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

Proceeding	91172902
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Attachments	Bridge Bank Reply in support of motion to compel etc.pdf ( 12 pages )(5981328 bytes ) proof of service.pdf ( 2 pages )(661005 bytes )

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

In the Matter of Application Serial No. 78/468,964  
Filed August 17, 2004  
Mark BRIDGE BANK  
Published on July 18, 2006

East West Bank,	)	
	)	OPPOSITION
	)	NO. 91172902
	)	
	)	BRIDGE BANK'S REPLY
	)	IN SUPPORT OF MOTION
	)	TO COMPEL DISCOVERY
	)	AND EXTEND BRIDGE
Bridge Bank, N.A.	)	BRIDGE BANK'S TIME TO
	)	PROPOUND DISCOVERY
	)	
	)	

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This document has been redacted in order to remove information that is subject to a protective order or agreement.

I. INTRODUCTION

After initiating this proceeding against Applicant Bridge Bank, Opposer East West Bank ("EWB") has delayed and stonewalled Bridge Bank's every attempt to obtain meaningful discovery into the factual bases for EWB's opposition – and continues to do so. Because new facts supporting Bridge Bank's motion to compel ("Motion") have surfaced since it filed its opening brief on March 15, and because EWB's Opposition Brief to Applicant's Motion to Compel Discovery ("Opposition" or "Opp.") contains several inaccuracies, Bridge Bank respectfully requests that the TTAB exercise its discretion and consider this Reply brief pursuant to TBMP 502.02(b).

## II. BRIDGE BANK MADE A GOOD FAITH EFFORT TO MEET AND CONFER

Without justifications for its deficient discovery responses and failures to cooperate in this proceeding, EWB instead makes the specious argument that Bridge Bank failed to meet and confer with EWB prior to filing its motion to compel. *E.g.*, Opp. at 2. Pursuant to TBMP § 524.02 a party has an obligation to make a “good faith effort” to meet and confer on discovery disputes prior to making them the subject of a motion to compel. Bridge Bank satisfied this requirement by: 1) sending a meet and confer letter on several discovery issues; 2) repeatedly attempting to contact EWB’s counsel by telephone to discuss all discovery issues raised in Bridge Bank’s motion to compel; and 3) e-mailing EWB’s counsel regarding discovery issues raised in the motion to compel. Declaration of Aaron Schur in Support of Bridge Bank’s Motion to Compel Discovery (“Schur Decl.”) (Docket Entry # 7) ¶¶ 8-9. EWB responded to these overtures weeks late – or not at all – and any response consistently failed to address Bridge Bank’s concerns and/or misrepresented prior communications. *Id.* ¶¶ 20-22. Further, in the only telephone conversation between counsel for the parties, EWB’s counsel, Ms. Marcey, stated that she lacked “authority” to negotiate with Bridge Bank’s counsel. *Id.* ¶ 14.<sup>1</sup> With less than three weeks remaining in the discovery period, and EWB’s clear refusals to engage in meaningful dialogue in response to Bridge Bank’s numerous attempts, Bridge Bank had exhausted its options and was forced to seek relief from the TTAB by filing its motion to compel on March 15.

Even after filing this motion, however, Bridge Bank offered to discuss the subject matter of its motion to compel with EWB. Declaration of George L. Fox in Support of Bridge Bank’s Motion to Compel Discovery (“Fox Decl.”) ¶ 3 & Ex. A. EWB never responded to this offer, just as Bridge Bank’s prior attempts to meet and confer with EWB were unavailing. *Id.*

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<sup>1</sup> According to the Declaration of M. Nicole Marcey (“Marcey Decl.”)(Docket Entry #14), filed with EWB’s Opposition, certain interrogatories and document requests were not discussed “in subsequent negotiations” with Bridge Bank’s counsel. Marcey Decl. ¶ 2. This is misleading. The sole conversation between Mr. Schur and Ms. Marcey prior to the filing of the motion to compel regarded the deposition of Ms. Wang and a proposal to extend the discovery period, in which Ms. Marcey stated that she “lacked authority” to make any agreement with Bridge Bank’s counsel. Schur Decl. ¶ 14. During this call Ms. Marcey also could not provide any information about any upcoming document production by EWB. *Id.* Indeed, now over two months after the motion was filed, no further documents have arrived. When Mr. Schur attempted to reach Ms. Marcey at other times, she was unavailable, and did not return phone calls, although she apparently had time to propound several deposition notices against Bridge Bank. *Id.* ¶¶ 15-22.

Accordingly, the TTAB should reject EWB's claim that Bridge Bank's "failure" to meet and confer should result in a denial of this motion to compel.

### III. THE PROTECTIVE ORDER IS IRRELEVANT

EWB repeatedly cites to the negotiations for a protective order as an excuse for its failure to cooperate in the discovery process. *E.g.*, Opp. at 2. This argument lacks merit. First, most of Bridge Bank's Requests for Production cannot possibly be interpreted to call for confidential information. For example, Request No. 9 calls for "[r]epresentative DOCUMENTS for each year since 1997 to the present showing the manner or purpose" of EWB's use of the purported YOUR FINANCIAL BRIDGE mark; and Request No. 10 calls for "advertising or promotional materials that have been used to promote and/or sell" EWB's alleged YOUR FINANCIAL BRIDGE PRODUCTS. *See* Schur Decl. Ex. A at 7. For each of these, documents responsive to the requests would include non-confidential documents such as print advertisements and brochures. But EWB produced a scant nine pages of documents,

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Moreover, Bridge Bank and EWB executed a protective order on April 16, 2007, over three weeks before the first deposition of Ms. Wang on May 7. Marcey Decl. ¶ 4 & Ex. B; Fox Decl. ¶ 6. EWB therefore has no excuse for failing to produce responsive documents, confidential or not, prior to Ms. Wang's depositions.<sup>2</sup> *See* Opp. at 2 (as of May 4, 2007, "far more documents are waiting to be produced now that a protective order is in place."). Instead of providing documents in a timely manner and as required by the Federal Rules of Civil Procedure, EWB deprived Bridge Bank of its opportunity to inquire about the information contained in its documents during Ms. Wang's depositions. And, to date, EWB has still produced no more than a handful of responsive documents, whereas Bridge Bank has produced over 1000 pages. *See*

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<sup>2</sup> Ms. Wang has been deposed twice in this proceeding: once on May 7, 2007, as EWB's designated 30(b)(6) witness; and once on May 8, 2007, in her individual capacity. Fox Decl. ¶¶ 9, 12.

Fox Decl. ¶¶ 13-16, 19.

IV.

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