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Assistant Commissioner for Trademarks  
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on 2/6/2003 [Signature]  
Date Signature

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

PIONEER KABUSHIKI KAISHA dba	)	Opposition No.:	125,458
PIONEER CORPORATION,	)	Mark:	SUPERSCAN ELITE
	)	Serial No.:	76/208230
Opposer,	)	Published:	March 19, 2002
	)		
vs.	)	STIPULATED PROTECTIVE ORDER	
	)		
NISSEI SANGYO AMERICA, LTD.	)		
	)		
Applicant.	)		
	)		

Assistance Commissioner For Trademarks  
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STIPULATED PROTECTIVE ORDER:  
PROVISIONS FOR PROTECTING CONFIDENTIALITY OF  
INFORMATION REVEALED DURING BOARD PROCEEDING

Subject to the approval of the Trademark Trial and Appeal Board ("the Board"), the parties hereby stipulate to the following protective order in the case of Pioneer Kabushiki Kaisha dba Pioneer Corporation v. Nissei Sangyo America, Ltd., Opposition Number 125,458 ("the Action"):

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

This Order is entered solely for the purpose of facilitating the exchange of documents and information between the parties to this Action without involving the Board unnecessarily in the process. Nothing in this Order or the production of any information or document under the terms of this Order or any proceedings pursuant to this Order shall be deemed to have the effect of an admission or waiver by either party or of altering the confidentiality or nonconfidentiality of any such document or information or altering any existing obligation of any party or the absence thereof.

1 TERMS OF ORDER

2 **(1) Classes of Protected Information.**

3 The Rules of Practice in Trademark Cases provide that all  
4 inter partes proceeding files, as well as the involved  
5 registration and application files, are open to public inspection.  
6 The parties agree that the terms of this order are not to be used  
7 to undermine public access to files. When appropriate, however, a  
8 party or witness, on its own or through its attorney, may seek to  
9 protect the confidentiality of information by employing one of the  
10 following designations.

11 **Confidential**—Material to be shielded by the Board from public  
12 access.

13 **Highly Confidential**—Material to be shielded by the Board from  
14 public access and subject to agreed restrictions on access  
15 even as to the parties and/or their attorneys.

16 **Trade Secret/Commercially Sensitive**—Material to be shielded  
17 by the Board from public access, restricted from any access  
18 by the parties, and available for review by outside counsel  
19 for the parties and, subject to the provisions of paragraph 4  
20 and 5, by independent experts or consultants for the parties.

21 **(2) Information Not To Be Designated As Protected.**

22 Information may not be designated as subject to any form of  
23 protection if it (a) is, or becomes, public knowledge, as shown by  
24 publicly available writings, other than through violation of the  
25 terms of this document; (b) is acquired by a non-designating party  
26 or non-party witness from a third party lawfully possessing such  
27 information and having no obligation to the owner of the  
28 information; (c) was lawfully possessed by a non-designating party

1 or non-party witness prior to the opening of discovery in this  
2 proceeding, and for which there is written evidence of the lawful  
3 possession; (d) is disclosed by a non-designating party or  
4 non-party witness legally compelled to disclose the information;  
5 or (e) is disclosed by a non-designating party with the approval  
6 of the designating party.

7 **(3) Access to Protected Information.**

8 The provisions of this order regarding access to protected  
9 information are subject to modification by written agreement of  
10 the parties or their attorneys, or by motion filed with and  
11 approved by the Board.

12 Judges, attorneys, and other employees of the Board are bound  
13 to honor the parties' designations of information as protected but  
14 are not required to sign forms acknowledging the terms and  
15 existence of this order. Court reporters, stenographers, video  
16 technicians or others who may be employed by the parties or their  
17 attorneys to perform services incidental to this proceeding will  
18 be bound only to the extent that the parties or their attorneys  
19 make it a condition of employment or obtain agreements from such  
20 individuals, in accordance with the provisions of paragraph 4.

- 21 ● **Parties** are defined as including individuals, officers  
22 of corporations, partners of partnerships, and  
23 management employees of any type of business  
24 organization.
- 25 ● **Attorneys** for parties are defined as including in-house  
26 counsel and outside counsel, including support staff  
27 operating under counsel's direction, such as paralegals  
28 or legal assistants, secretaries, and any other

1 employees or independent contractors operating under  
2 counsel's instruction or direction.

3 ● **Independent experts or consultants** include individuals  
4 retained by a party for purposes related to prosecution  
5 or defense of the proceeding but who are not otherwise  
6 employees of either the party or its attorneys.

7 ● **Non-party witnesses** include any individuals to be  
8 deposed during discovery or trial, whether willingly or  
9 under subpoena issued by a court of competent  
10 jurisdiction over the witness.

11 Parties and their attorneys shall have access to information  
12 designated as confidential or highly confidential, subject to any  
13 agreed exceptions. Outside counsel, but not in-house counsel,  
14 shall have access to information designated as trade  
15 secret/commercially sensitive. Independent experts or  
16 consultants, non-party witnesses, and any other individual not  
17 otherwise specifically covered by the terms of this order may be  
18 afforded access to confidential or highly confidential information  
19 in accordance with the terms that follow in paragraph 4. Further,  
20 independent experts or consultants may have access to trade  
21 secret/commercially sensitive information if such access is agreed  
22 to by the parties or ordered by the Board, in accordance with the  
23 terms that follow in paragraphs 4 and 5.

24 **(4) Disclosure to Any Individual.**

25 Prior to disclosure of protected information by any party or  
26 its attorney to any individual not already provided access to such  
27 information by the terms of this order, the individual shall be  
28 informed of the existence of this order and provided with a copy

1 to read. The individual will then be required to certify in  
2 writing that the order has been read and understood and that the  
3 terms shall be binding on the individual. No individual shall  
4 receive any protected information until the party or attorney  
5 proposing to disclose the information has received the signed  
6 certification from the individual. A form for such certification  
7 is attached to this order. The party or attorney receiving the  
8 completed form shall retain the original.

9 **(5) Disclosure to Independent Experts or Consultants.**

10 In addition to meeting the requirements of paragraph 4, any  
11 party or attorney proposing to share disclosed information with an  
12 independent expert or consultant must also notify the party which  
13 designated the information as protected. Notification must be  
14 personally served or forwarded by certified mail, return receipt  
15 requested, and shall provide notice of the name, address,  
16 occupation and professional background of the expert or  
17 independent consultant.

18 The party or its attorney receiving the notice shall have ten  
19 (10) business days to object to disclosure to the expert or  
20 independent consultant. If objection is made, then the parties  
21 must negotiate the issue before raising the issue before the  
22 Board. If the parties are unable to settle their dispute, then  
23 it shall be the obligation of the party or attorney proposing  
24 disclosure to bring the matter before the Board with an  
25 explanation of the need for disclosure and a report on the efforts  
26 the parties have made to settle their dispute. The party  
27 objecting to disclosure will be expected to respond with its  
28 arguments against disclosure or its objections will be deemed

1 waived.

2 **(6) Responses to Written Discovery.**

3 Responses to interrogatories under Federal Rule 33 and  
4 requests for admissions under Federal Rule 36, and which the  
5 responding party reasonably believes to contain protected  
6 information shall be prominently stamped or marked with the  
7 appropriate designation from paragraph 1. Any inadvertent  
8 disclosure without appropriate designation shall be remedied as  
9 soon as the disclosing party learns of its error, by informing all  
10 adverse parties, in writing, of the error. The parties should  
11 inform the Board only if necessary because of the filing of  
12 protected information not in accordance with the provisions of  
13 paragraph 12.

14 **(7) Production of Documents.**

15 If a party responds to requests for production under Federal  
16 Rule 34 by making copies and forwarding the copies to the  
17 inquiring party, then the copies shall be prominently stamped or  
18 marked, as necessary, with the appropriate designation from  
19 paragraph 1. If the responding party makes documents available  
20 for inspection and copying by the inquiring party, all documents  
21 shall be considered protected during the course of inspection.  
22 After the inquiring party informs the responding party what  
23 documents are to be copied, the responding party will be  
24 responsible for prominently stamping or marking the copies with  
25 the appropriate designation from paragraph 1. Any inadvertent  
26 disclosure without appropriate designation shall be remedied as  
27 soon as the disclosing party learns of its error, by informing all  
28 adverse parties, in writing, of the error. The parties should

1 inform the Board only if necessary because of the filing of  
2 protected information not in accordance with the provisions of  
3 paragraph 12.

4 **(8) Depositions.**

5 Protected documents produced during a discovery deposition,  
6 or offered into evidence during a testimony deposition shall be  
7 orally noted as such by the producing or offering party at the  
8 outset of any discussion of the document or information contained  
9 in the document. In addition, the documents must be prominently  
10 stamped or marked with the appropriate designation. During  
11 discussion of any non-documentary protected information, the  
12 interested party shall make oral note of the protected nature of  
13 the information.

14 The transcript of any deposition and all exhibits or  
15 attachments shall be considered protected for 30 days following  
16 the date of service of the transcript by the party that took the  
17 deposition. During that 30-day period, either party may designate  
18 the portions of the transcript, and any specific exhibits or  
19 attachments, that are to be treated as protected, by electing the  
20 appropriate designation from paragraph 1. Appropriate stampings  
21 or markings should be made during this time. If no such  
22 designations are made, then the entire transcript and exhibits  
23 will be considered unprotected.

24 **(9) Filing Notices of Reliance.**

25 When a party or its attorney files a notice of reliance  
26 during the party's testimony period, the party or attorney is  
27 bound to honor designations made by the adverse party or attorney,  
28 or non-party witness, who disclosed the information, so as to

1 maintain the protected status of the information.

2 **(10) Briefs.**

3 When filing briefs, memoranda, or declarations in support of  
4 a motion, or briefs at final hearing, the portions of these  
5 filings that discuss protected information, whether information of  
6 the filing party, or any adverse party, or any non-party witness,  
7 should be redacted. The rule of reasonableness for redaction is  
8 discussed in paragraph 12 of this order.

9 **(11) Handling of Protected Information.**

10 Disclosure of information protected under the terms of this  
11 order is intended only to facilitate the prosecution or defense of  
12 this Action. The recipient of any protected information disclosed  
13 in accordance with the terms of this order is obligated to  
14 maintain the confidentiality of the information and shall exercise  
15 reasonable care in handling, storing, using or disseminating  
16 the information.

17 **(12) Redaction; Filing Material With the Board.**

18 When a party or attorney must file protected information with  
19 the Board, or a brief that discusses such information, the  
20 protected information or portion of the brief discussing the same  
21 should be redacted from the remainder. A rule of reasonableness  
22 should dictate how redaction is effected.

23 Redaction can entail merely covering a portion of a page of  
24 material when it is copied in anticipation of filing but can also  
25 entail the more extreme measure of simply filing the entire page  
26 under seal as one that contains primarily confidential material.  
27 If only a sentence or short paragraph of a page of material is  
28 confidential, covering that material when the page is copied would

1 be appropriate. In contrast, if most of the material on the page  
2 is confidential, then filing the entire page under seal would be  
3 more reasonable, even if some small quantity of non-confidential  
4 material is then withheld from the public record. Likewise, when a  
5 multi-page document is in issue, reasonableness would dictate that  
6 redaction of the portions or pages containing confidential  
7 material be effected when only some small number of pages contain  
8 such material. In contrast, if almost every page of the document  
9 contains some confidential material, it may be more reasonable to  
10 simply submit the entire document under seal. Occasions when a  
11 whole document or brief must be submitted under seal should be  
12 very rare.

13 Protected information, and pleadings, briefs or memoranda  
14 that reproduce, discuss or paraphrase such information, shall be  
15 filed with the Board under seal. The envelopes or containers  
16 shall be prominently stamped or marked with a legend in  
17 substantially the following form:

18 **CONFIDENTIAL**

19 *This envelope contains documents or information that*  
20 *are subject to a protective order or agreement. The*  
21 *confidentiality of the material is to be maintained and*  
22 *the envelope is not to be opened, or the contents*  
23 *revealed to any individual, except by order of the*  
24 *Board.*

25 **(13) Acceptance of Information; Inadvertent Disclosure.**

26 Acceptance by a party or its attorney of information  
27 disclosed under designation as protected shall not constitute an  
28 admission that the information is, in fact, entitled to

1 protection. Inadvertent disclosure of information which the  
2 disclosing party intended to designate as protected shall not  
3 constitute waiver of any right to claim the information as  
4 protected upon discovery of the error.

5 **(14) Challenges to Designations of Information as Protected.**

6 If the parties or their attorneys disagree as to whether  
7 certain information should be protected, they are obligated to  
8 negotiate in good faith regarding the designation by the  
9 disclosing party. If the parties are unable to resolve their  
10 differences, the party challenging the designation may make a  
11 motion before the Board seeking a determination of the status of  
12 the information.

13 A challenge to the designation of information as protected  
14 must be made substantially contemporaneous with the designation,  
15 or as soon as practicable after the basis for challenge is known.  
16 When a challenge is made long after a designation of information  
17 as protected, the challenging party will be expected to show  
18 why it could not have made the challenge at an earlier time.  
19 The party designating information as protected will, when its  
20 designation is timely challenged, bear the ultimate burden of  
21 proving that the information should be protected.

22 **(15) Board's Jurisdiction; Handling of Materials After**  
23 **Termination.**

24 This Order shall survive the final termination of this  
25 Action, to the extent that the information contained in the  
26 Confidential Material is not or does not become known to the  
27 public, and the Board shall retain jurisdiction to resolve any  
28 dispute concerning the use of information disclosed hereunder.

1 Upon termination of this Action, counsel for the parties shall  
2 assemble and return to each other all documents, material and  
3 deposition transcript designated as Privileged and all copies of  
4 same, or shall certify the destruction thereof.

5 **(16) Other Rights of the Parties and Attorneys.**

6 This order shall not preclude the parties or their attorneys  
7 from making any applicable claims of privilege during discovery or  
8 at trial. Nor shall the order preclude the filing of any motion  
9 with the Board for relief from a particular provision of this  
10 order or for additional protections not provided by this order.

11 **(17) Right to Bring Motion.**

12 This Order shall be without prejudice to the right of the  
13 parties (i) to bring before the Board at any time the question of  
14 whether any particular document or information is confidential or  
15 whether its use should be restricted or (ii) to present a motion  
16 to the Board under Fed. R. Civ. P. 26(c) for a separate protective  
17 order as to any particular document or information, including  
18 restrictions differing from those as specified herein. This Order  
19 shall not be deemed to prejudice the parties in any way in any  
20 future application for modification of this Order.

21

22 By Agreement of the Following, effective January 31, 2003:

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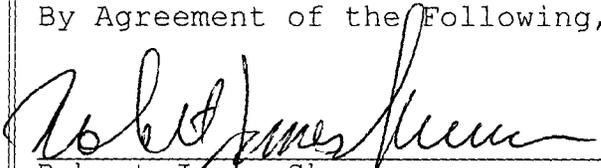
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Kabushiki Kaisha dba Pioneer  
Corporation**

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**Attorneys for Applicant Nissei  
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Hitachi High Technologies  
America, Inc.**

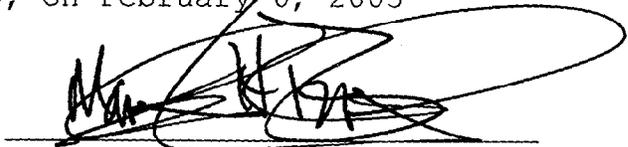
By Order of the Board, effective \_\_\_\_\_.

\_\_\_\_\_  
[Board Attorney/Judge  
Imposing Order]

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing STIPULATED PROTECTIVE ORDER is being deposited with the United States Postal Service, first class postage prepaid, in an envelope addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on February 6, 2003



Mark H. Bush



02-10-2003

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February 6, 2003

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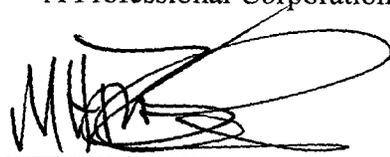
RE: Pioneer Corp. v. Nissei Sangyo America, Ltd.  
Opposition No. 125,458  
**Submission of Stipulated Protective Order**

Dear Sir or Madam:

I am enclosing the following documents: (1) Stipulated Protective Order; and (2) A stamped postcard for confirmation of receipt of same. Because we are submitting a document which requires the signature of a Board judge or attorney, I am enclosing an additional copy and request that it be conformed and returned to this office for the purpose of effectuating the terms of the protective order. If you have any questions or comments, please do not hesitate to contact me directly.

Very Truly Yours,

SKOUSEN & SKOUSEN  
A Professional Corporation

By: 

Mark H. Bush  
Law Clerk