documents relating to the business relationship (or a possible business relationship) between Applicant and Opposer. Opposer's only objection to this request is that that it is unduly burdensome to the extent that it requests documents and things outside the control of Opposer. Since Applicant is only requesting documents that are, in fact, in the "possession, custody or control" of Opposer, there is no valid objection to this request. Accordingly, Opposer should be required to produce all responsive documents in its possession, custody or control.

REQUEST FOR RELIEF

A. Applicant moves this Board for an Order compelling Opposer, within fifteen (15) days from the date of the Order, to fully and completely respond to all of Applicant's December 31, 2018 Requests for Production of Documents and Things, without objections. Further, with regard to any documents or things being withheld, Opposer be required to identify such documents being withheld. Further, if no responsive documents exist, Opposer be required to respond by stating in response to the request that "no responsive documents exist."

B. Applicant moves this Board to direct Opposer to serve, within fifteen (15) days from the date of the Order, hard or electronic copies of all responsive documents and things to counsel for Applicant at the expense of Opposer, or be prevented from introducing any evidence that should have been produced at Trial.

C. Applicant moves this Board to reset the close of discovery and subsequent deadlines to allow Applicant only time to conduct follow up discovery and depositions after the time allocated for Opposer to provide complete and full responses and production to the discovery detailed herein.

D. Applicant further moves this Board for any other relief it deems appropriate.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board grant its Motion to Compel and grant all other appropriate relief.

Date: June 11, 2019

/Michael C. Petock/

MICHAEL C. PETOCK, ESQUIRE
Attorney ID No. 93,692
PETOCK & PETOCK, LLC
46 The Commons at Valley Forge
1220 Valley Forge Road
P.O. Box 856
Valley Forge, PA 19482-0856
Telephone No. (610) 935-8600
mp@petocklaw.com
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2019 a true and complete copy of the foregoing **APPLICANT'S MOTION TO COMPEL** has been served on the following counsel for ENGIE INSIGHT SERVICES INC. by electronic mail to:

J. Christopher Lynch
Lee & Hayes, PLLC
601 W Riverside Ave Ste. 1400
Spokane, WA 99201
UNITED STATES
chris@leehayes.com

/Michael C. Petock/

Michael C. Petock, Esq.
PETOCK & PETOCK, LLC
1220 Valley Forge Road
P.O. Box 856
Valley Forge, PA 19482-0856
Tel: (610) 935-8600
Fax: (610) 933-9300
mp@petocklaw.com
PA Attorney ID No. 93,692
Attorney for Applicant

Exhibit A

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ENGIE INSIGHT SERVICES INC.	]	
	]	
	]	
Opposer	]	
	]	
vs.	].	Opposition No.: 91243210
	].	Application No.: 87/532,516
ATSITE, INC.	].	Mark: INSITE
	].	Filed: July 18, 2017
Applicant.	].	Published for Opposition: June 26, 2018
	]	

APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

Applicant AtSite, Inc. ("Applicant"), by and through its attorneys, requests that Engie Insight Services Inc. ("Opposer") produce for inspection and copying the following documents and things. Such documents and things shall be produced for inspection and copying at the offices of Petock & Petock, LLC, 1220 Valley Forge Road #46, P.O. Box 217, Valley Forge, PA 19481, within the time specified by the Federal Rules of Civil Procedure or at such other time and place mutually agreed to by the parties.

DEFINITIONS

1. "Applicant" means AtSite, Inc.

2 "Opposer" means Engie Insight Services Inc., including its employees, agents, representatives, predecessors or successors in interest, anyone acting on behalf or at its request, including its attorneys, consultants, expert witnesses, or any other individuals employed in any way by Opposer, in connection with any matter concerning or alleged in these proceedings. The definition is not intended to impose discovery obligations beyond those authorized by the Federal Rules of Civil Procedure.

3. The pronouns “you,” “your,” or “yours” as used herein shall be synonymous with the term “Opposer.”

4. The terms “confusion” and “likelihood of confusion,” in addition to their usual and customary meaning, shall have the meanings ascribed to them by the Trademark Act. Section 2(d). 15 U.S.C. § 1052(d).

5. The terms “merely descriptive” in addition to its usual and customary meaning, shall have the meanings ascribed to it by the Trademark Act. Section 2(e). 15 U.S.C. § 1052(e).

6. The terms “relating to,” “relate to,” or “relates to” mean evidencing, constituting, referring to, comprising, illustrating, recording, memorializing, concerning, or discussing.

7. The phrase “use in commerce” incorporates the definition set forth in 15 U.S.C. § 1127.

8. “Applicant’s Mark” means Applicant’s INSITE mark which is the subject of U.S. Application Serial No. 87/532,516 and U.S. Registration No. 4,659,66.

9. The term “Opposer’s Mark” means the mark ENGIE INSIGHT.

10. The term “documents” shall mean both “documents” and “things,” as those terms are defined in Federal Rule of Civil Procedure 34, and includes any and all written, recorded, printed, or graphic matter, however produced or reproduced, of any kind and description, including but not limited to communications, correspondence, letters, notes, press releases, interoffice and intraoffice communications, telephone calls, emails, instant messages, electronic chat logs, memorandum of meetings, reports, directives, inter-company communications, diaries, logs, summaries, contracts, licenses,

ledgers, books of account, vouchers, checks, invoices, charge slips, receipts, freight bills, working papers, drawings, sketches, photographs, models, and writings of every kind or description, tape recordings, computer printouts, magnetic cards, microfilm, microfiches, data, computer files, or other information stored electronically or mechanically or by any other means, including both originals and copies. A draft or non-identical copy is a separate document within the meaning of this term.

11. The term "communication" means any document or tangible thing, correspondence, oral statement, meeting or conference, formal or informal, at any time or place and under any circumstance whatsoever, whereby information of any nature was stated, written, disclosed, transferred, exchanged, recorded, or in any manner transmitted or transferred.

12. The terms "bearing" and "under" mean bearing, containing, reflecting, or used on or in connection with.

13. The phrase "documents sufficient to show" shall mean enough documents to adequately, accurately, and completely address the subject matter of the request.

14. The term "all" as used herein shall also mean "any and all."

15. The terms "and" and "or" as used herein shall be construed conjunctively or disjunctively to bring within the scope of these requests any and all information which might otherwise be construed as outside their scope.

16. The term "person" or "persons" as used herein shall mean any legal entity including natural person, corporations, partnerships, estates, or any other kind of legal entity.

17. The term "request" means requests, requests for production, requests for admissions and interrogatories.

18. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun and vice versa. The use of the masculine form of a pronoun also includes within its meaning the feminine form of the pronoun so used, and vice versa; and the use of any tense of any verb also includes within its meaning all other tenses of the verb so used.

INSTRUCTIONS

1. If any document is withheld under a claim of attorney-client privilege, the attorney work-product doctrine, or any other privilege, provide the following information:

(a) identifying information for each document including: the date of the document (as it appears on the document; or if no date appears thereon, so state and give the date or approximate date on which the document was prepared), number of pages, the type of information it contains (e.g. text, graphics, statistics), the title of the document, the type of document (e.g. memorandum, letter, brief, transcript, report, drawing), the author(s), the addressee(s), and the person(s) to whom the document or a copy thereof was sent. In addition to providing these names, identify the positions or titles of all persons mentioned in the document whether or not they are attorney(s); and

(b) a specification of which privilege is claimed, and, where more than one privilege is asserted for a document, the portions of that document to which each specified privilege applies.

2. The following are continuing requests, so as to require further and supplemental production promptly if Opposer receives, locates, or generates additional documents called for herein between the time of original production and the entry of judgment in this proceeding.

3. Opposer shall produce responsive documents within its possession, custody, or control and within the possession, custody, or control of its agents, attorneys or representatives.

4. If a document requested was, but no longer is, in the possession, custody, or control of Opposer, explain whether the document is missing or lost, has been destroyed, has been transferred to another person, or has been disposed of in some other manner. Also, explain the manner of such disposition, give the date or approximate date of such disposition, and provide the name and last known residence and business address of each person with knowledge of the circumstances surrounding such disposition.

5. Electronically stored documents shall be produced in searchable Adobe PDF format created directly from the native electronic document.

6. Paper documents shall be produced as multi-page, searchable Adobe PDF files.

7. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, all documents produced for inspection shall be produced as they are kept in the usual course of business, and each document so produced shall be organized in a manner that clearly corresponds to the Request set forth herein.

DOCUMENTS REQUESTED

Request No. 1.

All documents that Opposer was required to identify in response to Applicant's First Set of Interrogatories to Opposer, or from which information was obtained in preparing the responses to the First Set of Interrogatories.

Response:

Request No. 2.

All documents relating to the selection, availability, adoption, creation, design, proposed use, intent to use, attempt to register, or registration of Opposer's Mark, including without limitation, any minutes or notes from any meetings in which such topics were discussed.

Response:

Request No. 3.

All documents relating to any search or evaluation of any records conducted by or on behalf of Opposer to determine whether other persons had used or sought registration of any word or phrase similar to Opposer's Mark, or whether Opposer's use of Opposer's Mark would conflict with the rights of any person.

Response:

Request No. 4.

All documents relating to Opposer's consideration of filing a trademark application for registration of Opposer's Mark.

Response:

Request No. 5.

All documents including communications to any person related to, mentioning or referring to any application to register any mark containing the term "INSIGHT".

Response:

Request No. 6.

All documents relating to Applicant or Applicant's Mark.

Response:

Request No. 7.

All documents relating to any communications between Opposer and any other person regarding this dispute.

Response:

Request No. 8.

All documents relating to confusion as to a relationship or association between Applicant's products and services offered under Applicant's Mark and Opposer's products and services offered under Opposer's Mark.

Response:

Request No. 9.

All documents relating to any press releases, newspaper articles, blogs, websites, or other publications which mention Opposer's Mark or any of the products or services sold or rendered under Opposer's Mark.

Response:

Request No. 10.

All documents which Opposer contends demonstrate that Applicant's mark is merely descriptive.

Response:

Request No. 11.

All documents referenced in or relating to Opposer's Notice of Opposition.

Response:

Request No. 12.

All documents relating to communications between Opposer and/or Ecova on the one hand and CleaResult on the other hand mentioning or referring to Applicant.

Response:

Request No. 13.

All documents referring to, mentioning or related to the business relationship between Opposer (formally Ecova) and Applicant.

Response:

Request No. 14.

All documents referring to, mentioning or related to discussions for a possible business relationship between Opposer (formally Ecova) and Applicant.

Response:

Date: December 31, 2018

/Michael C. Petock/

MICHAEL C. PETOCK, ESQUIRE
Attorney ID No. 93,692
PETOCK & PETOCK, LLC
46 The Commons at Valley Forge
1220 Valley Forge Road
P.O. Box 856
Valley Forge, PA 19482-0856
Telephone No. (610) 935-8600
mp@petocklaw.com
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2018 a true and complete copy of the foregoing **APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS** has been served on the following counsel for ENGIE INSIGHT SERVICES INC. by electronic mail to:

J. Christopher Lynch
Lee & Hayes, PLLC
601 W Riverside Ave Ste. 1400
Spokane, WA 99201
UNITED STATES
chris@leehayes.com

/Michael C. Petock/

Michael C. Petock, Esq.
PETOCK & PETOCK, LLC
1220 Valley Forge Road
P.O. Box 856
Valley Forge, PA 19482-0856
Tel: (610) 935-8600
Fax: (610) 933-9300
mp@petocklaw.com
PA Attorney ID No. 93,692
Attorney for Applicant

Exhibit B

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ENGIE INSIGHT SERVICES INC.	]	
	]	
Opposer	]	
	]	
vs.	]	Opposition No.: 91243210
	]	Application No.: 87/532,516
ATSITE, INC.	]	Mark: INSITE
	]	Filed: July 18, 2017
Applicant.	]	Published for Opposition: June
	]	26, 2018

OPPOSER'S RESPONSES TO ATSITE, INC.'S FIRST SET OF DOCUMENT REQUESTS

GENERAL STATEMENTS AND OBJECTIONS

1. Opposer objects to each of Applicant's First Set of Document Requests ("Requests") from the opposition proceeding as well as to the "Definitions" and "Instructions" portions of the Requests to the extent they seek to expand the scope and obligations of discovery beyond that provided for in the Federal Rules of Civil Procedure.

2. Opposer objects to each of the Requests, as well as to the "Definitions" and "Instructions" portion of the Requests, to the extent they seek reference information, documents or things not in their possession, custody or control, including, without limitation, personal files, documents, records or other things, of its employees, officers, directors or agents.

3. Opposer objects to each of the Requests, as well as to the "Definitions" and "Instructions" portions of the Requests, to the extent they seek disclosure of information about uses and trademarks not at issue in this Proceeding or evidence relevant to issues that have no legal significance in this proceeding.

4. Opposer objects to each of the Requests on the grounds that, as expanded by the "Instructions" portion of the Requests, as well as certain preamble or explanatory language, they are overly-broad, unduly burdensome, oppressive and seek information that is obtainable more easily and less expensively through deposition testimony or other discovery methods.

5. Opposer objects to the Requests to the extent they seek information regarding damages and confidential financial information beyond the scope of this Proceeding.

6. Opposer objects to the Requests, as well as to the "Definitions" and "Instructions" portions of the Requests, to the extent they seek disclosure of an attorney's legal theories or mental impressions, or information protected by the attorney/client or accountant/client privilege, the work product doctrine, and/or any other applicable privilege or statutory or contractual restriction on disclosure. Opposer will not provide information or documents

that are protected from disclosure under any of the foregoing privileges or doctrines. An inadvertent disclosure of such documents or information shall not constitute a waiver of any privilege or of any other ground for objection to disclosure of the documents or information, nor shall inadvertent disclosure waive the right of Opposer to object to the use of any such documents or information during any subsequent proceeding. Opposer and its counsel hereby claim these privileges and object to any such Request on this basis.

7. Opposer objects to each Request to the extent that it may be construed as calling for information which constitutes or contains trade secret, proprietary, confidential, or commercially sensitive information, or other information, the disclosure of which would result in substantial injury to Opposer.

8. The disclosure of information or production of any document is without waiver of any privilege or claim of confidentiality. In the event that any privileged information is disclosed, or any privileged document is produced by Opposer, the disclosure or production is inadvertent and is not intended to constitute waiver of any privilege. Any privileged documents inadvertently produced shall be returned immediately to Opposer without any further review by Applicant or it agents.

9. Opposer objects to each Request to the extent that it may be construed as calling for information neither relevant to the claims and defenses in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

10. Opposer objects to each Request to the extent that it may be construed as calling for information already in the possession, custody or control of Applicant, or that is available from public sources, on the grounds that such a request is unduly burdensome and oppressive, and as such, exceeds the bounds of permissible discovery.

11. Opposer objects to each Request to the extent that it seeks discovery of documents beyond what are available from a reasonable search of files likely to contain relevant or responsive documents.

12. To the extent Opposer states that responsive documents have been produced, that statement means it has produced relevant documents that are neither privileged nor otherwise protected from disclosure, if found following a reasonable search therefore. Neither a response nor an objection to any of these document requests should be construed as meaning that any responsive documents exist, but only that it has conducted a reasonable search for, and has provided copies of, any relevant and responsive documents that are neither privileged nor otherwise protected from production, in its

possession, custody, or control, as they are kept in the usual course of business.

13. Opposer reserves the right to redact from otherwise responsive and non-privileged documents portions thereof that contain information that is (i) not relevant to the claims asserted by the parties or their defenses; (ii) non-responsive; or (iii) privileged or otherwise protected from production.

14. Opposer objects to each of the Requests, as well as to the "Definitions" and "Instructions" portions of the Requests, to the extent they seek reference information, documents or things not in their possession, custody or control, including, without limitation, personal files, documents, records or other things, of its employees, officers, directors or agents.

15. Opposer reserves the right to supplement its Responses as additional information becomes known during discovery in this action. The specific responses below are based upon information now available to Opposer, and Opposer reserves the right to revise, correct, add to or clarify the objections or responses set form herein. Failure to object herein shall not constitute waiver of any objection that Opposer may interpose as to the future supplemental responses. Each of these general objections is incorporated into each of the responses set forth below, which responses are made without waiver of any of these general objections. The responses set forth below

represent Opposer's present knowledge, based on discovery, investigation, and trial preparation to date. Discovery, investigation, and trial preparation are continuing. Opposer expressly reserves the right to rely upon further information and/or documents discovered upon completion of discovery, investigation, and trial preparation.

DOCUMENTS REQUESTED

Request No. 1.

All documents that Opposer was required to identify in response to Applicant's First Set of Interrogatories to Opposer, or from which information was obtained in preparing the responses to the First Set of Interrogatories.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to the extent this Request seeks to invade the attorney-client privilege and/or work product doctrine by asking Opposer to divulge legal theories. Opposer also objects to this Request to the extent it purports to require Opposer to prove something now at this stage that requires discovery from Applicant. By requiring Opposer to sift through certain documents that Applicant has not yet provided or produced in this opposition, Opposer objects to this Request because it is unduly burdensome to the extent it seeks

information about documents in the possession, custody, and control of Applicant. Opposer also objects to this Request to the extent it seeks information pertaining to Applicant's trademarks not relevant to this matter.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 2.

All documents relating to the selection, availability, adoption, creation, design, proposed use, intent to use, attempt to register, or registration of Opposer's Mark, including without limitation, any minutes or notes from any meetings in which such topics were discussed.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this request to the extent it requests production of attorney-client privileged work product. Opposer also objects to this Request to the extent it requests production of documents that are not relevant to any claim or defense in this matter.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 3.

All documents relating to any search or evaluation of any records conducted by or on behalf of Opposer to determine whether other persons had used or sought registration of any word or phrase similar to Opposer's Mark, or whether Opposer's use of Opposer's Mark would conflict with the rights of any person.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this request to the extent it requests production of attorney-client privileged work product. Opposer also objects to this Request to the extent it requests production of documents that are not relevant to any claim or defense in this matter.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 4.

All documents relating to Opposer's consideration of filing a trademark application for registration of Opposer's Mark.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request to the extent it requests production of

attorney-client privileged work product. Opposer also objects to this Request to the extent it requests production of documents that are not relevant to any claim or defense in this matter. Opposer further objects to this Request on the basis that it is unduly burdensome to the extent it requests unreasonably duplicative production of all materials described above.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 5.

All documents including communications to any person related to, mentioning or referring to any application to register any mark containing the term "INSIGHT".

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request on the basis that it is unduly burdensome to the extend it requests unreasonably duplicative production of all materials described above. Opposer also objects to this request to the extent it requests production of attorney-client privileged work product.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 6.

All documents relating to Applicant or Applicant's Mark.

Response:

Opposer incorporates its general objections by reference. Opposer objects to this request to the extent it requests production of attorney-client privileged communications and work product. Opposer also objects to this Request to the extent it seeks information pertaining to Applicant's trademarks not relevant to this matter. Opposer further objects to this Request on the basis that it is overly-broad and unduly burdensome.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 7.

All documents relating to any communications between Opposer and any other person regarding this dispute.

Response:

Opposer incorporates its general objections by reference. Opposer objects to this request to the extent it requests production of attorney-client privileged communications and work product. Opposer further objects to this Request as it is unduly burdensome to the extent it seeks information about documents in the possession, custody, and control of Applicant.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 8.

All documents relating to confusion as to a relationship or association between Applicant's products and services offered under Applicant's Mark and Opposer's products and services offered under Opposer's Mark.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request on the basis that it exceeds the permissible scope of discovery as it is not relevant to any claim or defense at issue in this case. Opposer further objects to this request to the extent it requests production of attorney-client privileged work product. Opposer also objects to this Request to the extent it seeks information pertaining to Applicant's trademarks not relevant to this matter.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 9.

All documents relating to any press releases, newspaper articles, blogs, websites, or other publications which mention Opposer's Mark or any of the products or services sold or rendered under Opposer's Mark.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request as unduly burdensome to the extent it requests production of Documents and things outside the control of Opposer. Opposer also objects to this Request to the extent it seeks information pertaining to Applicant's trademarks not relevant to this matter.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 10.

All documents which Opposer contends demonstrate that Applicant's mark is merely descriptive.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this request to the extent it requests production of attorney-client privileged communications and work product. Opposer further objects to this Request on the basis that it is unduly burdensome to the extent it requests unreasonably duplicative production of all materials described in Request No. 1. Opposer also objects to this Request to the extent it purports to require Opposer to prove something now at this stage that requires discovery from Applicant. By requiring Opposer to sift through certain

documents that Applicant has not yet provided or produced in this opposition, Opposer objects to this Request because it is unduly burdensome to the extent it seeks information about documents in the possession, custody, and control of Applicant. Opposer also objects to this Request to the extent it seeks information pertaining to Applicant's trademarks not relevant to this matter.

Subject to and without waiving the foregoing objections, Opposer responds as follows: Opposer will rely on documents in the custody or control of Applicant to support its position, which Opposer is attempting to obtain. Including Applicant's website, marketing material, memorandum, press releases, correspondence, and reports.

Opposer will supplement this Request with additional non-privileged documents and things responsive as it becomes available.

Request No. 11.

All documents referenced in or relating to Opposer's Notice of Opposition.

Response:

Opposer incorporates its general objections by reference. Opposer objects to this request to the extent it requests production of attorney-client

privileged communications and work product. Opposer further objects to this Request because the meaning of "referenced in or relating to" is vague.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 12.

All documents relating to communications between Opposer and/or Ecova on the one hand and CleaResult on the other hand mentioning or referring to Applicant.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request as unduly burdensome to the extent it requests production of Documents and things outside the control of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 13.

All documents referring to, mentioning or related to the business relationship between Opposer (formally Ecova) and Applicant.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request as unduly burdensome to the extent it requests production of Documents and things outside the control of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

Request No. 14.

All documents referring to, mentioning or related to discussions for a possible business relationship between Opposer (formally Ecova) and Applicant.

Response:

Opposer incorporates its general objections by reference. Opposer further objects to this Request as unduly burdensome to the extent it requests production of Documents and things outside the control of Opposer.

Subject to and without waiving the foregoing objections, Opposer will produce non-privileged documents and things responsive to this request.

/ / /

DATED this 30th day of January, 2019.

By: /J. Christopher Lynch/

J. CHRISTOPHER LYNCH
JOSHUA T. GRANDINETTI
Lee & Hayes, P.C.
601 W. Riverside Avenue, Suite 1400
Spokane, WA 99201
Telephone: (509) 324-9256
Fax: (509) 323-8979
Email: chris@leehayes.com
jgrandinetti@leehayes.com

Attorneys for Opposer Engie Insight Services Inc.

CERTIFICATION OF COUNSEL

The undersigned attorney for the party responding to the above discovery matters signs this response in compliance with Fed. R. Civ. P. 26(g).

/J. Christopher Lynch/
J. CHRISTOPHER LYNCH
Lee & Hayes, P.C.
601 W. Riverside Ave., Suite 1400
Spokane, WA 99201
Telephone: (509) 944-4792
Fax: (509) 323-8979
chris@leehayes.com

Attorneys for Opposer Engie Insight Services Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2019, I caused the foregoing Opposer's Responses to AtSite, Inc.'s First Set of Document Requests to be served upon Applicant's attorneys of record by emailing the same as follows:

Michael C. Petock, Esq.
Petock & Petock., LLC
46 The Commons at Valley Forge
1220 Valley Forge Road
P.0. Box 856
Valley Forge, PA 19482-0856
Tel: (610)935-8600
Fax: (610) 933-9300
mp@petocklaw.com

/J. Christopher Lynch/
J. CHRISTOPHER LYNCH
Lee & Hayes, P.C.
601 W. Riverside Ave., Suite 1400
Spokane, WA 99201
Telephone: (509) 944-4792
Fax: (509) 323-8979
chris@leehayes.com

Attorneys for Opposer Engie Insight Services Inc.

Exhibit C

Re: Discovery conference in Cancellation

Michael Petock

Tue 4/16/2019 1:01 PM

Sent Items

To: Chris Lynch <chris@leehayes.com>;

Chris:

You had promised the document production would occur on April 8th, but we still haven't received anything. We soon will need to consider filing a motion to compel which we very much want to avoid. Can you please make sure the document production happens by April 24th so we can avoid getting the Board involved?

Thanks very much and I appreciate your cooperation and assistance.

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Chris Lynch <chris@leehayes.com>
Sent: Monday, March 25, 2019 2:18 PM
To: Michael Petock
Subject: RE: Discovery conference in Cancellation

I spoke with Engie.
They will be ready to produce documents two weeks from today.
JCL

From: Chris Lynch
Sent: Monday, March 18, 2019 8:08 AM
To: 'Michael Petock' <mp@petocklaw.com>
Subject: RE: Discovery conference in Cancellation

I am sorry for the delayed response as I was back in DC Thursday and Friday.
There was a delay with Engie but I will get the firm date to update our production.
JCL

From: Michael Petock <mp@petocklaw.com>
Sent: Thursday, March 14, 2019 11:18 AM
To: Chris Lynch <chris@leehayes.com>

Subject: Re: Discovery conference in Cancellation
Importance: High

Chris:

I am following up again regarding your client's document production. We really need the production without further delay. The requests were served almost 3 months ago. You had told on February 25th that at least you would give me a firm date as to when they would be produced, but I have not heard from you since. Please let me know by tomorrow when the documents will be produced. Thanks very much.

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Michael Petock
Sent: Monday, March 11, 2019 6:46 AM
To: Chris Lynch
Subject: Re: Discovery conference in Cancellation

Chris:

I did not hear back from you with regard to your Client's document production. Please advise as to when the documents will be produced.

Thank you and please let me know if you have any questions.

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Chris Lynch <chris@leehayes.com>
Sent: Monday, February 25, 2019 11:33 AM
To: Michael Petock
Subject: RE: Discovery conference in Cancellation

I have a call with Engie this week to discuss the documents, so I should have a more firm date this week for you.
JCL

From: Michael Petock <mp@petocklaw.com>
Sent: Thursday, February 21, 2019 6:19 AM
To: Chris Lynch <chris@leehayes.com>
Subject: Re: Discovery conference in Cancellation
Importance: High

Chris:

Following up on our discussion from the discovery conference, we still have not received any documents in response to Applicant's First Request for Production of Documents (served 12/31/2018). When can we expect the production?

Also, I am in receipt of the stipulation regarding consolidation. I will be reviewing that shortly and will be in touch.

Thanks very much!

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Michael Petock
Sent: Monday, February 4, 2019 11:57 AM
To: Chris Lynch
Subject: Re: Discovery conference in Cancellation

Sounds good!

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Chris Lynch <chris@leehayes.com>
Sent: Monday, February 4, 2019 11:51 AM

To: Michael Petock
Subject: RE: Discovery conference in Cancellation

How about 10am pacific/1pm eastern on Wednesday.
You can call my direct line 509-944-4792 if that works.
JCL

From: Michael Petock [mailto:mp@petocklaw.com]
Sent: Monday, February 4, 2019 8:50 AM
To: Chris Lynch <chris@leehayes.com>
Subject: Re: Discovery conference in Cancellation

Hi Chris:

Wednesday anytime before 2 PM EST works for me. Please let me know what time.

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Chris Lynch <chris@leehayes.com>
Sent: Monday, February 4, 2019 11:22 AM
To: Michael Petock
Subject: Discovery conference in Cancellation

Mr. Petock: I have Friday on my calendar for our Discovery Conference deadline.
I am out of town Friday, but am available Wednesday or Thursday if you have time then please let me know. I could also do it on Monday.
Engie will have no other positions than as we discussed for the Opposition – our positions and theories are the same in the Cancellation.
Thank you.
JCL

J. Christopher Lynch
(509) 944-4792
chris@leehayes.com
Lee & Hayes pllc, Intellectual Property Law

601 West Riverside, Suite 1400, Spokane, WA 99201 | 509.323.8979 fax | www.leehayes.com

Re: Engie Impact (fka Engie Insight) v. At Site -- TTAB matters

Michael Petock

Tue 5/28/2019 11:37 AM

Sent Items

To: Chris Lynch <chris@leehayes.com>;

Cc: Caleb Hatch <Caleb.Hatch@leehayes.com>;

Chris, let me know when you hear back and we can schedule the call. Thanks!

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Chris Lynch <chris@leehayes.com>
Sent: Tuesday, May 28, 2019 11:17 AM
To: Michael Petock
Cc: Caleb Hatch
Subject: RE: Engie Impact (fka Engie Insight) v. At Site -- TTAB matters

I am waiting for instruction from my client, not sure if I will get that today.
I can do a call tomorrow at 1:30pm eastern time or Thursday at the same time.
I'd prefer to have the call after I have authority, so I will keep you advised when I hear from Mr. Uri.
Thank you.
JCL

From: Michael Petock <mp@petocklaw.com>
Sent: Tuesday, May 28, 2019 7:39 AM
To: Chris Lynch <chris@leehayes.com>
Cc: Caleb Hatch <Caleb.Hatch@leehayes.com>
Subject: Re: Engie Impact (fka Engie Insight) v. At Site -- TTAB matters

[External Email]

Chris:

A call would be good. Please let me know your availability this week. I could do today anytime or tomorrow early afternoon EST. Thanks!

Sincerely,

Michael C. Petock
Petock & Petock, LLC

p: (610) 935-8600 a: 1220 Valley Forge Rd #46, PO Box 217
Valley Forge, PA 19481
w: www.petocklaw.com e: mp@petocklaw.com

From: Chris Lynch <chris@leehayes.com>
Sent: Thursday, May 23, 2019 3:42 PM
To: Michael Petock
Cc: Caleb Hatch
Subject: RE: Engie Impact (fka Engie Insight) v. At Site -- TTAB matters

Michael: I am just returning today from INTA.
I will pass this along and we can have a call next week which I can do on Tuesday 5/28.
Thank you.
JCL

From: Michael Petock <mp@petocklaw.com>
Sent: Tuesday, May 21, 2019 12:37 PM
To: Chris Lynch <chris@leehayes.com>
Cc: Caleb Hatch <Caleb.Hatch@leehayes.com>
Subject: Re: Engie Impact (fka Engie Insight) v. At Site -- TTAB matters

[External Email]

Chris:

[redacted]

It does appear that we are back where we were, unfortunately.

I believe I have made a good faith effort to resolve the discovery issues (re: Engie's document production). I have asked for (and you have generally been promised in response) Engie's document production on 2/8/19; 2/21/19; 3/11/19; 3/14/19 and 4/16/19. However, still no documents have been produced. Of course, I acknowledge that we were hoping for a settlement the last few weeks and focused on that.

Nevertheless, my client has a right to the requested documents. I would very much like to avoid a Motion to Compel, but if the documents are not produced, I will take that route. Could you please provide the production by next Tuesday May 28th? After that if there are still issues, I will have to file a Motion to Compel.

Thanks very much and please let me know if you have any questions.

Sincerely,