

ESTTA Tracking number: **ESTTA978202**

Filing date: **06/04/2019**

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

Proceeding	92062895
Party	Plaintiff Uptime Institute, LLC
Correspondence Address	FRITZ L SCHWEITZER III & TATYANA VOLOSHCHUK ST ONGE STEWARD JOHNSTON & REENS LLC 986 BEDFORD STREET STAMFORD, CT 06905 UNITED STATES fschweitzer3@ssjr.com, tvoloshchuk@ssjr.com, litigation@ssjr.com 203-324-6155
Submission	Other Motions/Papers
Filer's Name	Fritz L. Schweitzer III
Filer's email	tvoloshchuk@ssjr.com, litigation@ssjr.com, fschweitzer3@ssjr.com
Signature	/Fritz L. Schweitzer III/
Date	06/04/2019
Attachments	Decl ISO Reply to Motion for PO.pdf(20182 bytes ) Exhibit A FORM.pdf(5917 bytes )

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

UPTIME INSTITUTE, LLC	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation Nos. 92,062,895 and
	:	92,062,912 (consolidated)
	:	
SWITCH, LTD.	:	
	:	
	:	
Registrant.	:	

---

**DECLARATION OF FRITZ SCHWEITZER III IN SUPPORT OF  
PETITIONER’S REPLY TO REGISTRANT’S RESPONSE TO MOTION FOR  
SANCTIONS AND PROTECTIVE ORDER**

I, FRITZ SCHWEITZER III, Esq. declare as follows:

1. I am an attorney at the law firm of St. Onge Steward Johnston & Reens, LLC (“St. Onge”) and represent Petitioner, Uptime Institute, LLC (“Uptime”) in the captioned matter. I am familiar with the facts stated herein and, if called to testify, would competently testify thereto.
2. I submit this declaration in connection with Uptime’s Reply to Registrant Switch, Ltd.’s (“Switch”) Response to Motion for Sanctions and Protective Order Preventing Disclosure of Uptime’s Confidential Information.
3. From about April 2018 to about April 2019, the parties engaged in settlement discussions attempting to resolve issues between them and in this proceeding.
4. During this time, counsel for Uptime and Switch communicated on multiple occasions regarding whether Switch would honor Uptime’s confidentiality designations during the settlement discussions, and Switch indicated that it would.

5. On April 20, 2018, I sent correspondence to Switch's counsel, Anne-Marie Birk, asking Switch to confirm that it would honor Uptime's confidentiality designations pending settlement discussions between the parties. A true and correct copy of the correspondence is attached hereto as Exhibit A at page 4.

6. On April 25, 2018, I sent another follow-up correspondence to Ms. Birk regarding Uptime's confidentiality designations. A true and correct copy of the correspondence is attached hereto as Exhibit A at page 3.

7. On April 26, 2018, I received a response from counsel for Switch, Sam Castor, stating that Switch would not publicly disclose the designated confidential information during the settlement discussions. A true and correct copy of the correspondence is attached hereto as Exhibit A at page 3.

8. On June 18, 2018, the parties met for a settlement discussion. I personally attended the meeting. During that meeting, Switch again indicated to Uptime that it would honor Uptime's confidentiality designations pending settlement discussions.

9. On June 19, 2018, I sent correspondence to Switch's counsel, Mr. Castor, confirming the conversation during the June 18, 2018 meeting. A true and correct copy of the correspondence is attached hereto as Exhibit A at page 2.

10. On June 19, 2018, I received a response from Mr. Castor, stating that Switch would honor the designations during a stay of the proceeding pending settlement discussions. A true and correct copy of the correspondence is attached hereto as Exhibit A<sup>1</sup> at page 1.

---

<sup>1</sup> Exhibit A contains redactions for information relating to settlement discussions not relevant to the present Motion.

I declare under penalty of perjury that the foregoing is true and correct.

June 4, 2019

/s/FRITZ L. SCHWEITZER/  
FRITZ SCHWEITZER III, Esq.  
[fschweitzer3@ssjr.com](mailto:fschweitzer3@ssjr.com)

**CERTIFICATE OF SERVICE**

This is to certify that on this date, a true copy of the foregoing DECLARATION OF FRITZ SCHWEITZER III IN SUPPORT OF PETITIONER'S REPLY TO REGISTRANT'S RESPONSE TO MOTION FOR SANCTIONS AND PROTECTIVE ORDER was served by electronic mail on counsel for Registrant as follows:

Bryce K. Earl, Esq.  
James D. Boyle, Esq.  
Holley Driggs Walch Fine Wray Puzey & Thompson  
400 South Fourth Street, Suite 300  
Las Vegas, Nevada 89101  
jboyle@nevadafirm.com  
bearl@nevadafirm.com  
sstory@nevadafirm.com  
tip@nevadafirm.com  
rhoban@nevadafirm.com

Anne-Marie Birk, Esq.  
Sam Castor, Esq.  
SWITCH, LTD.  
713 5 South Decatur Boulevard  
Las Vegas, Nevada 89118  
abirk@switch.com  
sam@switch.com  
ip@switch.com

June 4, 2019

Date:

/s/Erika S. Delaneau

# Exhibit A

**CONFIDENTIAL**

**(FILED UNDER SEAL)**