ESTTA Tracking number: **ESTTA1430414**
Filing date: **04/22/2025**

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

Proceeding no.	92082310
Party	Plaintiff Matos Insurance Agency, Inc. and Armando J. Matos
Correspondence address	MARC ALEXANDER RAPAPORT COLE, SCOTT & KISSANE, P.A. 9150 S. DADELAND BLVD SUITE 1400 MIAMI, FL 33156 UNITED STATES Primary email: marc.rapaport@csklegal.com Secondary email(s): edward.polk@csklegal.com, dan-ise.townsend@csklegal.com, karen.george@csklegal.com 786-268-6793
Submission	Opposition/Response to Motion
Filer's name	Marc Alexander Rapaport
Filer's email	marc.rapaport@csklegal.com
Signature	/Marc Alexander Rapaport/
Date	04/22/2025
Attachments	Response in Opposition to Motion to Strike Notice of Reliance.pdf(135471 bytes)

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

Registration No.: 6209276
Mark: MATTOS INSURANCE
Registered: December 1, 2020
Class: 036
Cancellation: 92082310

MATOS INSURANCE AGENCY, INC., ARMANDO JOSE MATOS	)
	)
Petitioner,	)
	)
v.	)
	)
MATTOS INSURANCE, INC.	)
	)
Respondent.	)

PETITIONERS' RESPONSE IN OPPOSITION
TO RESPONDENT'S MOTION TO STRIKE NOTICE OF RELIANCE

Petitioners Matos Insurance Agency, Inc., and Armando Jose Matos, respond in opposition to Respondent's Motion to Strike Evidence in Petitioners' Notice of Reliance and respectfully request this Board deny Respondent's Motion in its entirety. In the alternative, to the extent the Board entertains any of Respondent's argument, Petitioners would request leave to cure any "procedural defect that can be cured by [Petitioners] within the time set by Board order." 37 CFR § 2.122(g).

1. On April 9, 2025, Petitioners filed their Second Amended Notice of Reliance (26 TTABVUE) and filed all exhibits which correspond to said Notice (27 TTABVUE).

2. On April 22, 2025, Respondent, without conferring with undersigned counsel, moved to strike the Second Amended Notice of Reliance, specifically Exhibits 6, 7 and 8.

3. As a threshold, matter, 37 C.F.R. § 2.116(a), provides that "[e]xcept as otherwise provided, and wherever applicable and appropriate, practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure." There is a general duty to confer in good faith on motions in federal court. More specifically, virtually every set of local rules corresponding to each of the federal district courts contain a duty to confer requirement. Indeed, when filing documents with the Board, a party is generally required to indicate whether the Motion is "consented" to, or not. Respondent's failure to confer on its Motion warrants denying the Motion on its face.

4. Next, Respondent takes issue with Exhibit "6" because it disagrees with Petitioners position regarding the relevant nature of the cited documentation. This is an issue more suitable for Final Briefing because Petitioner has articulated why the evidence is relevant at this stage. Simply because some of the evidence of third party use does not directly concern "insurance", it still lends itself to showing usage of the identical or a substantially similar surname to that of "MATTOS", and lends itself to the weak nature of Respondent's mark, including that Respondent's use of its mark has not been substantially exclusive and continuous as it has sought to declare. Respondent also disagrees with three (3) pages lacking a URL and date of access or publication. Petitioner recognizes the URL and date of access was omitted but believe that is an issue which is easily amendable. The URL for the three cited pages is https://dematttosinsurance.com/ and it was accessed by Petitioners for use in its Notice of Reliance on April 4, 2024, along with all the other provided evidence of internet usage. Additionally, the evidence of internet usage was also introduced as an exhibit during the deposition of Tiago Macedo Manguiera, the deposition transcript of which was also submitted via Petitioners' Notice of

COLE, SCOTT & KISSANE, P.A.
COLE, SCOTT & KISSANE BUILDING - 9150 SOUTH DADELAND BOULEVARD - SUITE 1400 - P.O. BOX 569015 - MIAMI, FLORIDA 33256 - (305) 350-5300 - (305) 373-2294 FAX

Reliance. To the extent the Board disagrees with Petitioners position as to this evidence, Petitioner would respectfully request leave to address any purported procedural defects.

5. As to Exhibits 7 and 8, Mr. Sower's report and Declaration have been in the record for almost a year now, since as early as April 29, 2024, when it was timely served upon Respondent's counsel in accordance with the Board's deadlines at that time.[1]

6. The timely service of Petitioners' expert witness disclosure was memorialized via a Notice of Expert Witness Disclosure and Stipulation for Case Schedule (which referenced the service of the expert disclosure on April 29, 2024 submitted by Petitioners on May 14, 2024 (14 TTABVUE).

7. On July 25, 2024, the parties filed a Joint Stipulation that testimony for a party by a party's witness in this matter will be submitted via Declaration and that a deposition transcript of a party's witness offered by the opposing party into evidence may also be used as evidence by the first party. (16 TTABVUE). 37 CFR § 2.123 states that if the parties agree in writing, the testimony of a witness may be submitted in declaration form.

8. Additionally, on August 2, 2024, Petitioners timely submitted the testimonial Declaration of Mr. Sowers, along with this report/survey, which was attached to that submission as Exhibit "A". (17 TTABVUE).

9. Mr. Sower also had his oral cross examination taken on March 27, 2025, wherein his survey and declaration were introduced as an exhibit.

10. As to Exhibits 7 and 8, Respondent complains such testimony is not admissible via a Notice of Reliance. But that testimony is already in the record and is not now for the first time being disclosed via Notice of Reliance.

[1] At this time, Expert Disclosures were due on or before April 29, 2024.

11. Respondent provides no authority that a previously and timely disclosed expert witness report and declaration *cannot* be placed on a Notice of Reliance especially when considering the parties' aforementioned stipulations regarding certain evidence. Indeed, 37 CFR § 2.210(k)(6) expressly states that "Paragraph (k) of this section will not be interpreted to preclude reading or use of *written disclosures or documents* . . . during the testimony period of any party."

12. Notwithstanding, to the extent the Board wishes for Petitioner to remove Exhibits 7 and 8 from its Notice of Reliance and instead rely upon the report and declaration of Mr. Sowers through Petitioners' timely expert witness disclosure submitted on April 29, 2024, it would have no opposition in doing this in order to clarify the record.

13. Petitioners would also request the Board deny Respondent's request to suspend proceedings pending disposition of this Motion.

WHEREFORE, Petitioners Matos Insurance Agency, Inc., and Armando Jose Matos, respond in opposition to Respondent's Motion to Strike Evidence in Petitioners' Notice of Reliance and respectfully request this Board deny Respondent's Motion in its entirety. In the alternative, to the extent the Board entertains any of Respondent's argument, Petitioners would request leave to cure any "procedural defect that can be cured by [Petitioners] within the time set by Board order." 37 CFR § 2.122(g).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April 2025, a true and correct copy of the foregoing was filed via the Electronic System for Trademark Trials and Appeals (ESTTA), with a courtesy copy sent via e-mail to counsel of record for Respondent.

COLE, SCOTT & KISSANE, P.A.
Counsel for Petitioners
Cole, Scott & Kissane Building
9150 South Dadeland Boulevard, Suite 1400

P.O. Box 569015
Miami, Florida 33256
Telephone (305) 350-5338
Facsimile (305) 373-2294
Primary e-mail: edward.polk@csklegal.com
Secondary e-mail: edward.polk@csklegal.com
Alternate e-mail: danise.townsend@csklegal.com

By: /s/ Marc A. Rapaport
EDWARD S. POLK
Florida Bar No.: 239860
MARC A. RAPAPORT
Florida Bar No.: 1008359

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