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

Proceeding no.	92081595
Party	Plaintiff Mercury One, Inc.
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Date	04/03/2024
Attachments	04.03.24 Notice of Rebuttal Experts.Petitioner.vfinal.pdf(178362 bytes )

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

**Cancellation No.: 92081595**

***In the matter of:***

1. Reg. No. 6,008,523; word mark HONEST HISTORY Filed: April 19, 2018, Registration Date: March 10, 2020
2. Reg. No. 6,504,087; word mark HONEST HISTORY Filed: October 22, 2020, Registration Date: September 28, 2021
3. Reg. No. 6,504,088; word mark HONEST HISTORY Filed: October 22, 2020, Registration Date: September 28, 2021

***MERCURY ONE, INC.,  
PETITIONER/PLAINTIFF,  
V.  
HONEST HISTORY CO.,  
RESPONDENT/DEFENDANT.***

**PETITIONER’S NOTICE OF REBUTTAL AND  
RESPONSE EXPERT DISCLOSURES**

By this Notice, Petitioner provides the Trademark Trial and Appeal Board (TTAB) with notice under TBMP 401.03 of its intention to use Mr. Herbert J. Hammond, Mr. Brian Sowers, and Mr. David Barton as rebuttal and response experts in this Cancellation Proceeding. On March 29, 2024, Petitioner served Respondent with Rebuttal, Response and Supplemental Expert Reports from Messrs. Hammond and Sowers, as well as a Rebuttal Expert Report from Mr. David Barton.

The expert reports served on March 29, 2024 comply with Rule 26 (before the discovery cut-off date of April 7, 2024), and contain responses and rebuttals to the alleged Expert Report of Hal Poret (which was served less than 30 days beforehand). The response and rebuttal opinions set forth in the expert reports from Messrs. Hammond, Sowers, and Barton are material to the Petitioner’s case, and include, *inter alia*, the following: (1) the unreliability of Respondent’s alleged survey with its *over 40% error rate* for his survey respondents (Mr. Poret’s report admits and acknowledges over 40% of survey respondents incorrectly answered control questions), (2) the unreliability of the Respondent’s expert opinion as contradicted and undermined by Respondent’s adoption of the common word usage of “honest history” in reference to their products (*Respondent representatives repeatedly admitted and described the fact that “Honest History” provides “honest history”*), and (3) the unsupported view that “educational

publications” in the field of history are unrelated to, and unrepresentative of, “educational curriculum” in the field of history.

Petitioner has previously provided notice to the TTAB of its intention to use Messrs. Hammond and Sowers as experts in this matter, pursuant to the Notice to the TTAB filed on January 19, 2024. Additionally, Petitioner has previously served Expert Reports for Messrs. Hammond and Sowers on Respondent prior to filing the TTAB Notice on January 19, 2024, which have been properly supplemented in compliance with Rule 26.

Respectfully submitted,

Dated: April 3, 2024

/s/ D. Scott Hemingway /  
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## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 2.119, I hereby certify that a true and complete copy of the foregoing has been served by forwarding filing with the TTAB and serving electronically on April 3, 2024 to:

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Dated: April 3, 2024

/D. Scott Hemingway/  
D. Scott Hemingway