

ESTTA Tracking number: **ESTTA189496**

Filing date: **01/29/2008**

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

Proceeding	92045408
Party	Defendant SPINRITE LIMITED PARTNERSHIP
Correspondence Address	LEE J. EULGEN NEAL, GERBER & EISENBERG LLP TWO NORTH LASALLE STREET, SUITE 2300 CHICAGO,, IL 60602-3801 UNITED STATES ssmith@ngelaw.com,leulgen@ngelaw.com,ipdocket@ngelaw.com
Submission	Reply in Support of Motion
Filer's Name	Sarah E. Smith
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Signature	/Sarah E. Smith/
Date	01/29/2008
Attachments	Reply in Support of Motion to Compel and Certificate of Service.pdf (4 pages) (519523 bytes) Exhibit A.pdf (3 pages)(310512 bytes) Exhibit B.pdf (3 pages)(310023 bytes)

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

In the matter of Registration No. 0237163)	
)	
LILY CHIN,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92045408
)	
SPINRITE LIMITED PARTNERSHIP,)	
)	
Respondent.)	

RESPONDENT'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL

Respondent Spinrite Limited Partnership ("Spinrite"), by its attorneys, Neal, Gerber & Eisenberg LLP, hereby submits the following as its Reply in support of its previously-filed Motion to Compel petitioner Lily Chin ("Petitioner") to respond to certain of the requests contained in Spinrite's First Set of Interrogatories and First Set of Requests for the Production of Documents (the "Reply").

1. On October 25, 2007, Spinrite filed and served its Motion to Compel (the "Motion") certain of the requests contained in Petitioner's First Set of Interrogatories (the "Interrogatories") and First Set of Requests for the Production of Documents (the "Document Requests"), copies of which are attached to the Motion as **Exhibits 1 and 2**, respectively. Spinrite's Motion details the deficiencies in Petitioner's written responses to certain of the Interrogatories and Document Requests, as well as the repeated and unsuccessful attempts by Spinrite's counsel to resolve this matter through correspondence with Petitioner's counsel.

2. Because the Motion was served upon Petitioner via U.S. Mail on October 25, 2007, pursuant to TBMP § 502.02(b) and 37 CFR § 2.119(c), Petitioner was obligated to file and serve her opposition to the Motion within twenty (20) days.

3. After Spinrite filed its Motion, ten (10) days of Petitioner's time to oppose the Motion elapsed.

4. Then, on November 5, 2007, the parties stipulated to thirty (30) day suspension of these proceedings through December 5, 2007. Copies of the parties' November 5, 2007 stipulated motion to suspend and the Board's November 5, 2007 order granting that motion are attached hereto collectively as **Exhibit A**. On December 5, 2007, the parties filed another stipulated motion to suspend the proceedings for an additional thirty (30) days. Copies of the parties' December 5, 2007 stipulated motion to suspend and the Board's December 5, 2007 order granting that motion are attached hereto collectively as **Exhibit B**.

5. The Board's December 5, 2007 order provided that these proceedings were to "resume without further notice or order from the Board, upon the schedule set out in the [parties' December 5th motion]" *See Ex. B* (emphasis in original). The parties' motion provided that the proceedings would resume on January 5, 2008, which was a Saturday. *See Id.* Therefore, these proceedings actually resumed without further notice from the Board on Monday, January 7, 2008. *See Id.*

6. Because only ten (10) days of Petitioner's twenty (20) day time to oppose the Motion had elapsed when the parties suspended these proceedings, Petitioner had ten (10) days left after these proceedings resumed on January 7, 2008 to file her opposition to the Motion. Accordingly, Petitioner's deadline to oppose the Motion was January 17, 2008.

7. Petitioner did not timely file an opposition to the Motion. In fact, as of the filing date of this Reply, Petitioner still has yet to file or serve *any* response to the Motion. Furthermore, neither Petitioner nor her attorney ever requested an extension of time to respond to the Motion.

8. Because Petitioner failed to substantively and timely respond to the Motion, it should be treated as conceded, and for this reason as well as those set forth more fully in the Motion, Spinrite's well-founded Motion should be granted in full. *See Central Manufacturing Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210, 1211 (TTAB 2001) (motion to dismiss treated as conceded); *see also* 37 CFR § 2.127(a) ("[w]hen a party fails to file a brief in response to a motion, the Board may treat the motion as conceded").

WHEREFORE, for the foregoing reasons as well as those set forth in the Motion, Spinrite Limited Partnership respectfully requests that the Board enter an order (i) granting the Motion in full and ordering the relief requested therein, and (ii) granting such other and further relief as the Board deems appropriate.

Respectfully submitted,



One of the Attorneys for Respondent,
Spinrite Limited Partnership

Date: January 29, 2008

Lee J. Eulgen
Sarah E. Smith
Neal, Gerber & Eisenberg LLP
2 North LaSalle Street, Suite 2200
Chicago, Illinois 60602
312.269.8000

CERTIFICATE OF SERVICE

I, Sarah E. Smith, an attorney state that I served a copy of the foregoing, Respondent's Reply in Support of its Motion to Compel, upon:

Margo Lynn Hablutzel, Esq.
Hablutzel & Associates
19 S. LaSalle Street
Suite 1300
Chicago, Illinois 60603

via First Class U.S. Mail, postage prepaid, on this 29th day of January, 2008.



Sarah E. Smith

Exhibit A

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

November 5, 2007

PROCEEDING NO. 92045408
LILLY CHIN

v.

SPINRITE LIMITED
PARTNERSHIP

MOTION TO SUSPEND GRANTED

SPINRITE LIMITED PARTNERSHIP's motion filed, Nov 05, 2007, to suspend this proceeding is granted. Accordingly, proceedings herein are suspended through Dec 05, 2007, subject to the right of either party to request resumption at any time. During the suspension period, the parties shall notify the Board of any change of address for either the parties are their counsel.

Unless the parties sooner request resumption, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set out in the motion. If an answer has not been filed, the defendant is allowed until thirty days from the date of resumption to file an answer. The parties are allowed THIRTY DAYS from resumption in which to serve responses to any outstanding discovery requests.

ESTTA Tracking number: **ESTTA172882**

Filing date: **11/05/2007**

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

Proceeding.	92045408
Applicant	Defendant SPINRITE LIMITED PARTNERSHIP
Other Party	Plaintiff LILLY CHIN

Motion for Suspension for Settlement With Consent

The parties are actively engaged in negotiations for the settlement of this matter. SPINRITE LIMITED PARTNERSHIP requests that this proceeding be suspended for 30 days to allow the parties to continue their settlement efforts.

Proceedings Resume : 12/06/2007
Discovery Period to Close : 04/04/2008
Thirty-day testimony period for party in position of
plaintiff to close : 07/03/2008
Thirty-day testimony period for party in position of
defendant to close : 09/01/2008
Fifteen-day rebuttal testimony period to close : 10/16/2008

SPINRITE LIMITED PARTNERSHIP has secured the express consent of all other parties to this proceeding for the suspension requested herein.

SPINRITE LIMITED PARTNERSHIP has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/Sarah E. Smith/

Sarah E. Smith

ipdocket@ngelaw.com, ssmith@ngelaw.com, leuigen@ngelaw.com

copyrightlaw@earthlink.net

11/05/2007

Exhibit B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

December 5, 2007

PROCEEDING NO. 92045408
LILLY CHIN

v.

SPINRITE LIMITED
PARTNERSHIP

MOTION TO SUSPEND GRANTED

SPINRITE LIMITED PARTNERSHIP's motion filed, Dec 05, 2007, to suspend this proceeding is granted. Accordingly, proceedings herein are suspended through Jan 04, 2008, subject to the right of either party to request resumption at any time. During the suspension period, the parties shall notify the Board of any change of address for either the parties or their counsel.

Unless the parties sooner request resumption, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set out in the motion. If an answer has not been filed, the defendant is allowed until thirty days from the date of resumption to file an answer. The parties are allowed THIRTY DAYS from resumption in which to serve responses to any outstanding discovery requests.

ESTTA Tracking number: **ESTTA178768**

Filing date: **12/05/2007**

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

Proceeding.	92045408
Applicant	Defendant SPINRITE LIMITED PARTNERSHIP
Other Party	Plaintiff LILLY CHIN

Motion for Suspension for Settlement With Consent

The parties are actively engaged in negotiations for the settlement of this matter. SPINRITE LIMITED PARTNERSHIP requests that this proceeding be suspended for 30 days to allow the parties to continue their settlement efforts.

Proceedings Resume : 01/05/2008
Discovery Period to Close : 05/04/2008
Thirty-day testimony period for party in position of
plaintiff to close : 08/02/2008
Thirty-day testimony period for party in position of
defendant to close : 10/01/2008
Fifteen-day rebuttal testimony period to close : 11/15/2008

SPINRITE LIMITED PARTNERSHIP has secured the express consent of all other parties to this proceeding for the suspension requested herein.

SPINRITE LIMITED PARTNERSHIP has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,

/Sarah E. Smith/

Sarah E. Smith

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12/05/2007