

ESTTA Tracking number: **ESTTA343000**

Filing date: **04/19/2010**

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

Proceeding	92050302
Party	Defendant Invisible Fence, Inc.
Correspondence Address	R. Bradford Brittian Pitts and Brittian PC P.O. Box 51295 Knoxville, TN 37950 UNITED STATES MLDtrademarks@pitts-brittian.com
Submission	Other Motions/Papers
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Date	04/19/2010
Attachments	00207469.PDF ( 6 pages )(161042 bytes )

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

In the Matter of U. S. Trademark Registration Nos. 1,765,230, 1,600,470, and 1,371,021  
Marks: INVISIBLE, INVISIBLE FENCE, and INVISIBLE FENCING

FIDO'S FENCES,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92050302 (parent)
	)	92050306
INVISIBLE FENCE, INC.	)	92050322
	)	
Respondent.	)	
	)	

Commissioner for Trademarks  
Trademark Trial and Appeal Board  
P. O. Box 1451  
Alexandria, VA 22313-1451

**REPORT OF STATUS OF CIVIL ACTIONS**

In an Order dated March 19, 2010, the Trademark Trial and Appeal Board ordered that the Parties hereto have thirty (30) days from the mailing date of the Order to inform the Board of the status of the civil action which occasioned the suspension of this Cancellation Proceeding. This Proceeding was suspended pending the final disposition of two (2) civil actions, namely Civil Action No. 2:08-CV-754 styled *Fido's Fences, Inc. v. The Canine Fence Company*, filed in the United States District Court for the Eastern District of New York and Civil Action No. 3:09-CV-00025 styled *Invisible Fence, Inc. v. Fido's Fences, Inc.*, filed in the United States District Court for the Eastern District of Tennessee, Knoxville Division. In accordance with the Board's Order, the respondent, Invisible Fence, Inc., provides the following report regarding the status of said civil actions.

Civil Action No. 2:08-CV-754 (Eastern District of New York)

In a telephone conference between the undersigned and counsel for The Canine Fence Company, the defendant in Civil Action No. 2:08-CV-754 filed in the United States District Court for the Eastern District of New York (“the New York District Court”), counsel for The Canine Fence Company advised the undersigned that the New York District Court civil action has been settled. Counsel for The Canine Fence Company also advised that the settlement agreement between the parties includes a confidentiality provision which prohibits disclosure of the terms of settlement. Therefore, the undersigned is uninformed as to the terms of settlement. The parties filed a STIPULATION OF DISCONTINUANCE WITH PREJUDICE PURSUANT TO FED.R.CIV.P. 41, which was signed by Judge Wexler, the New York District Court Judge before whom the civil action was pending, and filed on March 16, 2010. A copy of the STIPULATION is attached hereto as **Exhibit A** and incorporated herein by reference. As will be noted from a review of the STIPULATION, all claims and counterclaims asserted in the New York District Court civil action have been voluntarily discontinued with prejudice.

Civil Action No. 3:09-CV-00025 (Eastern District of Tennessee, Knoxville Division)

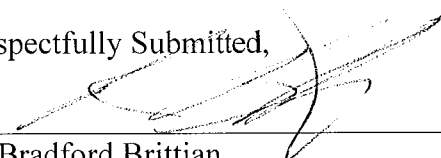
On August 20, 2009, the United States District Court for the Eastern District of Tennessee (“the Tennessee District Court”) entered a MEMORANDUM AND ORDER staying Civil Action No. 3:09-CV-00025 until disposition of the New York District Court civil action. In the MEMORANDUM AND ORDER of August 20, 2009, the Tennessee District Court also ordered the parties to file with the Court every ninety (90) days a report regarding the status of New York District Court civil action until such time as there is a disposition thereof.

On March 15, 2010, Invisible Fence, Inc. filed with the Tennessee District Court PLAINTIFF’S SUPPLEMENTAL STATUS REPORT REGARDING LITIGATION PENDING

IN THE EASTERN DISTRICT OF NEW YORK in which Invisible Fence, Inc. advised the Tennessee District Court that the New York District Court civil action has been settled. As of the date of this filing, the Tennessee District Court civil action is still stayed.

The disposition of the Tennessee District Court civil action may be dispositive of, or have a bearing upon, this Cancellation Proceeding. Accordingly, continuation of the stay of this Cancellation Proceeding pending final disposition of the Tennessee District Court civil action is warranted.

Respectfully Submitted,



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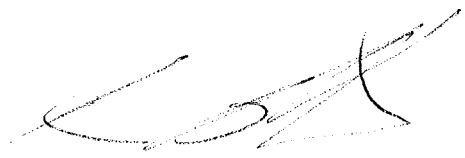
R. Bradford Brittian  
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Paul A. Forsyth  
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RBBTrademarks@pitts-brittian.com  
Attorneys for Respondent  
Invisible Fence, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this REPORT OF STATUS OF CIVIL ACTIONS, including the Exhibit A hereto, has been served upon Petitioner at the following addresses of record of Petitioner's counsels in this Proceeding by First Class Mail on the 19<sup>th</sup> day of April, 2010.

Brad M. Behar  
Brad M. Behar & Associates, PLLC  
94 2 Street  
Mineola, NY 11501

Panagiota Betty Tufariello  
Law Offices of P. B. Tufariello, P.C.  
25 Little Harbor Road  
Mt. Sinai, NY 11766



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R. Bradford Brittan

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FIDO'S FENCES, INC.,

Plaintiff,

- against -

THE CANINE FENCE COMPANY,

Defendant.

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y. Case No. CV-08-754  
(LDW) (AKT)

★ MAR 16 2010

LONG ISLAND

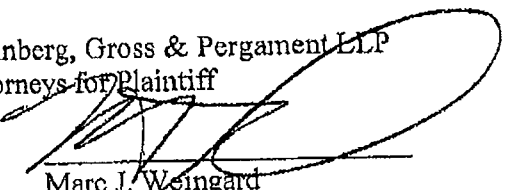
**STIPULATION OF  
DISCONTINUANCE WITH  
PREJUDICE PURSUANT TO  
FED. R. CIV. P. 41**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all of the parties to the above-entitled action, that, whereas no party hereto is an infant or an incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above-entitled action and all claims and counterclaims therein is voluntarily discontinued with prejudice, without costs to either party as against the other.

Dated: March 3, 2010

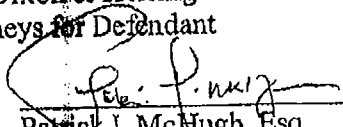
Weinberg, Gross & Pergament LLP  
Attorneys for Plaintiff

By:

  
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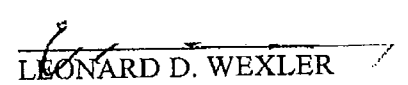
Finn Dixon & Herling  
Attorneys for Defendant

By:

  
Patrick J. McHugh, Esq.  
177 Broad Street  
Stamford, CT 06901  
(203) 325-5000

SO ORDERED

Central Islip, New York  
March 16, 2010

  
LEONARD D. WEXLER  
UNITED STATES DISTRICT JUDGE