

ESTTA Tracking number: **ESTTA1022993**

Filing date: **12/16/2019**

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

Proceeding	91249500
Party	Plaintiff eBay Inc.
Correspondence Address	CATHERINE C MILLER HOLLAND & HART LLP PO BOX 8749 , ATTN TRADEMARK DOCKETING DENVER, CO 80201 UNITED STATES docket@hollandhart.com, ccmiller@hollandhart.com, hihamilton@hollandhart.com, ebay@hollandhart.com 303-245-2092
Submission	Opposition/Response to Motion
Filer's Name	Hope Hamilton
Filer's email	docket@hollandhart.com, ccmiller@hollandhart.com, hihamilton@hollandhart.com, ebay@hollandhart.com
Signature	/Hope Hamilton/
Date	12/16/2019
Attachments	Opposer response to Applicant Motion to Suspend Wout Consent.pdf(726051 bytes)

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

EBAY, INC., Opposer, v. BITBAY SPÓLKA Z OGRANICZONA ODPOWIEDZIALNOSCIA, Applicant.	Opposition No.: 91249500 Mark: BITBAY Serial No.: 79239507
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**OPPOSER EBAY, INC.’S RESPONSE TO APPLICANT’S MOTION TO SUSPEND
WITHOUT CONSENT AND
JOINT PROPOSAL FOR SHORT SUSPENSION AND RESETTING OF DEADLINES**

eBay, Inc. (“Opposer”) hereby (1) responds to the Motion to Suspend Without Consent filed by Bitbay Spółka Z Ograniczona Odpowiedzialnoscia (“Applicant”) on November 23, 2019 (5 TTABVUE) and (2) offers a Joint Proposal for Short Suspension and Resetting of Deadlines to supersede the deadlines previously proposed by Applicant in its Motion.

BACKGROUND

1. Since as early as October 2017, Opposer has been actively communicating with Applicant and opposing Applicant’s International Registration No. 1419923 (based on a Polish national application), which was extend to 55 countries. Opposer has initiated over 25 oppositions; and, with the exception of a handful of jurisdictions, Applicant has elected not to defend against those oppositions. *See* Declaration of Hope Hamilton, ¶¶ 2, 8 (“Hamilton Decl.”).

2. On September 23, 2019, the parties held the discovery conference for this proceeding and agreed to “wait to serve initial disclosures until the deadline to allow” Applicant’s counsel to “contact [his] client about consolidating global settlement discussion.”

The Parties also agreed to “circle back as the deadline approaches to discuss suspending the proceeding if necessary.” *Id.* at ¶ 3 and Exhibit 1.

3. On October 11, 2019, Opposer followed up to see if Applicant had any developments to report on settlement. On October 13, 2019, Applicant’s counsel responded that he had “not heard back from [Applicant] yet.” *Id.* at ¶ 4 and Exhibit 2.

4. On October 17, 2019, Opposer informed Applicant that it was going to proceed “to fast track this [case] given the numerous proceedings ongoing worldwide.” *Id.* at ¶ 5 and Exhibit 3.

5. On October 28, 2019, Opposer served its first set of discovery requests and expressly cautioned: “[T]o avoid any confusion, we do not have authorization to extend the response deadline.” *Id.* at ¶ 6 and Exhibit 4.

6. On November 18, 2019, Applicant sent a letter outlining a settlement proposal, together with a request for consent to suspend the proceeding. *Id.* at ¶ 7 and Exhibit 5.

7. Within hours of receiving that settlement proposal and request to suspend, Opposer responded to reiterate: “[W]e have standing instructions to aggressively litigate all matters and to consider settlement in parallel. We therefore do not have authority to suspend the discovery responses deadline or to grant any extensions of time.” Opposer’s counsel also cautioned that, “[w]e cannot comment on whether eBay would consider this to be a viable settlement proposal or progress.” *Id.*

8. Applicant then elected to file a Motion to Suspend Without Consent on November 25, 2019 (5 TTABVUE).

9. Applicant’s discovery responses were due November 27, 2019.

10. On November 27, 2019, after filing its Motion, Applicant purported to serve discovery on eBay.

ARGUMENT

First, it is well-established that a unilateral motion to suspend based on one-side's position that it has tendered a settlement offer fails to set forth good cause for suspending these proceedings or delaying deadlines. *See Fairline Boats PLC v. The New Hampshire Boats Corp.*, 59 U.S.P.Q.2d 1479 (TTAB 2000) (holding that "even if the parties had been discussing settlement, the mere existence of such negotiations or proposals, without more, would not justify [applicant's] delay" and finding "no circumstances . . . to show any exception that proceedings would not move forward during any negotiations").

Second, Applicant has overstated the significance of the November 18, 2019 settlement offer presented to Opposer. Settlement talks between Opposer and Applicant have been ongoing for over two years. Opposer first contacted Applicant regarding its initial BITBAY application in Poland in October 2017 (Hamilton Decl. ¶ 2); and the parties have subsequently been engaged in worldwide opposition proceedings and negotiations ever since. Accordingly, and consistent with the Board's decision in *MacMillan Bloedel Ltd. v. Arrow-M Corp.*, 203 U.S.P.Q. 952, 953 (TTAB 1979), "it would be detrimental to suspend merely because [Applicant] has, after [two years], gotten around to responding to an outstanding settlement proposal."

Third, Applicant has misrepresented the purported need to "simultaneously coordinat[e] and devis[e] a defensive strategy against oppositions filed by Opposer in approximately 40 countries/jurisdictions" to justify a delay in responding to discovery. 5 TTABVUE, at 3. Opposer has initiated 29 (not 40) oppositions; and with the exception of a handful of jurisdictions, Applicant has elected not to defend. *See* Hamilton Decl. ¶ 8.

Fourth and finally, given that Opposer and Applicant have been actively disputing global registration of the BITBAY mark for over two years, Applicant has no good faith basis to assert that it was unprepared to timely respond to discovery in this proceeding. Moreover, even though Opposer initially stated during the discovery conference that it may be open to a possible suspension for settlement, Opposer informed Applicant of its changed strategy on October 17, 2019. Hamilton Decl. ¶ 5 and Exhibit 3. And, thereafter, Opposer repeatedly cautioned Applicant’s U.S. counsel that Opposer intended to move forward with the U.S. opposition proceeding in parallel with discovery and settlement. *See* Hamilton Decl. ¶ 5-7, Exhibits 3-5. Applicant’s failure to timely respond to discovery is a result of Applicant’s own lack of diligence. *See Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 U.S.P.Q.2d 1925 (TTAB 1999) (finding no good cause to extend).

For these reasons, Applicant has not established good cause to *unilaterally* suspend these proceedings without consent.

JOINT PROPOSAL FOR SHORT SUSPENSION AND RESETTING OF DEADLINES

Without waiving the foregoing arguments, Opposer declares (*see* Hamilton Decl. ¶ 9) that the Parties have further met and conferred regarding Applicant’s suspension request. And, in an effort to reset the schedule and clarify existing deadlines, the Parties consent to suspend the proceeding through **January 27, 2020**, resetting the deadlines as follows:

	Current Schedule	Proposed Schedule
Time to Answer	08/24/2019 (CLOSED)	08/24/2019 (CLOSED)
Deadline for Discovery Conference	09/23/2019 (CLOSED)	09/23/2019 (CLOSED)
Discovery Opens	09/23/2019 (CLOSED)	09/23/2019 (CLOSED)
Initial Disclosures Due	10/23/2019 (CLOSED)	10/23/2019 (CLOSED)
Expert Disclosures Due	02/20/2020	04/21/2020
Discovery Closes	03/21/2020	05/21/2020

Plaintiff's Pretrial Disclosures Due	05/05/2020	07/05/2020
Plaintiff's 30-day Trial Period Ends	06/19/2020	08/19/2020
Defendant's Pretrial Disclosures Due	07/04/2020	09/03/2020
Defendant's 30-day Trial Period Ends	08/18/2020	10/18/2020
Plaintiff's Rebuttal Disclosures Due	09/02/2020	11/02/2020
Plaintiff's 15-day Rebuttal Period Ends	10/02/2020	12/02/2020
Plaintiff's Opening Brief Due	12/01/2020	01/31/2021
Defendant's Brief Due	12/31/2020	03/02/2021
Plaintiff's Reply Brief Due	01/15/2021	03/17/2021
Request for Oral Hearing (optional) Due	01/25/2021	03/27/2021

The Parties also agree that, unless these proceedings are further suspended with the consent of *both* parties, Applicant's and Opposer's deadline to respond to outstanding discovery will be reset to **January 27, 2020**.

December 16, 2019

Respectfully submitted,

/Hope Hamilton/

Hope Hamilton
Catherine Miller
HOLLAND & HART LLP
P.O. Box 8749
Denver, Colorado 80201
Phone: (303) 473-4822
HHHamilton@hollandhart.com
CCMiller@hollandhart.com
docket@hollandhart.com
ebay@hollandhart.com

**Attorney for Opposer
eBay, Inc.**

CERTIFICATE OF SERVICE

I certify that on December 16, 2019, the undersigned served a copy of the above
**RESPONSE TO APPLICANT’S MOTION TO SUSPEND WITHOUT CONSENT AND
JOINT PROPOSAL FOR SHORT SUSPENSION AND RESETTING OF DEADLINES** to
Applicant by email at the address below:

Jun-Hwa Jeong
Scott Alprin
Rabin & Berdo PC
1101 14th Street NW, Suite 500
Washington, DC 20005
United States
firm@rabinberdo.com; salprin@rabinberdo.com

/Hope Hamilton/

Hope Hamilton

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

EBAY, INC., Opposer, v. BITBAY SPÓLKA Z OGRANICZONA ODPOWIEDZIALNOSCIA, Applicant.	Opposition No.: 91249500 Mark: BITBAY Serial No.: 79239507
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**DECLARATION OF HOPE HAMILTON IN RESPONSE TO APPLICANT’S MOTION
TO SUSPEND WITHOUT CONSENT AND JOINT PROPOSAL FOR SHORT
SUPENSION AND RESTTING OF DEADLINE**

I, Hope Hamilton, declare as follows:

1. I am an attorney for Holland & Hart LLP, and I am one of the attorneys of record for Opposer eBay, Inc. (“Opposer”) in this proceeding. I make this declaration based on personal knowledge.
2. Since as early as October 2017, Opposer has been actively communicating with Applicant and opposing Applicant’s International Registration No. 1419923 (based on a Polish national application), which was extend to 55 countries.
3. On September 23, 2019, the parties held the discovery conference for the instant proceeding and agreed to “wait to serve initial disclosures until the deadline to allow” Applicant’s counsel to “contact [his] client about consolidating global settlement discussion.” See attached as **Exhibit 1** and true and correct copy of an email memorializing those discussions.
4. Attached as **Exhibit 2** are true and correct copies of follow-up emails sent and received on October 11 and 13, 2019 regarding the status of settlement.

5. Attached as **Exhibit 3** is a true and correct copy of the October 17, 2019 email from Opposer, informing Applicant that Opposer was going to proceed “to fast track this [case] given the numerous proceedings ongoing worldwide.” (Although these emails contain FRE 408 headers, no substantive settlement information or proposals were exchanged and they are therefore not redacted.)

6. Attached as **Exhibit 4** a true and correct copy of Opposer’s October 28, 2019 email in which Opposer stated: “[T]o avoid any confusion, we do not have authorization to extend the response deadline.”

7. Attached as **Exhibit 5** are true and correct copies of Opposer and Applicant’s exchanges on November 18, 2019 pertaining to Opposer’s suspension request. (Confidential settlement communications have been redacted.)

8. Opposer has initiated 29 oppositions against Applicant; and Applicant has appeared to defend itself in only 5 of those proceedings. Opposer has also secured favorable decisions or default judgments in 13 of these proceedings.

9. On December 16, 2019, I met and conferred by phone with Applicant’s counsel, Scott Alprin, regarding the Joint Proposal for Short Suspension and Resetting of Deadlines. Mr. Alprin provided consent on behalf of Applicant to suspend the proceeding through January 27, 2020 (resetting deadlines as set out in Opposer’s Response) and agreeing that, unless these proceedings are further suspended with the consent of both parties, Applicant’s and Opposer’s deadline to respond to outstanding discovery will be reset to January 27, 2020.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of December 2019.

/s/ Hope Hamilton
Hope Hamilton

13961305_v1

Exhibit 1

Hope Hamilton

From: Catherine C. Miller <CCMiller@hollandhart.com>
Sent: Monday, September 23, 2019 12:51 PM
To: Scott Alprin
Cc: Holland & Hart - eBay; Hope Hamilton; Jun-Hwa Jeong; Tracy Zhang
Subject: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Scott,

I write to memorialize the terms discussed today during our initial discovery conference. As a general observation, if good cause exists, we are happy to revisit any of the points as the needs of the proceeding dictate.

1. Protective Order. The parties agree to be bound by the Board's standard protective order (<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>).
2. Schedule. The parties agree to be bound by the schedule as set. However, because BITBAY is a foreign entity, both parties will cooperate to extend deadlines as may be necessary to complete discovery. As we discussed, both sides will wait to serve initial disclosures until the deadline to allow you time to contact your client about consolidating global settlement discussions here in the US. We will circle back as the deadline approaches to discuss suspending the proceedings if necessary.
3. Discovery. The parties agree that Board Rules and Federal Rules of Civil Procedure governing discovery shall apply. Both parties intend to take discovery relevant to the Dupont factors (RFPs, Interrogatories, RFAs, depositions, experts, etc.).
4. Document Productions. The parties will take all necessary steps to preserve all relevant electronic materials and related metadata. The parties will have all available defenses in the event of spoliation. The parties also agree to produce documents by email with PDF attachment bearing Bates stamps (e.g., EBAY000001... and BIT000001...). The Parties agree to revisit the method and form of exchanging document discovery as the needs of the case dictate, including production of certain files in native format (e.g., Excel, PowerPoint, etc.).
5. Settlement. We provided some background on the global dispute. You will contact your client for an update regarding settlement.

Best regards,
Catherine

Catherine C. Miller
Attorney, Holland & Hart LLP
1800 Broadway, Suite 300, Boulder, CO 80302
T 303.245.2092



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Exhibit 2

Hope Hamilton

From: Scott Alprin <salprin@rabinberdo.com>
Sent: Sunday, October 13, 2019 1:12 PM
To: Holland & Hart - eBay
Cc: Hope Hamilton; Jun-Hwa Jeong; Tracy Zhang; Catherine C. Miller
Subject: Re: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Hello Hope,

We have not heard back from our client yet, and sent a reminder on Friday.

Best regards,

Scott

Scott Alprin
RABIN & BERDO, PC
Patent, Trademark and Copyright Law
1101 14th Street, N.W., Suite 500
Washington DC, 20005
Phone: (202) 371-8976
Fax: (202) 408-0924
Email: firm@rabinberdo.com - address for all official email correspondence
Website: www.rabinberdo.com

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From: Hope Hamilton <HIHamilton@hollandhart.com> on behalf of Holland & Hart - eBay <eBay@hollandhart.com>
Sent: Friday, October 11, 2019 2:23 PM
To: Scott Alprin <salprin@rabinberdo.com>; Catherine C. Miller <CCMiller@hollandhart.com>
Cc: Hope Hamilton <HIHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>
Subject: RE: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Scott,

Just checking in to see if you've had a chance to get the full download from your client and if there is any reason to try to meet and confer again on settlement on otherwise.

Thanks,
-Hope

Hope Hamilton

Holland & Hart LLP

One Boulder Plaza

1800 Broadway, Suite 300

Boulder, Colorado 80302

Phone (303) 473-4822

Fax (303) 416-8842

E-mail: hihamilton@hollandhart.com

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From: Scott Alprin <salprin@rabinberdo.com>

Sent: Monday, September 23, 2019 2:49 PM

To: Catherine C. Miller <CCMiller@hollandhart.com>

Cc: Holland & Hart - eBay <eBay@hollandhart.com>; Hope Hamilton <HHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>

Subject: Re: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Catherine:

It was good to talk with you and your colleague today (was it Hope, I didn't catch her name - sorry!). Please note that we do agree with your summary, expect the following wording, as we discussed: "The parties also agree to produce documents by email with PDF attachment bearing Bates stamps (e.g., EBAY000001... and BIT000001...)."

Best regards,

Scott Alprin

RABIN & BERDO, PC

Patent, Trademark and Copyright Law

1101 14th Street, N.W., Suite 500

Washington DC, 20005

Phone: (202) 371-8976

Fax: (202) 408-0924

Email: firm@rabinberdo.com - address for all official email correspondence

Website: www.rabinberdo.com

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From: Catherine C. Miller <CCMiller@hollandhart.com>

Sent: Monday, September 23, 2019 2:50 PM

To: Scott Alprin <salprin@rabinberdo.com>

Cc: Holland & Hart - eBay <eBay@hollandhart.com>; Hope Hamilton <HHamilton@hollandhart.com>; Jun-Hwa Jeong

<ijeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>

Subject: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

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3. Discovery. The parties agree that Board Rules and Federal Rules of Civil Procedure governing discovery shall apply. Both parties intend to take discovery relevant to the Dupont factors (RFPs, Interrogatories, RFAs, depositions, experts, etc.).
4. Document Productions. The parties will take all necessary steps to preserve all relevant electronic materials and related metadata. The parties will have all available defenses in the event of spoliation. The parties also agree to produce documents by email with PDF attachment bearing Bates stamps (e.g., EBAY000001... and BIT000001...). The Parties agree to revisit the method and form of exchanging document discovery as the needs of the case dictate, including production of certain files in native format (e.g., Excel, PowerPoint, etc.).
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Exhibit 3

Hope Hamilton

From: Hope Hamilton <HIHamilton@hollandhart.com> on behalf of Holland & Hart - eBay <eBay@hollandhart.com>
Sent: Thursday, October 17, 2019 10:50 AM
To: Scott Alprin
Cc: Jun-Hwa Jeong; Tracy Zhang; Catherine C. Miller; Hope Hamilton
Subject: RE: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

SUBJECT TO FRE 408

Thanks, Scott. We appreciate the update. As you might have guessed, we have instructions to fast track this given the numerous proceedings ongoing worldwide. Happy to revisit that if a viable settlement route presents itself.

Thanks,
-Hope

From: Scott Alprin <salprin@rabinberdo.com>
Sent: Thursday, October 17, 2019 11:29 AM
To: Holland & Hart - eBay <eBay@hollandhart.com>
Cc: Hope Hamilton <HIHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>; Catherine C. Miller <CCMiller@hollandhart.com>
Subject: Re: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

External Email

FRE 408 Applicable

Dear Hope:

We have heard from our client (a Polish law firm) that our client will be having internal discussions about how to proceed through November, and that we will be able to provide you with answers to many of the questions you raised in our telephone conference by the end of November. I know that such a delay will not be ideal from your perspective, but our client has asked for your indulgence in this regard.

Best regards,

Scott Alprin
RABIN & BERDO, PC
Patent, Trademark and Copyright Law
1101 14th Street, N.W., Suite 500
Washington DC, 20005
Phone: (202) 371-8976
Fax: (202) 408-0924

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From: Scott Alprin <salprin@rabinberdo.com>
Sent: Sunday, October 13, 2019 3:11 PM
To: Holland & Hart - eBay <eBay@hollandhart.com>
Cc: Hope Hamilton <HIHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>; Catherine C. Miller <CCMiller@hollandhart.com>
Subject: Re: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

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Scott Alprin
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From: Hope Hamilton <HIHamilton@hollandhart.com> on behalf of Holland & Hart - eBay <eBay@hollandhart.com>
Sent: Friday, October 11, 2019 2:23 PM
To: Scott Alprin <salprin@rabinberdo.com>; Catherine C. Miller <CCMiller@hollandhart.com>
Cc: Hope Hamilton <HIHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>
Subject: RE: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Scott,

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Thanks,
-Hope

Hope Hamilton

Holland & Hart LLP
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E-mail: hihamilton@hollandhart.com



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Cc: Holland & Hart - eBay <eBay@hollandhart.com>; Hope Hamilton <HIHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>
Subject: Re: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Catherine:

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Best regards,

Scott Alprin
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1101 14th Street, N.W., Suite 500
Washington DC, 20005
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From: Catherine C. Miller <CCMiller@hollandhart.com>

Sent: Monday, September 23, 2019 2:50 PM

To: Scott Alprin <salprin@rabinberdo.com>

Cc: Holland & Hart - eBay <eBay@hollandhart.com>; Hope Hamilton <HHHamilton@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>

Subject: BITBAY / U.S. TTAB Discovery Conference / 78143.1607

Scott,

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5. Settlement. We provided some background on the global dispute. You will contact your client for an update regarding settlement.

Best regards,
Catherine

Catherine C. Miller

Attorney, Holland & Hart LLP

1800 Broadway, Suite 300, Boulder, CO 80302

T 303.245.2092



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Exhibit 4

Hope Hamilton

From: Hope Hamilton <HIHamilton@hollandhart.com>
Sent: Monday, October 28, 2019 6:04 PM
To: firm@rabinberdo.com; Scott Alprin
Cc: Catherine C. Miller; Amanda N. Marston; Dardoh S. Skinner
Subject: First Set of Discovery - BITAY / 79239507 / US / 78143.1607
Attachments: eBay 1st Rogs to Bitbay[13755396v1].PDF; eBay 1st RFPs to Bitbay[13755391v1].PDF

Scott,

Please find attached eBay's first requests for production and interrogatories. We look forward to receiving you client's timely responses. And, to avoid any confusion, we do not have authorization to extend the response deadlines.

Regards,
-Hope

Hope Hamilton

Holland & Hart LLP
One Boulder Plaza
1800 Broadway, Suite 300
Boulder, Colorado 80302
Phone (303) 473-4822
Fax (303) 416-8842
E-mail: hihamilton@hollandhart.com



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Exhibit 5

Hope Hamilton

From: Scott Alprin <salprin@rabinberdo.com>
Sent: Monday, November 18, 2019 6:55 PM
To: Holland & Hart - eBay
Cc: Catherine C. Miller; Amanda N. Marston; Dardoh S. Skinner; Jun-Hwa Jeong; Firm RB; Tracy Zhang; Hope Hamilton
Subject: Re: First Set of Discovery - BITBAY / 79239507 / US / 78143.1607

Dear Hope:

Thank you for your e-mail. Your effort to reconfirm your client's position and avoid misunderstandings is certainly appreciated.

We are hopeful that eBay can reevaluate its decision to aggressively litigate now that our client has proposed a valid settlement offer in good faith.

We look forward to hearing from you.

Best regards,

Scott Alprin
RABIN & BERDO, PC
Patent, Trademark and Copyright Law
1101 14th Street, N.W., Suite 500
Washington DC, 20005
Phone: (202) 371-8976
Fax: (202) 408-0924
Email: firm@rabinberdo.com - address for all official email correspondence
Website: www.rabinberdo.com

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From: Hope Hamilton <HIHamilton@hollandhart.com> on behalf of Holland & Hart - eBay <eBay@hollandhart.com>
Sent: Monday, November 18, 2019 7:47 PM
To: Scott Alprin <salprin@rabinberdo.com>
Cc: Catherine C. Miller <CCMiller@hollandhart.com>; Amanda N. Marston <ANMarston@hollandhart.com>; Dardoh S. Skinner <DSSkinner@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Firm RB <firm@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>; Hope Hamilton <HIHamilton@hollandhart.com>
Subject: RE: First Set of Discovery - BITBAY / 79239507 / US / 78143.1607

Scott,

Your aggressive response is unjustified. In addition to our discussions during our discovery conference, we also told you in an October 17 email that our client has instructed us to fast track all matters. Those instructions have not changed. And the purpose of my earlier email of today was to re-confirm that position as a courtesy to you –

particularly since we noted your request to suspend. We also cannot at this time comment on whether eBay will consider this to be a viable settlement proposal or progress.

In any event, we will promptly present this proposal to eBay for consideration, together with your request to suspend. But, to avoid any confusion, we reiterate that we do not have authority at this time to consent to suspend or extend your client's discovery obligations. And we make no representations that we will be in a position to respond to your settlement proposal prior to the Thanksgiving Holiday.

Regards,
-Hope

Hope Hamilton
Holland & Hart LLP
One Boulder Plaza
1800 Broadway, Suite 300
Boulder, Colorado 80302
Phone (303) 473-4822
Fax (303) 416-8842
E-mail: hihamilton@hollandhart.com



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From: Scott Alprin <salprin@rabinberdo.com>
Sent: Monday, November 18, 2019 4:14 PM
To: Hope Hamilton <HIHamilton@hollandhart.com>
Cc: Catherine C. Miller <CCMiller@hollandhart.com>; Amanda N. Marston <ANMarston@hollandhart.com>; Dardoh S. Skinner <DSSkinner@hollandhart.com>; Jun-Hwa Jeong <jeong@rabinberdo.com>; Firm RB <firm@rabinberdo.com>; Tracy Zhang <tzhang@rabinberdo.com>
Subject: Re: First Set of Discovery - BITBAY / 79239507 / US / 78143.1607

External Email

Dear Hope:

Thank you for your prompt confirmation of receipt.

According to my notes from our conversation in September, you indicated that your client might entertain extensions if "progress" was made in settlement discussions. Therefore, I do not agree that your reaction to our request is consistent with the discovery conference. In my opinion, our offer represents significant "progress," and so I am surprised to hear that your instructions to "aggressively litigate" are in no way tempered by our client's good-faith offer. [REDACTED]

Relying on our conversation, I advised our client that your client would likely agree to at least a 30-day extension to our client's deadline to respond to discovery.

Our client has been devoting most of its energy to working on coordinating a possible settlement, and, to be clear, we need additional time.

Your client's instructions seem inflexible, and appear to be a good way to eviscerate trust between the parties, and, in my view, has placed the whole deal in jeopardy. While it may be eBay's strategy to aggressively litigate and negotiate in parallel, that is not our client's idea of a healthy recipe for negotiations. I plan on advising our client that it would be wise to withdraw the offer while eBay insists on leveraging maximum pressure against it, without even agreeing to a simple 30-day cessation of "hostilities" to review an offer made in good faith.

You may not have authorization to extend the response deadlines, but please ask. I consider this an urgent matter that requires eBay's attention *before* the holidays, if possible.

Best regards,

Scott Alprin
RABIN & BERDO, PC
Patent, Trademark and Copyright Law
1101 14th Street, N.W., Suite 500
Washington DC, 20005
Phone: (202) 371-8976
Fax: (202) 408-0924
Email: firm@rabinberdo.com - address for all official email correspondence
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From: Hope Hamilton <HIHamilton@hollandhart.com>
Sent: Monday, November 18, 2019 5:26 PM
To: Scott Alprin <salprin@rabinberdo.com>
Cc: Catherine C. Miller <CCMiller@hollandhart.com>; Amanda N. Marston <ANMarston@hollandhart.com>; Dardoh S. Skinner <DSSkinner@hollandhart.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>; Firm RB <firm@rabinberdo.com>
Subject: RE: First Set of Discovery - BITBAY / 79239507 / US / 78143.1607

Scott,

Just a quick note to acknowledge receipt of your letter. We will discuss this offer with our client and revert when we have instructions. We note, however, that we may not have instructions until after the Thanksgiving Holiday.

In addition, we note your request to suspend the deadline to respond to the outstanding discovery requests in the U.S. proceeding. Consistent with our discussions during the discovery conference for this matter, we have standing instructions to aggressively litigate all matters and to consider settlement in parallel. We therefore do not have authority to suspend the discovery response deadline or to grant any extensions of time.

Regards,
-Hope

Hope Hamilton

Holland & Hart LLP

One Boulder Plaza

1800 Broadway, Suite 300

Boulder, Colorado 80302

Phone (303) 473-4822

Fax (303) 416-8842

E-mail: hihamilton@hollandhart.com



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From: Tracy Zhang <tzhang@rabinberdo.com> **On Behalf Of Firm RB**

Sent: Monday, November 18, 2019 12:40 PM

To: Hope Hamilton <HIHamilton@hollandhart.com>

Cc: Catherine C. Miller <CCMiller@hollandhart.com>; Amanda N. Marston <ANMarston@hollandhart.com>; Dardoh S. Skinner <DSSkinner@hollandhart.com>; Firm RB <firm@rabinberdo.com>; Scott Alprin <salprin@rabinberdo.com>; Jun-Hwa Jeong <jjeong@rabinberdo.com>

Subject: RE: First Set of Discovery - BITAY / 79239507 / US / 78143.1607

External Email

Via E-mail Only

Dear Ms. Hamilton,

Please find the attached letter. We look forward to hearing from you at your earliest convenience.

Best regards,

Tracy Zhang, for

M. Scott Alprin

RABIN & BERDO, P.C.

Email: firm@rabinberdo.com - address for all official email correspondence

Website: www.rabinberdo.com

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From: Hope Hamilton [<mailto:HIHamilton@hollandhart.com>]

Sent: Monday, October 28, 2019 8:04 PM

To: Firm RB; Scott Alprin

Cc: Catherine C. Miller; Amanda N. Marston; Dardoh S. Skinner

Subject: First Set of Discovery - BITAY / 79239507 / US / 78143.1607

Scott,

Please find attached eBay's first requests for production and interrogatories. We look forward to receiving you client's timely responses. And, to avoid any confusion, we do not have authorization to extend the response deadlines.

Regards,

-Hope

Hope Hamilton

Holland & Hart LLP

One Boulder Plaza

1800 Broadway, Suite 300

Boulder, Colorado 80302

Phone (303) 473-4822

Fax (303) 416-8842

E-mail: hihamilton@hollandhart.com



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