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

Proceeding	92065794
Party	Defendant MT Industries, Inc.
Correspondence Address	RICHARD L ALBERT LAW OFFICES OF RICHARD L ALBERT 4605 LANKERSHIM BLVD, SUITE 203 NORTH HOLLYWOOD, CA 91602 UNITED STATES Email: rick@albertlawoffices.com
Submission	Response to Board Order/Inquiry
Filer's Name	Richard L. Albert
Filer's email	rick@albertlawoffices.com
Signature	/Richard L. Albert/
Date	05/15/2018
Attachments	Stipulation to Use of Document Production.pdf(189461 bytes )

May 15, 2018

**BY E-MAIL «Email Address» AND FIRST CLASS MAIL**

Sarah S. Brooks  
Stradling Yocca Carlson & Rauth  
100 Wilshire Boulevard  
4th Floor  
Santa Monica, CA 90401

*re: Marshall Tucker Band Inc. v. MT Industries, Inc.  
Cancellation No. 92065794*

Dear Ms. Brooks:

I have reviewed the May 15, 2018 Order from the TTAB Attorney, Ms. Dunn, regarding Registrant's production of documents in this matter. I am surprised that you apparently misinformed the Trademark Attorney about the current facts. Registrant has been consistent in advising you in writing that Petitioner should use the documents previously produced in the Federal proceedings in these proceedings, which are responsive to Petitioner's current demand. I offered to give you a new set of copies, and even to allow your inspection of the original documents. The document production has been supplemented after commencement of these proceedings and will continue to be supplemented pursuant to the discovery rules.

As stated in my April 25, 2018 e-mail to you, reproduced in full at the end of this letter, we *both* already stipulated that Petitioner may use the document production in these Cancellation Proceedings. Petitioner has all current responsive documents.

Not only did we so stipulate, but Registrant in its Amended Responses to MTB's Request For Documents, served on Petitioner concurrently with that e-mail, clearly stated that original documents as kept in the normal course of business that are responsive to Petitioner's inspection request were available for inspection on May 9, 2018, which you ignored.

Clearly stated: Registrant stipulates that Petitioner may use its document production from the related Federal litigation in these Cancellation Proceedings, and Registrant already has, and shall

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continue to, supplement the production of documents. The responsive documents are in your possession and were also made available for your inspection.

Sincerely,

/Richard Albert/

Richard L. Albert, Esq.

cc: Elizabeth Dunn, TTAB Attorney

**From:** Rick Albert [<mailto:rick@albertlawoffices.com>]  
**Sent:** Wednesday, April 25, 2018 10:43 AM  
**To:** Brooks, Sarah; Sara G. Memari  
**Subject:** Re: MTB v. MTI Cancellation

Sara,

Please do not misstate what I write to you in a self-serving e-mail (this is not the first time I had to politely ask you to stop doing that). I wrote:

"Also attached please find MTI's Amended Responses to MTB's request for documents (both redlined and final version). I had the documents delivered here to my office as they are kept in their normal course of business by MTI, which were kept by MTI in a bankers box

Copies of all responsive documents have already been made available and delivered to MTB, fully numbered, but you may re-inspect the documents on the date specified."

I never said that "You say that you simply transported a box that Rainey had collected."

You acknowledged that you received the electronic copies of the files when you took Ron Rainey's deposition, and you acknowledge you have the files in your e-mail below. If you need another copy, I offered to make a copy.

You and Mr. Wilkes as MTB's counsel signed and filed a pleading in Federal Court on May 31, 2017, stating that:

"Therefore, the time Defendants [i.e., Registrant] already have spent responding to Plaintiffs' discovery in this action will be time Defendants do not have to spend responding to discovery in

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the TTAB action . . . ."

That representation was also asserted by MTB in the meet and confer session we had on resolving that motion. I understand MTB's written and oral statement to be a representation, even a stipulation, that MTB would use the documents MTI produced in the TTAB action, which you expressly reference in your pleading.

I think you are looking to pick a fight where there is no dispute. You have the documents, if you lost them, you can get another copy, and you have been noticed that the originals, as kept in the normal course of business by MTI, are available for inspection. Isn't it time to move on to substantive matters?

Rick Albert