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

Proceeding	92061696
Party	Plaintiff Energy Heating LLC
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Date	05/03/2017
Attachments	Notice of Outcome of Civil Action Cancellation.pdf(732451 bytes)

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

ENERGY HEATING LLC, an Idaho limited
liability company,

Petitioner,

v.

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

Registrant.

Cancellation No. 92061696

Registration Serial No. 3,811,923

PETITIONER’S NOTICE OF OUTCOME OF CIVIL ACTION

Petitioner Energy Heating LLC (“Petitioner”), through its undersigned counsel, Davis Wright Tremaine LLP, hereby provides notice of the outcome of the related civil action for Cancellation No. 91213483.

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). Registrant Heat On-The-Fly, LLC originally sought to appeal the finding of genericness. However, in its appeal briefing filed on April 13, 2017, Registrant 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 *See* Annex C at 31 (“Accordingly, that appellate point [concerning the trademark judgment] is withdrawn and the Court need not address it.”).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, Petitioner 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, Petitioner respectfully requests that the Board enter judgment cancelling Registration No. Serial No. 3,811,923.

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 PETITIONER'S NOTICE OF OUTCOME 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 PETITIONER'S NOTICE OF OUTCOME OF CIVIL ACTION is being duly served upon on Registrant's counsel by email:

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

ANNEX A

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