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Filing date: **10/27/2022**

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

Proceeding no.	92075281
Party	Plaintiff Nerdio, Inc.
Correspondence address	ALEXIS CRAWFORD DOUGLAS K&L GATES LLP 70 W MADISON ST, SUITE 3300 CHICAGO, IL 60602 UNITED STATES Primary email: TTABLitigationDocket@klgates.com Secondary email(s): alexis.douglas@klgates.com, patrick.richards@klgates.com, katy.allor@klgates.com, RiKaleigh.Johnson@klgates.com 312-807-4346
Submission	Plaintiff's Notice of Reliance
Filer's name	/RiKaleigh C. Johnson/
Filer's email	TTABLitigationDocket@klgates.com, alexis.douglas@klgates.com, patrick.richards@klgates.com, katy.allor@klgates.com, RiKaleigh.Johnson@klgates.com
Signature	/RiKaleigh C. Johnson/
Date	10/27/2022
Attachments	Notice of Reliance - Discovery Responses.pdf(121717 bytes) Exhibit 1 - 14. Ex. N - 2021.03.05-NERDIO Response to Petitioner's 1s t Inter- rogos - redact.pdf(80886 bytes) Exhibit 2 - 35. Ex. II - 2021.03.05-NERDIO Response to Petitioner's F irst RFPs - Nos. 1-36_Redacted.pdf(41483 bytes)

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

In the Matter of Trademark Registration No. 6153453
For the Mark: NERDIO
Date Registered: September 15, 2020

Nerdio, Inc.,)	
a Delaware corporation,)	
Petitioner,)	Cancellation No. 92075281
)	
v.)	
)	
NerdIO Limited)	
a Hong Kong corporation,)	
Respondent.)	
)	

**PETITIONER’S NOTICE OF RELIANCE ON RESPONDENT’S DISCOVERY
RESPONSES UNDER 37 C.F.R. § 2.120(k)(5)**

Pursuant to Rule 2.120(k)(5) of the Trademark Rules of Practice, 37 C.F.R. § 2.120(k)(5), and TBMP §704.10, Petitioner Nerdio, Inc. (“Petitioner”), by and through its undersigned counsel, hereby makes of record and notifies Respondent NerdIO Limited (“Respondent”) of its reliance on the following discovery responses of Respondent:

1. A true and correct copy of Respondent's responses to Interrogatory No(s). 1, 8, 10, 11, and 12 of Petitioner Nerdio, Inc.’s First Set of Interrogatories to Respondent Nerdio Limited served in this proceeding, which are attached hereto as Exhibit 1. Petitioner submits these interrogatory responses to show the following:

- a. Response No. 1 - Relevant for and will be used to support Petitioner’s claims related to Respondent’s trademark use, the ownership and operation of website nerdio.com, and the likelihood of confusion factors relatedness of channels of trade and relatedness of services.

- b. Response No. 8 - Relevant for and will be used to support Petitioner's claims related to Respondent's ownership and operation of website nerdio.com, Respondent's trademark use, and the likelihood of confusion factor relatedness of channels of trade and relatedness of services.
 - c. Response No. 10 - Relevant for and will be used to support Petitioner's claims related to Respondent's ownership and operation of website nerdio.com, Respondent's trademark use, and the likelihood of confusion factor relatedness of channels of trade and relatedness of services.
 - d. Response No. 11 – Relevant for and will be used to support Petitioner's claims related to Respondent's trademark use, and the likelihood of confusion factor relatedness of channels of trade and relatedness of services.
 - e. Response No. 12 - Relevant for and will be used to support Petitioner's claims related to Respondent's intended consumer.
2. A true and correct copy of Respondent's responses to Nos. 6 and 10 of Petitioner Nerdio, Inc.'s First Set of Requests for The Production of Documents and Things to Respondent Nerdio Limited, which are attached hereto as Exhibit 2. Petitioner submits these document request responses to show the following:
- a. Response No. 6 - Relevant for and will be used to support Petitioner's claims related to priority.
 - b. Response No. 10 - Relevant for and will be used to support Petitioner's claims related to priority.

Dated this 27th day of October 2022.

By: /Alexis Crawford Douglas/
Attorneys for Petitioner
Alexis Crawford Douglas
Patrick Richards
RiKaleigh C. Johnson
K&L GATES LLP
70 W. Madison Street, Suite 3100
Chicago, IL 60602
Telephone: (312) 807-4346
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Notice of Reliance on Respondent's Discovery Responses Under 37 C.F.R. § 2.120(k)(5) was served upon counsel for Respondent via email on October 27, 2022 at the following address:

Jacqueline M. Lesser
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Jacqueline.Lesser@icemiller.com
Barbara.Bacon@icemiller.com
IPDocket.IPDocket@icemiller.com

/RiKaleigh C. Johnson/
RiKaleigh C. Johnson

EXHIBIT 1

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

NERDIO, INC.

Petitioner,

v.

NERDIO LIMITED,

Registrant.

Reg. No.: 5204323
Reg. Date: September 15, 2020
Mark: NERDIO

Cancellation No.: 92/075,281

**REGISTRANT’S RESPONSE TO PETITIONER NERDIO, INC.’S FIRST SET OF
INTERROGATORIES TO RESPONDENT NERDIO LIMITED**

Pursuant to 37 C.F.R. § 2.120 and Rule 33 of the Federal Rules of Civil Procedure, Registrant NerdIO Limited, Inc. (“Registrant”) hereby for its responses to Petitioner Nerdio, Inc. (“Petitioner”) First Set of Interrogatories (“Interrogatories”) states as follows:

GENERAL OBJECTIONS

1. Registrant objects to Petitioner’s Interrogatories to the extent that they seek, or may be construed to seek, information and/or documents immune from discovery by reason of the attorney-client privilege, the work product doctrine, the immunity under Fed. R. Civ. P. 26(b)(4)(B), or any other applicable privilege. Registrant will not produce information or documents protected by any such applicable privilege or doctrine. Nothing in this response is intended to be or should be considered a waiver of any attorney client privilege, community of interest privilege, work product doctrine, and/or Rule 26(b)(4)(B) protection, or any other applicable privilege or doctrine, and to the extent any request may be construed as calling for disclosure of information or document protected by such privilege or doctrines, a continuing objection to each and every such document request is hereby imposed.

The subject matter of these Interrogatories is under continuing investigation.

Registrant responds to these Interrogatories based on information currently available to it after reasonable investigation and reserves the right to amend or supplement these responses.

Subject to, and without waiving, the foregoing objections, Registrant answers as follows:

INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail the facts and circumstances concerning Your conception, creation, selection, and adoption of Respondent's Mark.

RESPONSE TO INTERROGATORY NO. 1:

Registrant's director adopted a nerdio.com domain on December 12, 1999. Registrant adopted the NerdIO name and mark in Hong Kong at least as early as 2013 for use in connection with a cloud computing business, services intended to be offered in the U.S., and subsequently offered in the U.S. NerdIO was registered as a company name in Hong Kong on July 16, 2013.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 8:

Describe any advertisements, promotional materials, and marketing materials (for example, newspaper advertisements, magazine advertisements, internet websites, television commercials, brochures), including by identifying the specific media outlet, in which Respondent is using, has used, or plans to use Respondent's Mark.

RESPONSE TO INTERROGATORY NO. 8:

Registrant advises that its advertising and marketing of its services are found on its website, as represented by www.nerdio.com, which is the customary manner of marketing and advertising for comparable services.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 10:

Identify the URL of all website(s), including social media accounts, displaying Respondent's Mark that are owned, operated, or controlled by Respondent, the date the website was created, and all persons who participated in or were or are responsible for the creation and development of each website.

RESPONSE TO INTERROGATORY NO. 10:

Registrant identifies its website located at: <https://www.nerdio.com/> and www.noticeip.com. Registrant identifies Mr. Ed Chow. Registrant elects, under F.R.C.P. 33 (d) to produce documents responsive to this request.

INTERROGATORY NO. 11:

Describe all channels of trade in the United States through which Respondent has provided, licensed for sale, offered for sale, sold, or intends to offer for sale or sell goods or services under or in connection with Respondent's Mark.

RESPONSE TO INTERROGATORY NO. 11:

Registrant objects to this request as vague and ambiguous. Subject to the foregoing objections, Registrant's Marks are used in the manner customary for use of service marks for analogous products and services

INTERROGATORY NO. 12:

Describe all classes and/or types of customers (for example, occupation, age, gender, socioeconomic group, business sector) that comprise the intended market for goods or services

[REDACTED]

Dated: March 5, 2021

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ Jacqueline M. Lesser

Jacqueline M. Lesser

jlesser@bakerlaw.com

2929 Arch Street

Cira Centre, 12th Floor

Philadelphia, PA 19104-2891

Telephone: (215) 568-3100

Facsimile: (215) 568-3439

Attorneys for Registrant NerdIO Limited.

CERTIFICATE OF SERVICE

I, Jacqueline M. Lesser, hereby certify that on March 5, 2021 a true and correct copy of the foregoing REGISTRANT'S RESPONSE TO PETITIONER NERDIO, INC.'S FIRST SET OF INTERROGATORIES TO RESPONDENT NERDIO LIMITED was served, via electronic mail, upon Counsel for Petitioner at the following address:

Alexis Crawford Douglas, Esq.
Patrick Richards, Esq.
Trevor Martin, Esq.
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/Jacqueline M. Lesser/

Jacqueline M. Lesser

EXHIBIT 2

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

NERDIO, INC.

Petitioner,

v.

NERDIO LIMITED,

Registrant.

Reg. No.: 5204323
Reg. Date: September 15, 2020
Mark: NERDIO

Cancellation No.: 92/075,281

**REGISTRANT’S RESPONSE TO PETITIONER NERDIO, INC.’S FIRST SET OF
REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO
RESPONDENT NERDIO LIMITED (NOS. 1–36)**

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Registrant NerDIO Limited. (“Registrant”) hereby for its responses and objections to Petitioner Nerdio, Inc.’s Request for Production of Documents and Things (“Requests”), states as follows:

GENERAL OBJECTIONS AND OBJECTIONS TO DEFINITIONS

Registrant objects to Petitioner’s Requests to the extent they seek, or may be construed to seek, information and/or documents immune from discovery by reason of the attorney- client privilege, the work product doctrine, the immunity under Fed. R. Civ. P. 26(b)(4)(B), or any other applicable privilege. Registrant will not produce information or documents protected by any such applicable privilege or doctrine. Nothing in this response is intended to be or should be considered a waiver of any attorney client privilege, community of interest privilege, work product doctrine, and/or Rule 26(b)(4)(B) protection, or any other applicable privilege or doctrine, and to the extent any request may be construed

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REQUEST NO. 6:

All Communications regarding Respondent's Services sold, provided, offered, or licensed for sale in the United States under Respondent's Mark.

RESPONSE TO REQUEST NO. 6:

Registrant objects to this request as vague and overbroad, and not proportional to the needs of the case. Registrant objects to this request to the extent that it calls for information protected by the attorney client privilege or work product doctrine. Subject to the foregoing objections, Registrant will produce representative nonprivileged documents responsive to this request.

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REQUEST NO. 10:

All contracts entered into relating to Respondent’s Mark.

RESPONSE TO REQUEST NO. 10:

Registrant objects to this Request as vague and ambiguous, and to the extent that the Request calls for information beyond the scope of this proceeding or for confidential information of third parties that is beyond the parties’ discovery obligations under the Stipulated Protective Order. Subject to the foregoing objections, to the extent that Registrant understands this request, Registrant will produce summary business documents responsive to this request.

[REDACTED]

Dated: March 5, 2021

Respectfully submitted,

BAKER & HOSTETLER LLP

By: /s/ Jacqueline M. Lesser

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Attorneys for Registrant NerdIO Limited.

CERTIFICATE OF SERVICE

I, Jacqueline M. Lesser, hereby certify that on March 5, 2021 a true and correct copy of the foregoing REGISTRANT'S RESPONSE TO PETITIONER NERDIO, INC.'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT NERDIO LIMITED (NOS. 1-36) was served, via electronic mail, upon Counsel for Petitioner at the following address:

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