

ESTTA Tracking number: **ESTTA873640**

Filing date: **01/26/2018**

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

Proceeding	92062895
Party	Defendant Switch, Ltd. dba Switch
Correspondence Address	ANNIE-MARIE BIRK SWITCH LTD 7135 SOUTH DECATUR BLVD LAS VEGAS, NV 89118 UNITED STATES Email: tip@nevadafirm.com, jboyle@nevadafirm.com, bearl@nevadafirm.com, sam@switch.com, ip@switch.com, abirk@switch.com
Submission	Opposition/Response to Motion
Filer's Name	James D. Boyle
Filer's email	jboyle@nevadafirm.com
Signature	/James D. Boyle/
Date	01/26/2018
Attachments	Supplemental Affidavit of James D Boyle in Support of Respondent Opposition to Petitioner Motion to Strike.pdf(112767 bytes)

held on April 24, 2017 to allow for electronic service in this matter, which Uptime's counsel then sought to confirm in an email exchange that occurred on April 25, 2017.

4. At no time during the meet and confer teleconference that occurred on April 24, 2017, did counsel for Uptime inform me that Respondent had already declined to agree to electronic service in this matter.

5. Due to a clerical error in my office, the due date for the Reply in Support of the Motion for Protective Order (the "Reply") was miscalculated and the Reply was filed under the belief that Respondent had additional time to file its reply because of service by U.S. Mail rather than via electronic means.

6. Respondent had no knowledge or reason to believe that the Reply was filed untimely. My firm is solely responsible for the untimely filing of the Reply, and to exclude the Reply from consideration unduly prejudices Respondent (the client) for the error of my firm.

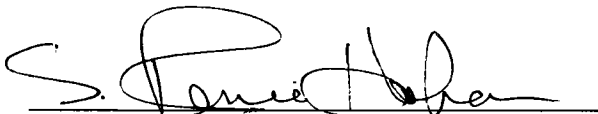
7. As Uptime had no procedural ability to file a responsive pleading to the Reply, Uptime was in no way prejudiced by the delay in my firm's untimely filing of the Reply.

Executed this 26th day of January, 2018.



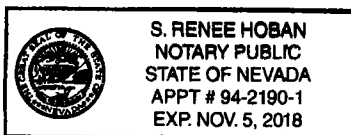
James D. Boyle, Esq.

Subscribed and sworn to before me
this 26th day of January, 2018.



Notary Public for Nevada

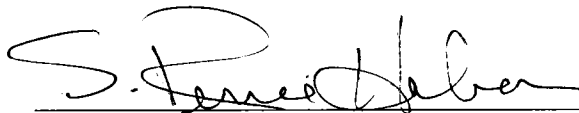
My Commission Expires: 11/5/2018



CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **SUPPLEMENTAL AFFIDAVIT OF JAMES D. BOYLE ESQ. IN SUPPORT OF RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION TO STRIKE REGISTANT'S REPLY IN SUPPORT OF ITS MOTION FOR PROTECTIVE ORDER PREVENTING THE DEPOSITION OF ROB ROY** was served upon Petitioner by forwarding same via First Class U.S. Mail, postage prepaid, and via Electronic Mail, to Petitioner's correspondent of record, on January 26, 2018, as follows:

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An Employee of Holley Driggs Walch
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