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

Proceeding	91213483
Party	Plaintiff Energy Heating LLC
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Date	05/03/2017
Attachments	Opposers Response to Status Inquiry Opposition HEAT ON THE FLY.pdf(743956 bytes )

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

ENERGY HEATING LLC, an Idaho limited liability company,

Opposer,

v.

HEAT ON-THE-FLY, LLC, a Louisiana limited liability company,

Applicant.

Opposition No. 91213483

Application Serial No. 85/797,416

**OPPOSER’S RESPONSE TO INQUIRY INTO STATUS OF CIVIL ACTION**

Opposer Energy Heating LLC (“Opposer”), through its undersigned counsel, Davis Wright Tremaine LLP, hereby responds to the Board’s status inquiry of April 21, 2017 in Opposition No. 91213843.

In the prior pending civil action, Case No. 4:13-cv-10, the jury found that the phrase “Heat On-The-Fly” is generic, and the Trial Court entered judgment accordingly (*see* Annexes A and B). Applicant Heat On-The-Fly, LLC originally sought to appeal the finding of genericness. However, in its appeal briefing filed on April 13, 2017, Applicant announced that it had “decided not to pursue its appeal regarding” the judgment on the trademark claims. *See* Annex C at 31 (“Accordingly, that appellate point [concerning the trademark judgment] is withdrawn and the Court need not address it.”). There are no other pending appeals concerning the trademark judgment, and no new appeals may be filed at this time. Accordingly, Opposer therefore respectfully submits that the Trial Court’s judgment that the phrase “heat on-the-fly” is generic is final and the Board may act accordingly. *See, e.g.*, TMPB 510.02(b) (“A proceeding is

considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed, or all appeals filed have been decided and the time for any further review has expired.). In light of the final judgment that the phrase “heat on-the-fly” is generic, Opposer respectfully requests that the Board enter judgment denying registration of Application Serial No. 85/797,416.

DATED this 3rd day of May, 2017.

Respectfully submitted,

s/Matthew E. Moersfelder  
By: F. Ross Boundy  
Matthew E. Moersfelder  
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**CERTIFICATE OF FILING**

I hereby certify that OPPOSER'S RESPONSE TO INQUIRY INTO STATUS OF CIVIL ACTION is being filed with the Trademark Trial and Appeal Board using the ESTTA filing system of the U.S. Patent and Trademark Office on the below date.

Date: May 3, 2017 s/Matthew E. Moersfelder

**CERTIFICATE OF SERVICE**

I hereby certify that OPPOSER'S RESPONSE TO INQUIRY INTO STATUS OF CIVIL ACTION is being duly served upon on Applicant's counsel by email:

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Date: May 3, 2017 s/Matthew E. Moersfelder

## ANNEX A

# Explore Litigation Insights

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