

ESTTA Tracking number: **ESTTA922252**

Filing date: **09/14/2018**

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

Proceeding	92068700
Party	Defendant EquipCo, LLC
Correspondence Address	EQUIPCO LLC #360, 7114 E STETSON DRIVE Scottsdale, AZ 85251 UNITED STATES no email provided no phone number provided
Submission	Other Motions/Papers
Filer's Name	Luke Powers
Filer's email	luke@equiprent.com
Signature	/Luke Powers/
Date	09/14/2018
Attachments	USPTO Response_encrypted_.pdf(184578 bytes ) Trademark Cover Letter.pdf(45113 bytes ) Notice of Recordation - EQUIPRENT.pdf(51259 bytes ) Cease and Desist letter_09102018.pdf(380335 bytes ) Cancellation Notice EQUIPRENT 9-7-18.pdf(35098 bytes ) Notice of Default EQUIPRENT 6-28-18.pdf(102040 bytes ) Petition for Cancellation EQUIPRENT 5-30-18.pdf(266289 bytes ) USPTO Notice to Incorrect Address EQUIPRENT 6-8-18.pdf(86163 bytes )

September 14, 2018

Luke Powers  
Founder & President  
Equiprent Inc.  
4500 Johnson Ave  
Western Springs, IL 60558  
EIN: 82-3989859  
Delaware C-Corp Company founded 10/17/2017

Office address:  
318 W Adams St  
Chicago, IL 60606

Trademark name: Equiprent  
Serial #: 85360848  
Registration #: 4196969

#### **REGARDING USPTO CANCELLATION NOTICE**

Dear Ms. Vogler or to Whom it May Concern at the USPTO office,

My name is Luke Powers, and I purchased the Trademark "Equiprent" from EquipCo LLC on January 9, 2018 via assignment (effective as of the date of the issuance of the registration - August 28, 2012). On February 13, 2018 I filed the assignment with the USPTO via an online request to transfer ownership of the Trademark "Equiprent" (see Trademark Assignment Cover Sheet dated February 13, 2018, attached).

The ownership assignment of the "entire interest" was granted by the USPTO and recorded as of February 13, 2018 ("Recordation Date") per USPTO's Notice of Recordation of Assignment Document dated June 18, 2018, PTAS #900439244 (see attached USPTO Notice of Recordation of Assignment; Brief: ASSIGNS THE ENTIRE INTEREST).

On September 10, 2018, I received by email a cease and desist notice from attorney David Oppenhuizen (see attached). In that notice he alleges that the "Equiprent" mark infringes on his client's mark - "Quiprent". Apparently Mr. Oppenhuizen filed a trademark application on May 18, 2018 to register the trademark "Quiprent" owned by a competing business called QuipRent Inc. domiciled in Indiana (Serial No. 87928298).

When I researched Mr. Oppenhuizen's "Quiprent" filings on the USPTO website I learned that on June 8, 2018, Mr. Oppenhuizen filed a petition to cancel the trademark registration for "Equiprent" with the Trademark Trial and Appeal Board ("TTAB"), and it appears that the TTAB

incorrectly served the petition for cancellation on the prior owner, Equipco LLC in Scottsdale, Arizona by certified mail:

EQUIPCO LLC  
#360, 7114 E STETSON DRIVE  
SCOTTSDALE, AZ 85251  
UNITED STATES

Equipco LLC has no interest and had no interest in the “Equiprent” trademark as of the date of the notice of cancellation, June 8, 2018. Thus the petition for cancellation was filed and served against the wrong party, and as such, is void. Equipco LLC did not inform me of the notice of cancellation. **At no time did Equiprent, Inc., the recorded owner of the registration, receive any notice of the cancellation proceeding. The default, therefore, was completely inadvertent.**

The USPTO website record for the Equiprent mark states that the registration was cancelled on Friday, September 7, 2018. Notably, on the next business day following cancellation of the mark, September 10, 2018, Mr. Oppenhuizen served Equiprent, Inc. with the cease and desist notice. This is the first we became aware of any issue with the mark. In fact, we were preparing to file the Declaration of Use.

The improper filing and service, I have learned, may relate to a clerical error in that the USPTO had not yet updated the ownership and contact information for the registration “Equiprent”, effective February 13, 2018, following USPTO approval of the assignment of the entire interest in the mark to Equiprent Inc. Therefore, I request reinstatement of the following mark under TMEP Code 1712.02:

Trademark name: Equiprent  
Serial #: 85360848  
Registration #: 4196969

**#1712.02: Reinstatement of Registrations Cancelled or Expired**

(Relevant sections bolded for effect):

<https://tmep.uspto.gov/RDMS/TMEP/current#/current/TMEP-1700d1e460.html>

**37 C.F.R. 2.64 Reinstatement of applications and registrations abandoned, cancelled, or expired due to Office error.**

**...(b) Request for Reinstatement of Cancelled or Expired Registration. The registrant may file a written request to reinstate a registration cancelled or expired due to Office error. There is no fee for the request for reinstatement.**

**(1) Deadline. The registrant must file the request by not later than:**

**(i) Two months after the issue date of the notice of cancellation/expiration; or**

**(ii) Where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, two months after the date of actual knowledge of the cancellation/expiration and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired, where the registrant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of cancellation/expiration or where the Office did not issue a notice.**

**(2) Requirements. A request to reinstate a registration cancelled/expired due to Office error must include:**

*i Proof that an affidavit or declaration of use or excusable nonuse, a renewal application, or a response to an Office action was timely filed and a copy of the relevant document;*

*(ii) Proof of actual receipt by the Office of an affidavit or declaration of use or excusable nonuse, a renewal application, or a response to an Office action and a copy of the relevant document;*

*(iii) Proof that the Office processed a fee in connection with the filing at issue and a copy of the relevant document;*

**(iv) Proof that the Office sent the Office action to an address that is not the designated correspondence address; or**

*(v) Other evidence, or factual information supported by a declaration under § 2.20 or 28 U.S.C. 1746, demonstrating Office error in cancelling/expiring the registration...*

Per this section of code, I request that the registration be reinstated.

I look forward to your timely response,



Luke Powers (Sep 14, 2018)

---

Luke Powers  
Founder & President, Equiprent Inc.  
Mobile: 630-780-7500  
luke@equiprent.com

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM461956

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
EquipCo, LLC	FORMERLY EquipCo, LLC	08/28/2012	Limited Liability Company: ARIZONA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	EquipRent Inc.		
<b>Street Address:</b>	4500 Johnson Ave		
<b>City:</b>	Western Springs		
<b>State/Country:</b>	ILLINOIS		
<b>Postal Code:</b>	60558		
<b>Entity Type:</b>	Corporation: ILLINOIS		
<b>PROPERTY NUMBERS Total: 1</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	85360848	EQUIPRENT	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	630-780-7500		
<b>Email:</b>	luke@equiprent.com		
<b>Correspondent Name:</b>	Luke Powers		
<b>Address Line 1:</b>	4500 Johnson Ave		
<b>Address Line 4:</b>	Western Springs, ILLINOIS 60558		
<b>NAME OF SUBMITTER:</b>	Luke Powers		
<b>SIGNATURE:</b>	/Luke Powers/		
<b>DATE SIGNED:</b>	02/13/2018		
<b>Total Attachments: 1</b>			
source=Assignment of Trademark Name Equiprent #4196969#page1.tif			

OP \$40.00 85360848

Assignment of Trademark

Whereas

Roberto Guerrieri formerly of EquipCo, LLC DBA EquipRent of #360, 7114 E Stetson Drive, Scottsdale, AZ 85251, Is the owner of Trademark registration #4196969.

Whereas

Luke Powers of Equiprent.com, Inc. of 4500 Johnson Ave, Western Springs, IL 60558, is desirous of acquiring said trademark registration #4196969.

Now therefore good and valuable consideration I Roberto Guerrieri formerly of EquipCo, LLC hereby assign the entire interest and goodwill of the business to Luke Powers of Equiprent.com Inc.

Signature

Date

/Roberto Guerrieri/

1-13-2017

Roberto Guerrieri



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUNE 18, 2018

PTAS

LUKE POWERS  
4500 JOHNSON AVE  
WESTERN SPRINGS, IL 60558

**900439244**

### UNITED STATES PATENT AND TRADEMARK OFFICE NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT RECORDATION BRANCH OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE ASSIGNMENT RECORDATION BRANCH AT 571-272-3350. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, MAIL STOP: ASSIGNMENT RECORDATION BRANCH, P.O. BOX 1450, ALEXANDRIA, VA 22313.

RECORDATION DATE: 02/13/2018

REEL/FRAME: 6354/0007  
NUMBER OF PAGES: 2

BRIEF: ASSIGNS THE ENTIRE INTEREST

ASSIGNOR:

EQUIPCO, LLC  
FORMERLY EQUIPCO, LLC

DOC DATE: 08/28/2012  
CITIZENSHIP: ARIZONA  
ENTITY: LIMITED LIABILITY COMPANY

ASSIGNEE:

EQUIPRENT INC.  
  
4500 JOHNSON AVE  
WESTERN SPRINGS, ILLINOIS 60558

CITIZENSHIP: ILLINOIS  
ENTITY: CORPORATION

SERIAL NUMBER: 85360848  
REGISTRATION NUMBER: 4196969  
MARK: EQUIPRENT  
DRAWING TYPE: STANDARD CHARACTER MARK

FILING DATE: 06/30/2011  
REGISTRATION DATE: 08/28/2012

ASSIGNMENT RECORDATION BRANCH  
PUBLIC RECORDS DIVISION



146 Monroe Center NW  
McKay Tower, Ste. 730  
Grand Rapids, MI 49503

616-242-9550

616-217-4135

david@oppenhuizen.com

September 10, 2018

**VIA CERTIFIED MAIL**

Mr. Luke Powers  
Equiprent Inc.  
4500 Johnson Ave.  
Western Springs, IL 60558

RE: Use of the name "Equiprent"

Dear Mr. Powers:

My law office represents QuipRent, Inc., which owns and operates the website located online at [www.quiprent.com](http://www.quiprent.com). Through this website QuipRent, Inc. uses its trademark "QuipRent" in interstate commerce in connection with classified listings for equipment rentals. QuipRent, Inc. also owns the pending U.S. Trademark Application Serial No. 87928298 for this same mark. This trademark application was filed on May 18, 2018, which establishes nationwide priority in its trademark as of that date.

It has come to my client's attention that you are in the process of starting operations of your equipment rental business located online at [www.equiprent.com](http://www.equiprent.com). We have documented your website which recently stated "Equiprent.com – Coming September 2018!" We have also documented that, as of September 5, 2018, your "Top 50 Best Selling Products" webpage does not display any products and states "we couldn't find any matches!," indicating that your business has not started operating as of that date.

In addition, we believe that your use of the name "Equiprent" will create a likelihood of confusion with my client's trademark. We are contacting you at this point to notify you of our concerns, and to give you an opportunity to change your name while it is still relatively easy to do so.

Although my client is serious about enforcing its trademark, it is hoping to avoid a lengthy and costly litigation over this matter at this point. At this time, we request your full and immediate cooperation by ceasing any current and future use of the name "Equiprent."



September 10, 2018

However, if we are unable to resolve this matter efficiently and my client is forced to expend money to protect its trademark, then we will pursue money damages to the fullest extent possible. In view of the importance of this matter to my client, we request a reply from you or your attorney within ten days of your receipt of this letter. We look forward to your cooperation in resolving this matter.

Sincerely,

Oppenhuizen Law PLC



David L. Oppenhuizen

Enclosures

September 7, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

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*QuipRent, Inc*

*v.*

*EquipCo, LLC*

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Cancellation No. 92068700

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David L. Oppenhuizen of Oppenhuizen Law PLC for QuipRent, Inc.

EquipCo, LLC, pro se.

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The petition of QuipRent, Inc. having been granted on September 7, 2018,  
Registration No. 4196969 is hereby cancelled.

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

July 28, 2018

Cancellation No. 92068700

*QuipRent, Inc*

*v.*

*EquipCo, LLC*

### **NOTICE OF DEFAULT**

An answer to the petition to cancel was due in this proceeding on **July 18, 2018**. Inasmuch as it appears that no answer has been filed, nor has Respondent filed a motion to extend its time to answer, a notice of default is hereby entered against Respondent under Fed. R. Civ. P. 55(a).<sup>1</sup>

Respondent is allowed until thirty days from the date of this order to show cause why judgment by default should not be entered against Respondent in accordance with Fed. R. Civ. P. 55(b)(2).

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<sup>1</sup> Inasmuch as Respondent is in default, the parties' obligations to hold the discovery conference, and to serve initial disclosures, are effectively stayed. *See* TBMP § 312.01.

ESTTA Tracking number: **ESTTA899646**

Filing date: **05/30/2018**

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

## Petition for Cancellation

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

### Petitioner Information

Name	QuipRent, Inc		
Entity	Corporation	Citizenship	Indiana
Address	2112 Beech Road Nappanee, IN 46550 UNITED STATES		

Attorney information	David L. Oppenhuizen Oppenhuizen Law PLC 146 Monroe Center ST NW McKay Tower, Ste. 730 Grand Rapids, MI 49503 UNITED STATES Email: david@oppenhuizen.com Phone: 6162429550
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### Registration Subject to Cancellation

Registration No.	4196969	Registration date	08/28/2012
Registrant	EquipCo, LLC #360 7114 E. Stetson Drive Scottsdale, AZ 85251 UNITED STATES		

### Goods/Services Subject to Cancellation

Class 035. First Use: 2011/05/31 First Use In Commerce: 2011/05/31 All goods and services in the class are subject to cancellation, namely: providing an online computer database for customers to locate various providers of goods and services by means of an online marketplace; business services, namely, providing an online network for vendors to receive customer bidding opportunities by means of an online marketplace
Class 042. First Use: 2011/05/31 First Use In Commerce: 2011/05/31 All goods and services in the class are subject to cancellation, namely: providing temporary use of online non-downloadable software and applications for matching vendors of goods and services and customers seeking such goods and services via global computer network

### Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)
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Attachments	PetitionToCancel_05302018.pdf(322495 bytes ) Exhibits_05292018.pdf(138454 bytes )
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Signature	/David L. Oppenhuizen/
Name	David L. Oppenhuizen
Date	05/30/2018



3. The Registrant is listed on the Registration as the owner thereof, and as being a limited liability company of Arizona and as having an address at 7114 E. Stetson Drive #360, Scottsdale, Arizona 85251.

4. U.S. Trademark Registration Number 4,196,969 for EQUIPRENT lists its services as “providing an online computer database for customers to locate various providers of goods and services by means of an online marketplace; business services, namely, providing an online network for vendors to receive customer bidding opportunities by means of an online marketplace” in International Class 35; and for “providing temporary use of online non-downloadable software and applications for matching vendors of goods and services and customers seeking such goods and services via global computer network” in International Class 42.

5. The Registrant was legally dissolved by way of Articles of Termination filed with the Arizona Corporation Commission on September 2, 2014. (Exhibit B)

6. The Articles of Termination state that “all of [EquipCo, LLC’s] known properties and assets have been applied and distributed to chapter 4, title 29 of the Arizona Revised Statutes.” The Registrant has not existed since 2014, and therefore since that time has been unable to make use in commerce of EQUIPRENT as a matter of law. That period of non-use now spans over three years and eight months.

7. Upon information and belief, the Registrant made previous use of EQUIPRENT through its website that was previously located at [www.equiprent.com](http://www.equiprent.com). Upon further information and belief, no perceptible changes were made to the Registrant’s website following termination of the Registrant – up until the point when ownership of the domain name was transferred to another entity.

8. Upon information and belief, and as a matter of law, the Registrant ceased making

use in commerce of EQUIPRENT following its legal termination in 2014. Upon information and belief, the Registrant had no intent to resume use of EQUIPRENT since abandoning use in 2014, and accordingly the Registrant has abandoned EQUIPRENT.

9. The Petitioner has priority in QUIPRENT over the Registrant's rights in EQUIPRENT because the Registrant abandoned EQUIPRENT, and the Petitioner has since established rights in QUIPRENT.

10. Based on similarities between the marks EQUIPRENT and QUIPRENT, as well as the services associated therewith, the Petitioner has a reasonable belief that registration of its Application will be refused due to Registrant's Registration.

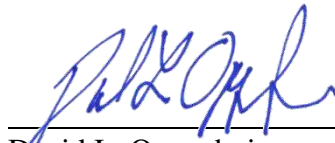
11. The Petitioner has expended substantial money in developing its website at <https://www.quiprent.com>, in marketing the mark QUIPRENT, and in other business startup costs. The Petitioner will suffer harm and be damaged if trademark registration for QUIPRENT is rejected due to the Registration, which is likely to occur.

WHEREFORE, Petitioner QuipRent, Inc prays that Registration Number 4,196,969 be cancelled in its entirety.

The Petitioner hereby electronically submits the required fee of \$800 (\$400/class) along with this Petition.



Respectfully submitted, this 30<sup>th</sup> day of May, 2018.



---

David L. Oppenhuizen  
Oppenhuizen Law PLC  
146 Monroe Center St. NW  
McKay Tower, Ste. 730  
Grand Rapids, Michigan 49503  
Tel.: 616-242-9550  
Fax: 616-217-4135  
david@oppenhuizen.com

Attorney for Petitioner  
QuipRent, Inc

# Exhibit A

**United States Patent and Trademark Office**[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)**

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# QUIPRENT

**Word Mark**            **QUIPRENT**

**Goods and Services**    IC 035. US 100 101 102. G & S: providing an online computer database for customers to locate various providers of goods and services by means of an online marketplace; business services, namely, providing an online network for vendors to rent goods to customers by means of an online marketplace. FIRST USE: 20180518. FIRST USE IN COMMERCE: 20180518

**Standard Characters Claimed**

**Mark Drawing Code**    (4) STANDARD CHARACTER MARK

**Serial Number**        87928298

**Filing Date**            May 18, 2018

**Current Basis**         1A

**Original Filing Basis**    1A

**Owner**                 (APPLICANT) QuipRent, Inc CORPORATION INDIANA 2112 Beech Rd. Nappanee INDIANA 46550

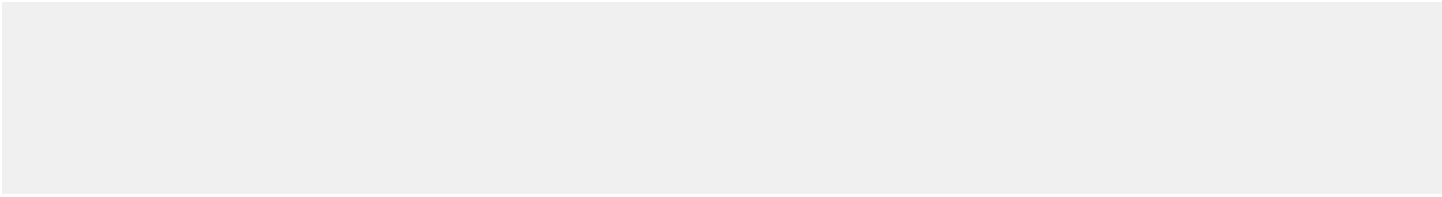
**Attorney of Record**    David L. Oppenhuizen

**Type of Mark**          SERVICE MARK

**Register**                PRINCIPAL

**Live/Dead Indicator**    LIVE

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# Exhibit B



AZ CORPORATION COMMISSION  
FILED

SEP 02 2014

FILE NO. L-16034602

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

**ARTICLES OF TERMINATION  
LIMITED LIABILITY COMPANY**

*Read the Instructions L0311*

1. **ENTITY NAME** – give the exact name of the LLC as currently shown in A.C.C. records:  
EQUIPCO, LLC

2. **A.C.C. FILE NUMBER:** L-1603460-2  
Find the A.C.C. file number on the upper corner of filed documents OR on our website at: <http://www.azcc.gov/Divisions/Corporations>

3. **STATEMENT CONCERNING PROPERTIES AND ASSETS** – by the signature appearing below, the limited liability company named in number 1 above affirms or certifies under penalty of perjury that all of its known properties and assets have been applied and distributed pursuant to chapter 4, title 29 of the Arizona Revised Statutes.

**SIGNATURE:** By checking the box marked "I accept" below, I acknowledge *under penalty of perjury* that this document together with any attachments is submitted in compliance with Arizona law.

I ACCEPT

  
Signature

Todd Belfer

Printed Name

8/28/14  
Date (mm/dd/yyyy)

**REQUIRED** – check only one and fill in the corresponding blank if signing for an entity:

<input checked="" type="checkbox"/> This is a manager-managed LLC and I am signing individually as a manager or I am signing for an entity manager named:  <u>Canal Partners, LLC</u>	<input type="checkbox"/> This is a member-managed LLC and I am signing individually as a member or I am signing for an entity member named:
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------

Filing Fee: \$35.00 (regular processing)  
Expedited processing – add \$35.00 to filing fee.  
All fees are nonrefundable - see Instructions.

Mail: Arizona Corporation Commission - Corporate Filings Section  
1300 W. Washington St., Phoenix, Arizona 85007  
Fax: 602-542-4100

Please be advised that A.C.C. forms reflect only the minimum provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.  
All documents filed with the Arizona Corporation Commission are public record and are open for public inspection.  
If you have questions after reading the instructions, please call 602-542-3025 or (within Arizona only) 800-345-5818.

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: June 8, 2018

Cancellation No. 92068700  
Registration No. 4196969

EQUIPCO LLC  
#360, 7114 E STETSON DRIVE  
SCOTTSDALE, AZ 85251  
UNITED STATES

*QuipRent, Inc*

*v.*

*EquipCo, LLC*

DAVID L OPPENHUIZEN  
OPPENHUIZEN LAW PLC  
146 MONROE CENTER ST NWMCKAY TOWER, STE 730  
GRAND RAPIDS, MI 49503  
UNITED STATES

**Joi M. Wilson, Paralegal Specialist:**

#### **NOTICE OF INSTITUTION**

The petitioner (plaintiff) identified above has filed a petition to cancel the above-identified registration owned by respondent (defendant). This notice of institution is forwarded pursuant to Trademark Rules 2.113(b) and (c), and constitutes service of the petition to cancel on respondent. An electronic version of the petition to cancel is viewable on TTABVUE at <http://ttabvue.uspto.gov/ttabvue/>. See Trademark Rule 2.113(a). The parties should diligently monitor this proceeding via TTABVUE.

#### **RESPONDENT MUST FILE ANSWER THROUGH ESTTA**

As required in the schedule below, **respondent must file an answer within forty (40) days from the mailing date of this order.** Failure to file a timely answer may result in the entry of default judgment and cancellation of the registration. Regarding when a deadline falls on a Saturday, Sunday or federal holiday, *see* Trademark Rule 2.196. Respondent must file the answer through ESTTA - Electronic System for Trademark Trials and Appeals, unless ESTTA is unavailable due to technical problems or extraordinary circumstances are present. An answer filed on paper under

these limited circumstances must be accompanied by a Petition to the Director (and the required fee under Trademark Rule 2.6). *See* Trademark Rule 2.114(b)(1). In substance, respondent's answer must comply with Fed. R. Civ. P. 8(b); it must admit or deny the allegations in the petition to cancel, and may include available defenses and counterclaims. Regarding the form and content of an answer, *see* Trademark Rule 2.114(b)(2) and TBMP § 311.

#### **DUTY TO MAINTAIN ACCURATE CORRESPONDENCE INFORMATION**

Throughout this proceeding, the parties, and their attorneys or representatives, must notify the Board of any correction or update of physical address and email address, and should use the ESTTA change of address form. *See* Trademark Rule 2.18(b); TBMP § 117.

#### **SERVICE OF ANSWER AND OF ALL SUBMISSIONS**

The service of the answer, of all other submissions in this proceeding, and of all matters that are required to be served but not required to be filed in the proceeding record, **must** be by **email** unless the parties stipulate otherwise. Trademark Rule 2.119(b). In the absence of a stipulation, service may be by other means **only** under the **limited** circumstances and in a manner specified in Trademark Rule 2.119(b). Regarding the signing and service of all submissions, *see* TBMP §§ 113-113.04.

The answer, and all other submissions, **must** include proof of service. As noted in TBMP § 113.03, proof of service may be in the following certificate of service form:

*I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, and address or email address of opposing counsel or party).*

*Signature* \_\_\_\_\_

*Date* \_\_\_\_\_

#### **SUBMIT ALL FILINGS ONLINE VIA ESTTA**

Submissions **must** be filed via ESTTA, the Board's online filing system, unless ESTTA is unavailable due to technical problems or extraordinary circumstances are present. Trademark Rule 2.126(a). Submissions may be filed in paper form **only** under the **limited** circumstances specified in Trademark Rule 2.126(b), with a required written explanation. ESTTA is accessible at the Board's web page: <http://estta.uspto.gov/>. The page has instructions and tips. ESTTA offers various forms, some of which may require attachments and/or a fee. For technical questions, a party may call 571-272-8500 (Mon. - Fri. 8:30 - 5:00 ET) or email [ESTTA@uspto.gov](mailto:ESTTA@uspto.gov). This proceeding involves several deadlines, and due to potential technical issues,



parties should not wait until the deadline to submit filings. The Board may **decline to consider** an untimely submission. Moreover, Trademark Rule 2.126 sets forth the required form and format for all submissions (*e.g.*, page limitations), and the Board may **decline to consider** any submission that does not comply with this rule, including, but not limited to motions, briefs, exhibits, and deposition transcripts.

## **CONFERENCE, DISCOVERY, DISCLOSURE AND TRIAL SCHEDULE**

Time to Answer	7/18/2018
Deadline for Discovery Conference	8/17/2018
Discovery Opens	8/17/2018
Initial Disclosures Due	9/16/2018
Expert Disclosures Due	1/14/2019
Discovery Closes	2/13/2019
Plaintiff's Pretrial Disclosures Due	3/30/2019
Plaintiff's 30-day Trial Period Ends	5/14/2019
Defendant's Pretrial Disclosures Due	5/29/2019
Defendant's 30-day Trial Period Ends	7/13/2019
Plaintiff's Rebuttal Disclosures Due	7/28/2019
Plaintiff's 15-day Rebuttal Period Ends	8/27/2019
Plaintiff's Opening Brief Due	10/26/2019
Defendant's Brief Due	11/25/2019
Plaintiff's Reply Brief Due	12/10/2019
Request for Oral Hearing (optional) Due	12/20/2019

### **PARTIES ARE REQUIRED TO HOLD DISCOVERY CONFERENCE**

The parties are required to schedule and hold a discovery conference by the deadline in the schedule in this order, or as reset by the Board. In the conference, the parties are required to discuss, at a minimum, 1) the nature and basis of their claims and defenses, 2) the possibility of promptly settling, or at least narrowing the scope of claims or defenses, and 3) arrangements for disclosures, discovery, preserving discoverable information and introduction of evidence at trial. For guidance, *see* Fed. R. Civ. P. 26(f), Trademark Rule 2.120(a)(2)(i) and TBMP §§ 401.01 and 408.01(a).

The parties must hold the conference in person, by telephone or by a means on which they agree. A Board interlocutory attorney or administrative trademark judge will participate in the conference either upon request of any party made no later than ten (10) days prior to the conference deadline, or when the Board deems it useful to have Board involvement. *See* Trademark Rule 2.120(a)(2)(i). A request for Board participation must be made either through ESTTA, or by telephone call to the assigned interlocutory attorney named on the TTABVUE record for this proceeding. A party requesting Board participation should first determine possible dates and

times when all parties are available. A conference with a Board attorney's participation will be by telephone in accordance with the Board's instructions.

For efficiency, the parties may stipulate to various procedural and substantive disclosure, discovery and trial matters (*e.g.*, modification of deadlines and obligations) upon written stipulation and approval by the Board. Trademark Rule 2.120(a)(2)(iv) provides a non-exhaustive list of matters to which parties may stipulate. The best practice is to reduce all stipulations to writing. If email service is not practical, such as for voluminous document production in discovery, the parties should discuss in the conference how production will be made. The parties, and their attorneys or representatives, have a **duty to cooperate** in the discovery process. TBMP § 408.01.

### **PROTECTIVE ORDER FOR CONFIDENTIAL INFORMATION**

The Board's Standard Protective Order is automatically imposed in all *inter partes* proceedings, and is available at: <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.

During their conference, the parties should discuss whether they will use an alternative or modified protective order, subject to approval by the Board. *See* Trademark Rule 2.116(g) and TBMP § 412. The standard order does not automatically protect confidential information; its provisions for designating confidential information must be utilized as needed by the parties. Trademark Rule 2.126(c) sets forth the procedure for filing confidential submissions.

### **ACCELERATED CASE RESOLUTION (ACR)**

During their conference, the parties are to discuss whether they wish to seek mediation or arbitration, and whether they can stipulate to the Board's Accelerated Case Resolution (ACR) process for a more efficient and cost-effective means of obtaining the Board's determination of the proceeding. For details, and examples of ACR proceedings, *see* TBMP § 528, and the Board's webpage: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>.

### **INITIAL DISCLOSURES AND DISCOVERY**

Regarding the deadline for and contents of initial disclosures, *see* Trademark Rules 2.120(a)(1) and (2)(i), and TBMP § 401.02. Regarding deadlines for serving and responding to discovery, *see* Trademark Rule 2.120(a)(3) and TBMP § 403.03. Certain provisions of Fed. R. Civ. P. 26 are applicable in modified form. Note that written discovery (interrogatories, requests for production, requests for admission) must be served **early** enough so that responses will be due **no later than** the close of discovery. Regarding the scope and limits of discovery, *see* TBMP 414; discoverable items may include documents, tangible things, and electronically stored information (ESI).

## **MOTIONS**

Certain provisions of Fed. R. Civ. P. 11 apply to all submissions in Board proceedings. *See* TBMP § 527.02. Regarding available motions, *see* TBMP Chapter 500. Regarding applicable deadlines to respond to motions, depending on the motion filed, *see* Trademark Rules 2.127(a) and (e)(1). When a party timely files a potentially dispositive motion the proceeding is suspended with respect to all matters not germane to the motion. *See* Trademark Rule 2.127(d). In addressing motions or other filings, if it appears to the Board that a telephone conference would be beneficial, or upon request of one or both parties, the Board may schedule a conference. *See* Trademark Rule 2.120(j)(1) and TBMP § 502.06(a).

## **PRETRIAL DISCLOSURES, TRIAL AND BRIEFING**

Regarding the procedures and deadlines for pretrial disclosures and trial, and specifically the noticing, taking, serving and submitting of evidence and testimony, *see* Trademark Rules 2.120(k), 2.121, 2.122, 2.123 and 2.125, as well as TBMP Chapter 700. The parties should review these authorities. For example: witness testimony may be submitted in the form of affidavit or declaration subject to the right to oral cross examination; transcripts of testimony depositions, with exhibits, must be served on each adverse party within thirty (30) days after completion of taking the testimony; certified transcripts and exhibits must be filed, with notice of such filing served on each adverse party; and all notices of reliance must be submitted during the submitting party's assigned testimony period and must indicate generally the relevance the evidence and associate it with one or more issues.

Main briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing is not required, but will be scheduled upon separate notice timely filed pursuant to Trademark Rule 2.129(a). Regarding briefs and oral hearings, *see* TBMP §§ 801-802.

## **LEGAL RESOURCES AVAILABLE AT WEB PAGE**

For a general description of Board proceedings, *see* TBMP §102.03. Proceedings are governed by the Trademark Rules of Practice in Parts 2 and 7 of Title 37 of the Code of Federal Regulations. These rules, the Manual of Procedure (TBMP), information on Accelerated Case Resolution (ACR) and Alternative Dispute Resolution (ADR), and many Frequently Asked Questions, are available on the Board's web page, at: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>. The parties should check the web page for important changes, announcements, etc., many of which apply to proceedings already in progress.

## **PARTIES NOT REPRESENTED BY COUNSEL**

This proceeding is similar to a civil action in a federal district court and can be complex. The Board **strongly** advises all parties to secure the services of an attorney who is familiar with trademark law and Board procedure. The Board cannot aid in

the selection of an attorney. *See* TBMP § 114.02. The Board requires strict compliance with all applicable authorities whether or not the party is represented by counsel.

**NOTIFY BOARD OF ALL PENDING ACTIONS**

If the parties are, or during the pendency of this proceeding become, parties in another Board proceeding or a civil action involving the same or related marks, or involving any issues of law or fact which are also in this proceeding, they shall notify the Board immediately. *See* Trademark Rule 2.106(b)(3)(i). The Board will consolidate and/or suspend related Board proceedings, as appropriate. *See* Trademark Rule 2.117(c); TBMP §§ 510 and 511.