

ESTTA Tracking number: **ESTTA677194**

Filing date: **06/09/2015**

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

Proceeding	92058280
Party	Defendant Tenggis Co., Ltd.
Correspondence Address	PETER D GORDON PETER D GORDON & ASSOCIATES 8052 MELROSE AVENUE, 2ND FLOOR LOS ANGELES, CA 90046-7015 UNITED STATES peter@lawnet1.com, david@latml.com, juancarlos@aol.es
Submission	Other Motions/Papers
Filer's Name	PETER D. GORDON
Filer's e-mail	peter@lawnet1.com, juancarlos@g-m.es, juancarlos@aol.es
Signature	/Peter D. Gordon/
Date	06/09/2015
Attachments	Declaration of PETER GORDON - June 8, 2015.pdf(238903 bytes)

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

APU XK, Petitioner	Cancellation No. 92058280
TENGGIS CO., LTD. Registrant	Registration No. 3949134

SUPPLEMENTARY DECLARATION OF PETER D. GORDON

I, PETER D. GORDON, declare as follows:

1. I am the attorney for Registrant Triggis Co., Ltd./E. Shagdarguntev. In this regard, I have been admitted to all of the Courts of the State of California as a licensed member of this Bar for more than 20-years. I am also admitted to the United States Supreme Court, the USDC for the Eastern District of Michigan, the Central, Southern and Eastern Districts of the U.S. District Courts in California and to the 9th Circuit Court of Appeals. Each of the statements set forth below is based on facts and events known to me of my own personal knowledge and, if called upon as a witness, I would be competent to attest to the following.

Refusal of Professional Courtesy

2. I must be naïve. After drafting my Motion to Withdraw Admissions, I genuinely thought that counsel Lebow would acknowledge that the few days’

delay in serving the Responses to the First Set of Request for Admissions was a *de minimis* error and, given his massive round of 2nd and 3rd set of Interrogatories, Document Productions and Admissions, that he would simply stipulate to having the Board issue an Order allowing the Registrant to withdraw said admissions.

3. Attorney Lebow was also fully on notice of my unfamiliarity with the discovery rule requiring responses to discovery even after the discovery cut off. Nevertheless, counsel for APU opposes withdrawal and presses for a forfeiture against Registrant's right to the mark by reason of a 3 to 10 day delay in receiving Responses

Suppression by Petitioner of Service Date Error on Requests in Issue

4. This level of "hardball" gamesmanship is reflected not only in attorney Lebow's refusal, under these circumstances, to do the courteous or collegial thing by stipulating to a withdrawal (nor even responding to my request for such a stipulation), but he has suppressed a material fact. He failed to disclose to the Board in his 165-page Opposition that the Proof of Service on his First Set of Request for Admissions contained the date of service as "July November 7, 2014." After recognizing this service error, his office re-served the Requests on November 14, 2014. See the mea culpa introduction to Registrant's Response to the Admissions in issue attached as Exhibit "7" to the Motion to Withdraw, where I wrote the following:

Counsel for Registrant believed in good faith that service of these Requests were belated and untimely pursuant to the previous Scheduling Order which provided for the end of discovery by November 30, 2014. Since these

Requests were served by mail on “7th day of July November 2014,” and reserved on July 14, 2014 [sic. November 14, 2014] despite the error, Counsel believed that the 30 day plus mailing rule would take the response date beyond the November 30, 2014 then pending discovery cut off. In reliance on this understanding, as well as the pending Objection to Petitioner’s Motion to Correct the Case Scheduling Order, counsel for Respondent did not prepare responses to admissions on behalf of TENGGIS CO., LTD. On this basis, and TENGGIS CO.’s reasonable reliance on counsel, no responses were provided in a timely manner. Upon receipt of the demand by Petitioner’s counsel on December 19, 2014, immediate steps were taken to prepare the attached Verified Response to Request for Admissions. Consequently, these Requests should not be deemed admitted as the belated Responses below result from attorney error, inadvertence or excusable neglect.

Another lawyer would have accepted that I had “fallen on my sword” and considered the brief delay a non-issue. Mr. Lebow, instead, is now trying to go for the jugular based on my admitted error regarding a de minimis delay.

Responses Served Only 3-Days Late Making Error *de minimis*

5. Given the corrected Proof of Service by Petitioner, the re-served Request for Admissions did not require a response until-- served by mail November 14, +5-days mailing, +30 days to respond --namely, putting the Response as due on December 19, 2014. Thus, service of the Responses in Exhibit “7” were a mere three (3) days after December 19, 2014, when the

Responses were due. Instead, they were mailed out on December 22, 2014, a maximum 3-days later. Please refer to the Proof of Service on Exhibit “7” to the Motion to Withdraw.

Petitioner has Pursued an Exorbitant, Repetitive 3-Rounds of Interrogatories, Document Production Requests and Admissions, Each Followed by Supplementary Demands, Thus Waiving any Prejudice

6. Attorney Lebow has since December 2014 pursued an exorbitantly expensive round-after-round of discovery, pursuing the First Set of Interrogatories and the First Set of Document Production Requests, with demands for supplementation.

7. Then following with a 2nd wave of Interrogatories, Demand for Production of Documents and Request for Admissions, which were likewise subjected to further demands for supplementation.

8. There is now pending a 3rd Set of Request for Admissions, Interrogatories and Document Productions, as to which there is also a pending demand for Supplementary Responses.

Attorney Lebow’s Use of Massive Discovery as a Distraction Away from His Plan to Use the First Admissions for a Forfeiture

9. When I look at this massive follow-on discovery, binder after binder of discovery Responses, and now attorney Lebow taking the position that the First Set of Request for Admissions should be admitted because the Responses were served a few days late, I realize that the successive waves of discovery were a distraction. Attorney Lebow sought to divert my attention away from his secret

plan to (a) rely on these admissions and (b) obtain a forfeiture of Registrant's rights without a hearing on the merits.

Reason for Delay in Moving to Withdraw Admissions

10. If attorney Lebow had made clear that he insisted entry of these first admissions, that would by themselves be determinative of the case without trial, I would have moved to withdraw them months ago! I moved to set aside the admissions without realizing that this was his nefarious plan.

11. Given the erroneous Proof of Service, the 3-days' delay due to counsel's unfamiliarity with the Rule, this is almost a shameful exercise in gamesmanship. Chinggis is blameless, I have acknowledged my excusable error or mistake, and equity, statutory and case law precedent all combined more than justify the remedy of allowing the Registrant to withdraw its Admissions and receive a hearing on the merits.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed in Los Angeles County on June 8, 2015.

By /Peter D. Gordon/
PETER D. GORDON, ESQ.

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the Response to Opposition and the within Supplementary Declaration of Peter D. Gordon is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to Petitioner's counsel at:

Elizabeth A. Linford, Esq.
LADAS & PARRY LLP
5670 Wilshire Boulevard, Suite 2100
Los Angeles, California 90036

Mark Lebow, Esq.
LADAS & PARRY LLP
1727 King Street, Suite 105
Alexandria, Virginia 22314

On: June 9, 2015

 /Peter D. Gordon/
PETER D. GORDON, ESQ.