

ESTTA Tracking number: **ESTTA1250315**

Filing date: **11/26/2022**

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

Proceeding no.	91273650
Party	Plaintiff Global Eye Investments, LLC
Correspondence address	THOMAS D. FOSTER TDFOSTER - INTELLECTUAL PROPERTY LAW 11622 EL CAMINO REAL, SUITE 100 SAN DIEGO, CA 92130 UNITED STATES Primary email: foster@tdfoster.com 858-922-2170
Submission	Motion to Reopen
Filer's name	Thomas D. Foster
Filer's email	foster@tdfoster.com
Signature	/Thomas D. Foster/
Date	11/26/2022
Attachments	7204.003-00 20221126 MOTION TO REOPEN DISCOVERY.pdf(66559 bytes) EXHIBIT A - Discovery Conference Email.pdf(238405 bytes) EXHIBIT B - Opposers Initial Disclosures Email.pdf(194597 bytes) EXHIBIT C - OPPOSERS INITIAL DISCLOSURES.pdf(107689 bytes) EXHIBIT D - Opposers First Discovery Requests Email.pdf(197217 bytes) EXHIBIT E - Ps 1st INTERROG.pdf(44632 bytes) EXHIBIT F - Ps 1st RFP.pdf(42940 bytes) EXHIBIT G - Demand Email.pdf(256739 bytes) EXHIBIT H - Stipulated Motion to Reset Dates Email.pdf(224223 bytes) EXHIBIT I - STIPULATED MOTION TO RESET DATES.pdf(38527 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Global Eye Investments, LLC	)	Opposition No. 91273650
	)	Mark: IMPERIAL KALUGA
Opposer and Counterclaim Defendant,	)	Serial No.:90579958
)	
v.)	
	)	Mark: IMPERIA CAVIAR
Prime Fish, LLC	)	Reg. No. 5662504
)	
Applicant and Counterclaim Plaintiff)	

MOTION TO REOPEN DISCOVERY AND RE-SET TRIAL DEADLINES

Pursuant to F.R.C.P. §6(b), Opposer and Counterclaim Defendant, Global Eye Investments, LLC (Hereinafter “Global Eye”) moves to reopen the discovery period in Opposition/Cancellation No. 91273650 and to re-set the subsequent trial dates accordingly. Global Eye submits that it meets the "excusable neglect" standard set forth in *Hewlett-Packard Co. v. Olympus Corp.*¹ as further clarified in *Pioneer Investment Services Co. v. Brunswick Associates L.P.*² Specifically, reopening of the discovery period (i) would not prejudice the non-moving party; and (ii) would cause relatively little delay on the judicial proceedings. Moreover, (iii) the reason for the delay was caused, at least in part, by the non-moving party; and (iv) the moving party has acted in good faith.

The following recitation of facts is intended to shed light upon the underlying reasons necessitating this motion.

STATEMENT OF FACTS

1. On December 23, 2021 this proceeding was instituted by the Board and the initial trial dates were noticed including the February 1, 2022 deadline for the applicant, Prime Fish, LLC, to answer.
2. On January 31, 2022, Applicant filed an answer to the notice of opposition and a counterclaim to cancel Opposer's pleaded Registration(s) No. 5662504. Applicant

¹*Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 1552-53, 18 USPQ 1710, 1712, (Fed. Cir. 1991)(citing Black's Law Dictionary 508 (5th ed. 1979).

²*Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993).

submitted the required fee. The Board also noted Applicant's appearance and change of address filed on January 31, 2022 and the records were updated to reflect that attorney Alexis Campbell was now representing Prime Fish. Global Eye was allowed until March 9, 2022 to file an answer to the counterclaim. The Deadline for Discovery Conference was rescheduled to April 8, 2022.

3. On March 7, 2022, Global Eye filed a timely answer to the counterclaim.

4. On March 18, 2022 Global Eye's counsel held the required discovery conference with attorney Campbell. See attached **Exhibit A** which is a true and accurate copy of the email that memorialized the discussions that day.

5. On May 4, 2022 Global Eye's Initial Disclosures were served on attorney Campbell. See attached **Exhibit B** which is a true and accurate copy of the email sent that day. Attached as **Exhibit C** is a true and accurate copy of the Initial Disclosure that was sent that day. On the following day, attorney Campbell served a copy of the Applicant's Initial Disclosure on Global Eye's attorney.

6. On August 22, 2022 Global Eye's counsel served their First Set of Discovery Requests on attorney Campbell. See attached **Exhibit D** which is a true and accurate copy of the email sent that day. Attached hereto are true and accurate copies of the following respective documents which were transmitted that day to attorney Campbell.

Exhibit E - OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF.

Exhibit F - OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND COUNTERCLAIM PLAINTIFF

At that time, Discovery was set to close on October 5, 2022 (See TTAB entry No. 7 dated February 7, 2022).

7. On August 31, 2022 attorney Campbell filed a MOTION TO WITHDRAW AS COUNSEL, which motion was subsequently granted. The Board suspended proceedings on September 3, 2022 to allow Prime Fish to appoint new counsel, or to file a paper stating that Applicant chooses to represent itself.

8. On September 3, 2022, the Board noted the withdrawal of Applicant's counsel, suspended the proceedings, and allowed Applicant until October 3, 2022 to appoint new counsel, or to file a paper stating that Applicant chooses to represent itself. Importantly the Board noted

that the parties will be notified by the Board when proceedings are resumed, and dates will be reset, as appropriate.

9. On October 3, 2022, an individual, James H. Miller, filed a simple statement with the Board claiming that he was going to represent Prime Fish, LLC. Only his email and address was given. No phone number for Mr. Miller was provided and the phone number was not provided in Prime Fish's initial disclosures.

10. Subsequently, on October 21, 2022, the Board issued a notice that the "proceedings herein are RESUMED and dates remain as set by the Board on February 7, 2022."

11. On October 31, 2022, Global Eye's attorney send an email to Mr. Miller demanding a response to the outstanding Discovery Requests. Attached hereto as **Exhibit G** is a true and accurate copy of that email.

12. On November 22, 2022, Global Eye's attorney sent a second email to Mr. Miller requesting that he sign a Stipulated Motion to which the parties jointly ask that the Board reopen the trial dates to give Prime Fish additional time to answer the outstanding discovery requests. Attached hereto as **Exhibit H** is a true and accurate copy of that email. Attached hereto as **Exhibit I** is a copy of the Stipulated Motion that accompanied that email.

DISCUSSION

The objective of the disclosure regime is to accelerate the exchange of basic information about the case and to eliminate the paperwork involved in requesting such information.³ The Board expects each party to cooperate in the discovery process and to make a good faith effort to satisfy the discovery requests of its opponent.⁴ A party upon whom discovery is served cannot impede the progress of its opponent's discovery by failing to respond in a timely manner.

///

³Fed.R.Civ.P.26, Advisory Committee Note (1993 Amendments, Subdivision (a)).

⁴See Fed.R.Civ.P. 26(g); *Johnson Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 719 (TTAB 1989); *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718, 1720 (TTAB 1987); *Sentrol, Inc.. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986).

The Board will, upon motion, "re-open or extend discovery solely for the benefit of a party whose opponent, by wrongfully refusing to answer, or delaying its responses to, discovery, has unfairly deprived the propounding party of the right to take follow-up."⁵

The Board's maintenance of the original trial dates appears to be an oversight since the Board's order dated September 3, 2022 made it clear that the proceedings are otherwise suspended pending response to the order and that the parties will be notified by the Board when proceedings are resumed, and dates will be reset, as appropriate. Resetting the trial dates are appropriate given the appearance of Mr. Miller, an individual; the fact that only a short time remained in the discovery period; and that fact that Mr. Miller has not yet communicated in any way with Global Eye's attorney. The Board's order of October 21, 2022 maintaining the original trial dates is surprising since it effectively truncated the discovery period and ignored the fact that the proceedings had been suspended on September 3, 2022 due to the withdrawal of Prime Fish's attorney.

Prime Fish has not yet provided the necessary responses and documents requested by Global Eye Investments, LLC in its first discovery requests despite being warned that they were past due.

Thus, in analyzing the circumstances to be considered in making a determination of excusable neglect, Global Eye submits that each of the factors has been established in its favor. Therefore, Global Eye respectfully requests that the discovery period be reopened and that all trial dates be re-calculated accordingly and set to run from the date of the Board's decision on the present Motion.

///

⁵*Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067, 1070, (TTAB 1990); *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 USPQ 955, 966, n.21 (TTAB 1986), adhered to on reconsideration, 231 USPQ 626 (TTAB 1986); Fed.R.Civ.P. 26(d).

In view of the foregoing, Global Eye Investments, LLC requests the Board to reopen and the trial dates be re-calculated to give Prime Fish, LLC the necessary time to respond to the outstanding discovery requests and for Global Eye sufficient time to conduct follow-up discovery if warranted. It is requested that upon reopening the Discovery Period that a 90 day extension of all trial dates be ordered.

Respectfully submitted,

Dated: November 26, 2022

By: /Thomas D. Foster/
Thomas D. Foster, # 44,686
TDFoster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
858-922-2170
Attorney for Opposer and Counterclaim Defendant

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2022, a true and complete copy of the foregoing MOTION TO REOPEN DISCOVERY AND RE-SET TRIAL DEADLINES is being served upon the following individual by email to the following addresses:

James H. Miller
PRIME FISH LLC
820 GLENMERE WAY
LOS ANGELES, CA 90049
UNITED STATES
enjoy@kolikof.com, jim@kolikofcaviar.com

/Thomas D. Foster/
(Typed or Printed Name of Person Signing Certificate)

From: [Tom Foster](#)
To: "[Alexis Campbell](#)"
Cc: "[Hallie Ricketts](#)"; "[Litigation Support](#)"
Subject: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - Discovery Conference
Date: Friday, March 18, 2022 10:19:00 AM

Dear Alexis,

I enjoyed meeting with you today in connection with the discovery settlement conference that we conducted in the above referenced opposition proceeding. Our conference was conducted by phone and in compliance with the order of the Trademark Trial and Appeal Board in this matter.

We discussed the following matters during our conference:

1. **Settlement.** I promised to provide you with several types of evidence gathered by my client that strongly suggest that the term IMPERIAL KALUGA is a descriptor for a type of caviar. You mentioned that your client has a strong interest in keeping their registration for IMPERIAL 000 TRIPLE ZERO and would like to include this mark in any settlement discussions.
2. **Protective Order.** We agreed that there was no present need to alter or amend the Standard Protective Order
3. **Accelerated Case Resolution.** The parties decided not to have the TTAB's Accelerated Case Resolutions process apply.

Please let me know if this summary of the conference is incomplete or if anything herein is inaccurate.

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

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fax: 888.757.3817
foster@tdfoster.com

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addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at foster@tdfoster.com and delete this message. Thank you very much.

From: Alexis Campbell <alexis@trademarkia.com>
Sent: Wednesday, March 16, 2022 2:46 PM
To: Tom Foster <foster@tdfoster.com>
Cc: Hallie Ricketts <hallie@trademarkia.com>; Litigation Support <litigation@trademarkia.com>
Subject: Re: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - Discovery Conference

Hello Tom,

That works. Will you be sending an invite?

Thank you,

Alexis



Alexis Campbell

Trademark Attorney, LegalForce RAPC Worldwide, P.C.
[Calendly.com/alexistrademark](https://calendly.com/alexistrademark) | alexis@trademarkia.com
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Tempe, AZ 85282
www.trademarkia.com



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On Wed, Mar 16, 2022 at 2:45 PM Tom Foster <foster@tdfoster.com> wrote:

Dear Alexis,

If possible, 10 am Pacific on Friday would be great.

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney

Registration No.: 44,686

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From: Alexis Campbell <alexis@trademarkia.com>
Sent: Wednesday, March 16, 2022 2:33 PM
To: Tom Foster <foster@tdfoster.com>
Cc: Hallie Ricketts <hallie@trademarkia.com>; Litigation Support <litigation@trademarkia.com>
Subject: Re: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - Discovery Conference

Hello Mr. Foster,

I would prefer Friday but can make myself available on Thursday as well. What times are best for you?

Thank you,

Alexis



Alexis Campbell

Trademark Attorney, LegalForce RAPC Worldwide, P.C.
[Calendly.com/alexis@trademarkia.com](https://www.calendly.com/alexis@trademarkia.com) | alexis@trademarkia.com

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On Wed, Mar 16, 2022 at 1:35 PM Tom Foster <foster@tdfoster.com> wrote:

Dear Ms. Campbell,

Kindly let me know if you would like to hold the discovery conference tomorrow or Friday.

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

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From: Tom Foster <foster@tdfoster.com>

Sent: Monday, March 7, 2022 7:01 PM

To: 'alexis@trademarkia.com' <alexis@trademarkia.com>

Subject: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - 1. Opposer's Answer to Applicant's Counterclaim

Dear Ms. Campbell,

Please find attached hereto the following:

1. Opposer's Answer to Applicant's Counterclaim
2. Filing Receipt for same

I look forward to holding our discovery conference.

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

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--

Alexis Campbell
Trademark Attorney

Emails: alexis@legalforcelaw.com
alexis@trademarkia.com

Calendly: calendly.com/alexistrademark



LegalForce RAPC Worldwide, P.C.

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--

Alexis Campbell
Trademark Attorney

Emails: alexis@legalforcelaw.com
alexis@trademarkia.com

Calendly: calendly.com/alexistrademark



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From: [Tom Foster](#)
To: "alexis@trademarkia.com"
Subject: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - 1. Opposer's Initial Disclosures
Date: Wednesday, May 4, 2022 6:09:00 AM
Attachments: [7204.003-00 20220504 OPPOSERS INITIAL DISCLOSURES.pdf](#)

Dear Ms. Campbell,

Please find attached hereto the following:

1. Opposer's Initial Disclosures

I look forward to picking up on our settlement discussions in the next week or two. My client is considering possible settlement terms among the principals.

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

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

Global Eye Investments, LLC, Opposer, v. Prime Fish, LLC, Applicant.	Opposition No.: 91273650 Mark: IMPERIAL KALUGA Serial No. 90579958
Prime Fish, LLC, Petitioner, v. Global Eye Investments, LLC, Registrant.	Cancellation No.: TBA Mark: IMPERIA CAVIAR Reg. No. 5662504

OPPOSER’S INITIAL DISCLOSURES

Pursuant to 37 C.F.R. § 2.120 and Rule 26(a)(1) of the Federal Rules of Civil Procedure, Global Eye Investments, LLC (“Global Eye” or “Opposer/Registrant”), through counsel, hereby provides the following initial disclosures to Prime Fish, LLC (“Prime Fish” or “Applicant/Petitioner”). In making these disclosures, Global Eye reserves the right to supplement, modify, or revise its disclosures in the event additional information becomes available during future investigation or discovery. Global Eye’s disclosures are made without waiving its rights to object to the use of such information upon any reasonable grounds.

1. Persons likely to have discoverable information that Global Eye may use to support its claims.
 - a. Sony Mordechai, Principal of Global Eye Investments, LLC
c/o TDFoster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
(858) 922-2170

Mr. Mordechai is likely to have discoverable information regarding Global Eye's registration and use of its IMPERIA CAVIAR trademark, sales and advertisement of services offered under IMPERIA CAVIAR trademark, channels of trade of services offered under IMPERIA CAVIAR mark, classes of customers to whom Applicant's services are marketed and sold, and other facts and issues as raised in the pleadings.

Mr. Mordechai is likely to have discoverable information regarding Opposer's and others in the caviar industry present and prospective right to use the term "Imperial" generically and/or descriptively in their business to indicate the grade of their caviar.

Mr. Mordechai is likely to have discoverable information regarding Opposer's and others in the caviar industry present and prospective right to use the term "Imperial Kaluga" generically and/or descriptively in their business to indicate the grade of their caviar which comes specifically from the Kaluga Sturgeon.

2. A description by category of all documents, data compilations, and tangible things that Global Eye may use to support its claims.

Pursuant to Rule 26(a)(1)(B), Global Eye discloses the following categories of documents, which will be made available for inspection and copying at a mutually convenient time and place:

- a. Documents related to Global Eye's U.S. Trademark Registration No. 5662504.
- b. Documents relating to Global Eye's sales, marketing and advertising, plans, and intent regarding adoption and ultimate use of the IMPERIA CAVIAR mark.
- c. Documents related to third-party use of marks containing IMPERIAL and KALUGA or otherwise similar marks for competitive, similar, or related goods or services.
- d. Documents related to the sophistication of customers to whom the parties' respective goods and services are marketed and sold.
- e. Documents relating to the absence or presence of actual confusion.
- f. Documents relating to the parties' pricing of goods and services sold in connection with the marks.
- g. Documents relating to the parties' respective trade channels and customer bases.
- h. Documents received during discovery from Petitioner and third parties.
- i. Documents received from industry experts.
- j. Documents relating to the generic and/or descriptive nature of the terms IMPERIAL and KALUGA.

3. A computation of any category of damages claimed by Prime Fish.

Not applicable

4. Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in this action or to indemnify or reimburse for payments to satisfy the judgment.

Not applicable.

Dated: May 4, 2022

Respectfully submitted,

/Thomas D. Foster/

Thomas D. Foster
TDFoster – Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
foster@tdfoster.com
(858) 922-2170

Attorneys for Opposer/Registrant
Global Eye Investments, LLC

CERTIFICATE OF SERVICE

I certify that on the day of May 4, 2022, a copy of the foregoing OPPOSER'S INITIAL DISCLOSURES is being served by electronic mail addressed as follows:

Alexis Campbell
446 E Southern Ave
Tempe, AZ 85282
alexis@trademarkia.com

May 4, 2022

/Thomas D. Foster/

Thomas D. Foster
TDFoster – Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130

From: [Tom Foster](#)
To: ["Alexis Campbell"](#)
Cc: ["Hallie Ricketts"; "Litigation Support"](#)
Subject: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - 1. Opposer's Initial Disclosures
Date: Monday, August 22, 2022 11:16:00 AM
Attachments: [7204.003-00 20220822 P'S 1st INTERROG.pdf](#)
[7204.003-00 20220822 P'S 1st RFP.pdf](#)

Dear Alexis,

Please find attached hereto the following:

1. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF
2. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND COUNTERCLAIM PLAINTIFF

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

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**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Global Eye Investments, LLC	)	Opposition No. 91273650
	)	Mark: IMPERIAL KALUGA
Opposer and Counterclaim Defendant,	)	Serial No.:90579958
)	
v.)	
	)	Mark: IMPERIA CAVIAR
Prime Fish, LLC	)	Reg. No. 5662504
)	
Applicant and Counterclaim Plaintiff)	

**OPPOSER AND COUNTERCLAIM DEFENDANT’S FIRST SET OF
INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF**

Opposer and Counterclaim Defendant, Global Eye Investments, LLC, pursuant to 37 C.F.R. Section 2.120 and Federal Rule of Civil Procedure 33, hereby submits its First Set of Interrogatories to Applicant and Counterclaim Plaintiff, Prime Fish, LLC, to be answered under oath by Applicant and Counterclaim Plaintiff.

Respectfully submitted,

Dated: August 22, 2022

By: /Thomas D. Foster/
Thomas D. Foster, # 44,686
TDFoster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
858-922-2170
Attorney for Opposer and Counterclaim Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2022, a true and complete copy of the foregoing OPPOSER AND COUNTERCLAIM DEFENDANT’S FIRST SET OF INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF is being served upon the attorney of record for Applicant and Counterclaim Plaintiff, Prime Fish, LLC, by email to the following address:

Alexis Campbell
LEGALFORCE RAPC WORLDWIDE, P.C.
446 E Southern Avenue
Tempe AZ 85282
alexis@trademarkia.com

/Thomas D. Foster/

(Typed or Printed Name of Person Signing Certificate)

INTRODUCTION AND DEFINITIONS

A. These interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Prime Fish, LLC acquires or which becomes known to Prime Fish, LLC up to and including the time of trial shall be furnished to Global Eye Investments, LLC immediately after such information is acquired or becomes known.

B. As used herein, the term "document" is used in its customary broad sense as described in Rule 34 of the Federal Rules of Civil Procedure.

C. As used herein, "identify," or to give the "identity" of, mean, in general, to give the fullest description, and specifically:

1. in the case of a natural person to state
 - a) name;
 - b) last known residence;
 - c) employer or business affiliation;
 - d) occupation and business position held and length of time in such position;
2. in the case of a company or other business organization, to state
 - a) name;
 - b) place of incorporation;
 - c) principal place of and nature of business;
 - d) identity of persons having knowledge of the matter with respect to which the company is named;
 - e) executive officer or officers of the company;
 - f) its relation, if any, to Prime Fish, LLC or Prime Fish, LLC 's goods or products;
3. in the case of a document, to state
 - a) identity of the person preparing it and of the sender;
 - b) its title or a description of the general nature of its subject matter;
 - c) the identity of the addressees, if any;
 - d) its date of preparation;
 - e) its dates and manner of distribution and publication, if any;
 - f) location of each copy and identity of present custodian;

- g) identity of persons who can identify it;
 - h) if privilege is claimed, the specific basis therefor;
4. in the case of a trademark or trademark application or registration, to state
- a) its country or state, registration number, and application number;
 - b) its date of first use in that country or state and the goods on which used;
 - c) identity of trademark owner;
 - d) identity of any U.S. counterpart application of registration;
 - e) date of first use in the U.S. and the goods on which used;
5. in the case of a product, device or goods, to state the catalog, stock or like number, the trademark, name, type, grade, and any other designation customarily used by the party concerned and the trade to designate such product, device or goods and to distinguish it from other made or sold by the same or a different producer or vendor.
- D. As used herein "person" shall mean both natural persons and corporate or other business entities, whether or not in the employ of Prime Fish, LLC or Global Eye Investments, LLC unless otherwise specified.
- E. As used herein, "Prime Fish, LLC" means not only Prime Fish, LLC, but also its predecessors, if any, persons controlling or controlled by Prime Fish, LLC, and its and their officers, directors, employees, agents, representatives and attorneys, to the fullest extent the context permits.
- F. As used here in, "Document" means, in addition to the generally accepted definitions of that word, any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, or other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the responding party into reasonably usable form.

INTERROGATORY NO.1.

Describe the history of the adoption and use by the Prime Fish, LLC and its licensee(s), if any, of the term IMPERIAL KALUGA (hereinafter “the Mark”).

ANSWER:

INTERROGATORY NO.2.

Describe the specific products offered by Prime Fish, LLC and its licensee(s), if any, on which the Mark has been used.

ANSWER:

INTERROGATORY NO.3.

Explain the origin of the Mark, including all documents and things considered in connection with the conception, intention to use, and use of the Mark.

ANSWER:

INTERROGATORY NO.4.

Describe the meaning ascribed by the Prime Fish, LLC and its licensee(s), if any, to the Mark and the terms IMPERIAL and KALUGA in reference to caviar.

ANSWER:

INTERROGATORY NO.5.

Describe any known uses of the Mark and the terms IMPERIAL and KALUGA by competitors in the caviar industry.

ANSWER:

INTERROGATORY NO.6.

Describe any known uses of the Mark and the terms IMPERIAL and KALUGA by the public in reference to caviar.

ANSWER:

INTERROGATORY NO.7.

Describe any known uses of the Mark and the terms IMPERIAL and KALUGA by the media in reference to caviar.

ANSWER:

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Global Eye Investments, LLC	)	Opposition No. 91273650
	)	Mark: IMPERIAL KALUGA
Opposer and Counterclaim Defendant,	)	Serial No.:90579958
)	
v.)	
	)	Mark: IMPERIA CAVIAR
Prime Fish, LLC	)	Reg. No. 5662504
)	
Applicant and Counterclaim Plaintiff)	

**OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND
COUNTERCLAIM PLAINTIFF**

Opposer and Counterclaim Defendant, Global Eye Investments, LLC, pursuant to 37 C.F.R. Section 2.120 and Federal Rule of Civil Procedure 34, hereby requests that Applicant and Counterclaim Plaintiff, Prime Fish, LLC, produce the original of the following documents and things or deliver legible and accurate copies of the following documents and things to the office of Thomas D. Foster, APC, 11622 El Camino Real, Suite 100, San Diego, California 92130. Said documents or copies shall be produced within thirty (30) days following service of this Request or as otherwise agreed to by the parties.

Respectfully submitted,

Dated: August 22, 2022

By: /Thomas D. Foster/
Thomas D. Foster, # 44,686
TDFoster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
858-922-2170
Opposer and Counterclaim Defendant

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2022, a true and complete copy of the foregoing
OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND COUNTERCLAIM
PLAINTIFF is being served upon the attorney of record for Applicant and Counterclaim Plaintiff,
Prime Fish, LLC, by email to the following address:

Alexis Campbell
LEGALFORCE RAPC WORLDWIDE, P.C.
446 E Southern Avenue
Tempe AZ 85282
alexis@trademarkia.com

/Thomas D. Foster/

(Typed or Printed Name of Person Signing Certificate)

DEFINITIONS:

"Applicant and Counterclaim Plaintiff" and "Prime Fish, LLC" is defined to mean not only Prime Fish, LLC, but also its predecessors, if any, persons controlling or controlled by Prime Fish, LLC, and its and their officers, directors, employees, agents, representatives and attorneys, to the fullest extent the context permits.

"Document" is defined to mean, in addition to the generally accepted definitions of that word, any designated documents or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, or other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the responding party into reasonably usable form.

Requests for Production:

REQUEST 1. All documents which refer or relate to Prime Fish, LLC's use the term IMPERIAL as a mark for its caviar.

RESPONSE:

REQUEST 2. All documents which refer or relate to Prime Fish, LLC's use the term KALUGA as a mark for its caviar.

RESPONSE:

REQUEST 3. All documents which refer or relate to Prime Fish, LLC's use the term IMPERIAL on its caviar and in the advertisement of its caviar.

RESPONSE:

REQUEST 4. All documents which refer or relate to Prime Fish, LLC's use the term KALUGA on its caviar and in the advertisement of its caviar.

RESPONSE:

REQUEST 5. All documents which refer or relate to third party use of the term IMPERIAL on caviar and in the advertisement of their caviar.

RESPONSE:

REQUEST 6. All documents which refer or relate to third party use of the term KALUGA on caviar and in the advertisement of their caviar.

RESPONSE:

REQUEST 7. All documents which refer or relate to the public's use of the term IMPERIAL in reference to caviar.

RESPONSE:

REQUEST 8. All documents which refer or relate to the public's use of the term KALUGA in reference to caviar.

RESPONSE:

REQUEST 9. All documents which refer or relate to the media's use of the term IMPERIAL in reference to caviar.

RESPONSE:

REQUEST 10. All documents which refer or relate to the media's use of the term KALUGA in reference to caviar.

RESPONSE:

REQUEST 11. All documents which refer or relate to a government's use of the term IMPERIAL in reference to caviar.

RESPONSE:

REQUEST 12. All documents which refer or relate to a government's use of the term KALUGA in reference to caviar.

RESPONSE:

REQUEST 13. All documents which refer or relate to a non-governmental organization's use of the term IMPERIAL in reference to caviar.

RESPONSE:

REQUEST 14. All documents which refer or relate to a non-governmental organization's use of the term KALUGA in reference to caviar.

RESPONSE:

From: [Tom Foster](#)
To: "Jim@kolikof.com"
Subject: DEMAND FOR RESPONSE AND THINGS: 7204.003-00 (US OPP 91273650) GLOBAL EYE INVESTMENTS, LLC V. PRIME FISH LLC - Opposer's Interrogatories and Req for Production
Date: Monday, October 31, 2022 2:40:00 PM
Attachments: [7204.003-00 20220822 P'S 1st INTERROG.pdf](#)
[7204.003-00 20220822 P'S 1st RFP.pdf](#)
[image001.png](#)

Dear Mr. Miller,

This communication is to alert you that appropriate responses to the attached discovery requests are now overdue. They were sent out to your previous counsel on August 22, 2022 and the Board has now resumed the proceedings.

Global Eye Investments warns that if you do not provide the responses and things right away, we will be pursuing appropriate sanctions with the Board.

Cordially,



CONFIDENTIAL/PRIVILEGED COMMUNICATION

This message contains information which may be confidential and privileged communication between client and attorney. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at foster@tdfoster.com and delete this message. Thank you very much.

From: Tom Foster <foster@tdfoster.com>
Sent: Monday, August 22, 2022 11:19 AM
To: 'alexis@trademarkia.com' <alexis@trademarkia.com>
Cc: 'hallie@trademarkia.com' <hallie@trademarkia.com>
Subject: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - Opposer's Interrogatories and Req for Production

Dear Alexis,

Please find attached hereto the following:

1. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF
2. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND COUNTERCLAIM PLAINTIFF

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

TD Foster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
ph: 858.922.2170
fax: 888.757.3817
foster@tdfoster.com

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From: [Tom Foster](#)
To: ["enjoy@kolikof.com"](mailto:enjoy@kolikof.com); ["jim@kolikofcaviar.com"](mailto:jim@kolikofcaviar.com); [Jim Miller](#); [Jim Miller kolikof.com](#)
Subject: 7204.003-00 (US OPP 91273650) GLOBAL EYE INVESTMENTS, LLC V. PRIME FISH LLC - Stipulated Motion to Reset Dates
Date: Tuesday, November 22, 2022 9:58:00 AM
Attachments: [image001.png](#)
[7204.003-00 20221122 STIPULATED MOTION TO RESET DATES.pdf](#)

Dear Mr. Miller,

I kindly ask that you sign the attached online form in which we jointly ask that the Board reopen the trial dates to give you additional time to answer the discovery requests mentioned below.

Please type your name into the field on the form and promptly send it back to me for filing with the Board.

Cordially,



CONFIDENTIAL/PRIVILEGED COMMUNICATION

This message contains information which may be confidential and privileged communication between client and attorney. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at foster@tdfoster.com and delete this message. Thank you very much.

From: Tom Foster <foster@tdfoster.com>
Sent: Monday, October 31, 2022 2:41 PM
To: 'Jim@kolikof.com' <Jim@kolikof.com>
Subject: DEMAND FOR RESPONSE AND THINGS: 7204.003-00 (US OPP 91273650) GLOBAL EYE INVESTMENTS, LLC V. PRIME FISH LLC - Opposer's Interrogatories and Req for Production

Dear Mr. Miller,

This communication is to alert you that appropriate responses to the attached discovery requests are now overdue. They were sent out to your previous counsel on August 22, 2022 and the Board has now resumed the proceedings.

Global Eye Investments warns that if you do not provide the responses and things right away, we will be pursuing appropriate sanctions with the Board.

Cordially,



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From: Tom Foster <foster@tdfoster.com>
Sent: Monday, August 22, 2022 11:19 AM
To: 'alexis@trademarkia.com' <alexis@trademarkia.com>
Cc: 'hallie@trademarkia.com' <hallie@trademarkia.com>
Subject: 7204.003-00 (US OPP 91273650) IMPERIAL KALUGA (90579958) - Opposer's Interrogatories and Req for Production

Dear Alexis,

Please find attached hereto the following:

1. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF
2. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND COUNTERCLAIM PLAINTIFF

Cordially,

Thomas D. Foster, Esq.
Registered Patent Attorney
Registration No.: 44,686

TDFoster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130
ph: 858.922.2170
fax: 888.757.3817
foster@tdfoster.com

CONFIDENTIAL/PRIVILEGED COMMUNICATION

This message contains information which may be confidential and privileged communication between client and attorney. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail at foster@tdfoster.com and delete this message. Thank you very much.

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Global Eye Investments, LLC	)	Opposition No. 91273650
	)	Mark: IMPERIAL KALUGA
Opposer and Counterclaim Defendant,	)	Serial No.:90579958
)	
v.)	
	)	Mark: IMPERIA CAVIAR
Prime Fish, LLC	)	Reg. No. 5662504
)	
Applicant and Counterclaim Plaintiff)	

STIPULATED MOTION TO REOPEN TRIAL DATES

The parties to this proceeding, pursuant to 37 CFR § 2.120(a)(2) stipulate that the discovery period be reopened and extended for the following reasons.

On August 22, 2022 Global Eye Investments, LLC's counsel served on Alexis Campbell, then counsel for Prime Fish LLC, the following discovery requests:

1. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES TO APPLICANT AND COUNTERCLAIM PLAINTIFF
2. OPPOSER AND COUNTERCLAIM DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT AND COUNTERCLAIM PLAINTIFF

At that time, Discovery was set to close on 10/5/2022 (See TTAB entry No. 7 dated February 7, 2022).

Later that month, on August 31, 2022 Mr. Campbell filed a MOTION TO WITHDRAW AS COUNSEL, which motion was subsequently granted. The Board suspended proceedings on September 3, 2022 to allow Prime Fish to appoint new counsel, or to file a paper stating that Applicant chooses to represent itself.

On October 3, 2022, a James H. Miller filed an answer stating that he was going to represent Prime Fish, LLC.

Subsequently, on October 21, 2022, the Board issued a notice that the "proceedings herein are RESUMED and dates remain as set by the Board on February 7, 2022." This appears to be a mistake since the Board's order dated September 3, 2022 made it clear that the

proceedings are otherwise suspended pending response to the order and that the parties will be notified by the Board when proceedings are resumed, and dates will be reset, as appropriate.

Prime Fish, LLC has not yet provided the necessary responses and documents requested by Global Eye Investments, LLC in its first discovery requests despite being warned that they were past due.

In view of the foregoing, Global Eye Investments, LLC and Prime Fish, LLC request the Board to reopen and reset the trial dates to give Prime Fish, LLC the necessary time to respond to the outstanding discovery requests.

Dated November 22, 2022

/ _____ /
James H. Miller, Principal
PRIME FISH LLC
820 Glenmere Way
Los Angeles, CA 90049

/ _____ /
Thomas D. Foster, Esq.
TDFoster - Intellectual Property Law
11622 El Camino Real, Suite 100
San Diego, CA 92130

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2022, a true and complete copy of the foregoing STIPULATED MOTION TO REOPEN TRIAL DATES is being served upon the principal for pro se Applicant and Counterclaim Plaintiff, PRIME FISH LLC, by email to the following address:

James H. Miller
PRIME FISH LLC
820 GLENMERE WAY
LOS ANGELES, CA 90049
UNITED STATES
enjoy@kolikof.com, jim@kolikofcaviar.com

/Thomas D. Foster/

(Typed or Printed Name of Person Signing Certificate)