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1 **MOTION FOR SANCTIONS PURSUANT TO TRADEMARK RULE OF**
2 **PRACTICE 2.120(g) (2) AND FEDERAL RULE OF CIVIL**
3 **PROCEDURE 37, AND ALTERNATIVELY TO COMPEL THE ATTENDANCE**
4 **OF MICHAEL LEVANS AT DEPOSITION IN LOS ANGELES**

5 PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil
6 Procedure 37 and Trademark Rules of Practice 2.120(e) and (g),
7 Opposer Pioneer Kabushiki Kaisha dba Pioneer Corporation
8 ("Pioneer") hereby moves the Trademark Trial and Appeal Board
9 ("the Board") for an order of sanctions dismissing the SUPERSCAN
10 ELITE application or other sanctions or, alternatively, for an
11 order compelling Applicant Hitachi High Technologies America,
12 Inc., formerly known as Nissei Sangyo America, Ltd., ("Applicant")
13 to produce Michael Levans for his individual deposition pursuant
14 to Rule 30(a) (1) and 37 CFR 2.120(b) in Los Angeles, California at
15 a place and time convenient for Pioneer.

16 Applicant previously produced Michael Levans on March 6, 2003
17 and designated him pursuant to Pioneer's Notice of Deposition of
18 Applicant in accordance with Federal Rule of Civil Procedure
19 30(b) (6). Nevertheless, Michael Levans has never been produced
20 for his individual deposition. Counsel for Pioneer has attempted
21 to informally resolve this matter, but counsel for the Applicant
22 has emphatically refused to allow Mr. Levans to be deposed in his
23 individual capacity.

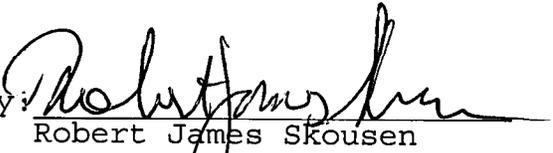
24 This motion is based upon this Notice of Motion and Motion,
25 the accompanying Memorandum of Points and Authorities, the
26 Certificate of Robert James Skousen, all pleadings and papers on
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1 file in this action, and upon such other matters as may be
2 presented to the Board.

3 Dated: July 11, 2003

4 SKOUSEN & SKOUSEN
5 A Professional Corporation

6
7 By: 
8 Robert James Skousen

9 Attorneys for Pioneer Kabushiki
10 Kaisha dba Pioneer Corporation
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1 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT MOTION FOR AN ORDER
2 COMPELLING THE ATTENDANCE OF MICHAEL LEVANS AT DEPOSITION¹

3 I.

4 PRELIMINARY STATEMENT

5 Opposer Pioneer Kabushiki Kaisha dba Pioneer Corporation
6 ("Pioneer"), brings this motion for sanctions or to compel the
7 attendance of Michael Levans at his individual deposition pursuant
8 to Federal Rules of Civil Procedure 37(d), 30(a)(1), and Trademark
9 Rules of Practice 2.120(b) and (g)(2).

10 This motion became necessary because of Applicant's
11 consistent and unfounded refusal to produce Michael Levans ("Mr.
12 Levans") for his individual deposition pursuant to a Notice of
13 Deposition dated February 24, 2003. Pioneer's counsel re-noticed
14 Mr. Levans deposition for June 25, 2003 but Applicant's lawyer
15 refused to make Mr. Levans available.

16 Applicant has refused to provide Mr. Levans for his
17 Deposition. In fact, HHTA's counsel, Bill McGrath, has clearly
18 indicated that he does not intend to produce Mr. Levans for his
19 duly noticed deposition. Applicant's position is based on the
20 unsupported argument that Pioneer is not entitled to depose Mr.
21 Levans further because he was produced pursuant to Applicant's
22 30(b)(6) Notice of Deposition. Federal Rule of Civil Procedure
23 30, the Advisory Committee Notes thereto, and case law each
24 contradict Applicant's position and support Pioneer's argument
25 that sanctions up to and including the dismissal of the
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27 ¹This motion to compel the attendance of Michael Levans at his
28 individual deposition is being filed and served concurrently with, but
separate from, Pioneer's motion to compel Applicant's attendance at the
continued 30(b)(6) deposition.

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1 Applicant's application. As an alternative option, Mr. Levans
 2 should be produced for his individual deposition under an
 3 independent seven-hour time limit separate and apart from his
 4 previous deposition as 30(b)(6) designee for Applicant and that
 5 deposition should be taken in Los Angeles.

6 By agreement of the parties, discovery had closed in this
 7 matter on July 6, 2003. The deposition that is the subject of
 8 this motion was re-set for June 25, 2003 in Chicago, Illinois.
 9 Because Applicant's counsel refused to produce Mr. Levans for this
 10 deposition, this motion to compel is necessary. Accordingly,
 11 based on the foregoing, Pioneer respectfully urges the Trademark
 12 Trial and Appeal Board ("the Board") to grant this motion for
 13 sanctions dismissing the SUPERSCAN ELITE application, or
 14 alternatively, to compel the individual deposition of Michael
 15 Levans to be taken in Los Angeles, California at a time and place
 16 convenient to Pioneer.

17 II.

18 RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

19 A. Factual Background

20 Pioneer is the owner of United States Trademark Number
 21 1,591,868 for the mark "ELITE" in International Class 009 for the
 22 following goods and services:

23 [A]udio and video products, namely, amplifiers; video
 24 disc players; compact disc players; combination video
 25 disc and compact disc players; monitor televisions;
 loudspeakers; tuners; and stereo radio/audio cassette
 players.

26 Pioneer's ELITE mark was registered on the Principal Register
 27 on April 17, 1990. Pioneer's registered mark is valid and use of
 28 the mark has been continuous. Further, Pioneer's registered mark

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1 is conclusive evidence of Pioneer's exclusive right to use the
2 ELITE mark in commerce on the goods specified in registration
3 number 1,591,868.

4 On February 9, 2001, Applicant² filed its application for the
5 mark SUPERSCAN ELITE in International Class Nine by filing an
6 application for SUPERSCAN ELITE for the following goods and
7 services:

8 [V]ideo and audio products and systems, namely,
9 televisions, projection televisions, plasma display
10 televisions, video cassette recorders, DVD players, DVD
11 players with built-in DVD recorders, televisions with
12 built-in video cassette recorders, televisions with
13 built-in DVD players, televisions with built-in video
14 cassette recorder and DVD player, audio receivers,
15 audio speakers and home theater systems consisting of
16 any combination of stereo amplifiers, DVD players,
17 video cassette recorders and audio speakers.

18 This proposed registration of the SUPERSCAN ELITE mark
19 directly conflicts with Pioneer's existing registration for its
20 "Elite" mark.

21 **B. Procedural Background**

22 On March 19, 2002, the PTO published the SUPERSCAN ELITE
23 application for opposition in the *Official Gazette*. On April 29,
24 2002, Pioneer timely filed this opposition to Applicant's attempt
25 to register SUPERSCAN ELITE. On June 10, 2002, Applicant filed an
26 answer to Pioneer's Opposition complaint.

27 On February 24, 2003, Pioneer's counsel noticed the
28 deposition of Michael Levans pursuant to Federal Rule of Civil
Procedure 30(a)(1). Robert Skousen Declaration, Ex. A. Mr.
Levans "individual" deposition was scheduled to take place on

²Applicant originally filed its Application as Nissei Sangyo America, Ltd. It is currently known as Hitachi High Technologies America, Inc.

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1 March 6, 2003.

2 On March 6, 2003, counsel for Pioneer appeared in Chicago,
3 Illinois to take Mr. Levans' individual deposition. At the outset
4 of Mr. Levans' deposition, counsel for Applicant, William McGrath,
5 identified Mr. Levans as being produced pursuant to Pioneer's
6 30(b)(6) notice of deposition:

7 MR. McGRATH: Bob, let me interrupt if I can. I just
8 want to mention a few things. We're presenting Mr.
9 Levans as our 30(b)(6) witness, so you know that.

10 Skousen Decl. Ex. B.

11 During the course of that deposition, Mr. Levans testified
12 extensively on behalf of Applicant with respect to many of the
13 categories identified in Pioneer's Rule 30(b)(6) notice of
14 deposition. At no time during that deposition, however, did
15 William McGrath or Robert Skousen demarcate or identify a point at
16 which Mr. Levans began testifying on his own behalf or pursuant to
17 Mr. Levans individual Notice of Deposition. In short, although
18 noticed for his individual deposition, Mr. Levans has never been
19 produced to testify on his own behalf.

20 On March 11, 2003, just five days after the March 6, 2003
21 deposition of Mr. Levans as Applicant's Rule 30(b)(6) designee,
22 the Board suspended the above-captioned proceeding pursuant to
23 Trademark Rule of Practice 2.120(e)(2) to consider Pioneer's
24 October 30, 2002 motion to compel further written discovery
25 responses. The suspension was lifted on May 16, 2003 concurrent
26 with the Board's ruling on that motion.

27 On May 22, 2003, counsel for Pioneer, Robert Skousen, sent a
28 letter to counsel for Applicant, William McGrath, indicating
Pioneer's intent to take Mr. Levans' individual deposition prior

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1 to the close of discovery and to renew and complete Mr. Levans'
2 deposition as Applicant's Rule 30(b)(6) designee prior to the
3 close of the discovery period. Skousen Decl. Ex. C. Mr. McGrath
4 responded to Mr. Skousen's letter on May 29, 2003 by stating:

5 You had the opportunity to take the full seven (7)
6 hours with Mr. Levans on March 6th, and we are not
7 required to produce him further.

8 Skousen Decl. Ex. D.

9 Thereafter, on June 4, 2003, Mr. Skousen sent a detailed
10 letter to Mr. McGrath pursuant to Trademark Rule of Practice
11 2.120(e)(1) and Federal Rule 37 for the purpose of making a good
12 faith effort to resolve the issue of this deposition prior to
13 involving the Board through formal motion. Mr. Skousen's letter
14 identified legal authority indicating Pioneer's right to take a
15 separate deposition of Mr. Levans "individually" because that
16 deposition had been separately noticed from the 30(b)(6)
17 deposition of Applicant. Skousen Decl. Ex. E.

18 On June 12, 2003, counsel for Pioneer sent a new notice of
19 deposition for Mr. Levans' individual deposition pursuant to Rule
20 30(a)(1). Skousen Decl. Ex. F. On June 13, 2003, Mr. Skousen
21 received a two sentence letter from Mr. McGrath indicating that a
22 decision still had not been made as to whether Mr. Levans would be
23 produced for his deposition. The letter also stated that Mr.
24 McGrath would contact Mr. Skousen on Monday, June 16, 2003, for
25 the purpose of discussing the deposition. Skousen Decl. Ex. G.

26 On June 16, 2003, Mr. Skousen received another letter from
27 Mr. McGrath stating that he had been unable to speak with his
28 client and that he would contact Mr. Skousen on June 17, 2003.
29 Skousen Decl. Ex. H. On June 17, 2003, Mr. Skousen received a

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1 letter from Mr. McGrath indicating that he did not intend to
2 produce Mr. Levans for his individual deposition. Skousen Decl.
3 Ex. I. Thereafter, on June 17, 2003, Mr. Skousen sent an
4 additional letter to Mr. McGrath stating that he would accept
5 taking the deposition of any other 30(b)(6) deponents as a
6 possible means of resolving the outstanding issues with respect to
7 Mr. Levans' individual deposition. Nevertheless, Mr. Skousen
8 specifically indicated that he intended to reserve Pioneer's right
9 to bring a motion to compel Mr. Levans' individual testimony if
10 the testimony given by the 30(b)(6) designee proved insufficient.
11 Skousen Decl. Ex. J.

12 On June 20, 2003, Mr. Skousen received yet another letter
13 from Mr. McGrath with respect to the deposition of Mr. Levans. In
14 that letter, Mr. McGrath again stated that Mr. Levans had already
15 been produced and because of that production, they were under no
16 obligation to produce him for his individual deposition even
17 though the deposition had been properly noticed. Skousen Decl.
18 Ex. K. Notwithstanding, Mr. McGrath's letter failed to address or
19 refute the authority cited by Mr. Skousen in his June 4, 2003
20 letter to Mr. McGrath.

21 On June 25, 2003, Mr. Skousen took the further deposition of
22 Applicant's 30(b)(6). During this second session of the 30(b)(6)
23 deposition, Applicant produced its General Counsel, Steve Snoke,
24 for testimony. During this deposition, Mr. McGrath indicated that
25 he had no intention of producing Mr. Levans for his individual
26 deposition: [

27 **THIS SECTION FILED UNDER SEAL PURSUANT TO STIPULATED**
28 **PROTECTIVE ORDER DATED JANUARY 31, 2003**

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Skousen Decl. Ex. L.

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III.

ARGUMENT

A. THE TRADEMARK TRIAL AND APPEAL BOARD IS AUTHORIZED TO HEAR AND DECIDE MOTIONS FOR SANCTIONS PURSUANT TO 37 C.F.R. § 2.120 (g) (2) AND, ALTERNATIVELY, AN MOTIONS FOR ORDERS COMPELLING ATTENDANCE AT A DEPOSITION

It is well settled that the Board has authority to compel the attendance of a witness at a discovery deposition. Trademark Rule

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1 of Practice 2.120(a) makes the Federal Rules of Civil Procedure
2 with respect to discovery applicable to proceedings before the
3 Board unless they are otherwise abrogated by the Trademark Rules:

4 Wherever appropriate, the provisions of the Federal
5 Rules of Civil Procedure relating to discovery shall
6 apply in opposition, cancellation, interference and
concurrent use registration proceedings except as
otherwise provided in this section.

7 37 C.F.R. § 2.120(a).

8 Consequently, this provision makes Federal Rule 37 applicable
9 to TTAB proceedings where a party fails to cooperate in the taking
10 of discovery. Rule 37(d) states, in pertinent part:

11 **(d) Failure of Party to Attend at Own Deposition or**
12 **Serve Answers to Interrogatories or Respond to Request**
13 **for Inspection.** If a party or an officer, director, or
14 managing agent of a party or a person designated under
15 Rule 30(b)(6) or 31(a) to testify on behalf of a party
16 fails (1) to appear before the officer who is to take
17 the deposition, after being served with a proper
notice...the court in which the action is pending on
motion may make such orders in regard to the failure as
are just, and among others it may take any action
authorized under subparagraphs (A), (B), and (C) of
subdivision (b)(2) of this rule.

18 Fed. R. Civ. P. 37(d) (emphasis original).

19 Subparagraphs (A), (B), and (C) of Rule 37(b)(2), which is
20 referenced in Rule 37(d) authorize the following sanctions:

21 (A) An order that the matters regarding which the order
22 was made or any other designated facts shall be taken
23 to be established for the purposes of the action in
accordance with the claim of the party obtaining the
order;

24 (B) An order refusing to allow the disobedient party to
25 support or oppose designated claims or defenses, or
prohibiting that party from introducing designated
matters in evidence;

26 (C) An order striking out pleadings or parts thereof,
27 or staying further proceedings until the order is
obeyed, or dismissing the action or proceeding or any
part thereof, or rendering a judgment by default
28 against the disobedient party.

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1 Fed. R. Civ. P. 37(b) (2).

2 Trademark Rule 2.120(g) (2), the TTAB companion provision to
3 Rule 37(d), states:

4 If a party, or an officer, director, or managing agent
5 of a party, or a person designated under Rule 30(b) (6)
6 or 31(a) of the Federal Rules of Civil Procedure to
7 testify on behalf of a party, fails to attend the
8 party's or person's discovery deposition, after being
9 served with proper notice, or fails to provide any
10 response to a set of interrogatories or to a set of
11 requests for production of documents and things, and
12 such party or the party's attorney or other authorized
13 representative informs the party seeking discovery that
14 no response will be made thereto, the Board may make
15 any appropriate order, as specified in paragraph (g) (1)
16 of this section.

17 37 C.F.R. § 2.120(g) (2).

18 Subsection (g) (2) makes reference to Trademark Rule
19 2.120(g) (1), which states:

20 If a party fails to comply with an order of the
21 Trademark Trial and Appeal Board relating to discovery,
22 including a protective order, the Board may make any
23 appropriate order, including any of the orders provided
24 in Rule 37(b) (2) of the Federal Rules of Civil
25 Procedure, except that the Board will not hold any
26 person in contempt or award any expenses to any party.
27 The Board may impose against a party any of the
28 sanctions provided by this subsection in the event that
said party or any attorney, agent, or designated
witness of that party fails to comply with a protective
order made pursuant to Rule 26(c) of the Federal Rules
of Civil Procedure.

37 C.F.R. § 2.120(g) (1).

The Trademark Manual of Practice indicates that such a
sanction is appropriate for discovery depositions where the
responding party failed to respond and "has informed the party
seeking discovery that no response will be made." TBMP 527.02.

Accordingly, the Board is vested with the authority to hear
and consider this motion to compel the attendance of a witness at
a discovery deposition.

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B. THE BOARD SHOULD MAKE AN ORDER DISMISSING APPLICANT'S APPLICATION

Subsection (g) (1) of Trademark Rule 2.120 authorizes the Board to make an appropriate sanction for the failure and refusal to appear at a deposition. Moreover, the TBMP is clear that sanctions under this section are available where the party failing to appear has informed the party seeking discovery that no response will be made.

Here, Mr. McGrath has clearly indicated, on more than one occasion, his position that Mr. Levans will not be produced for his individual deposition. Specifically, Mr. McGrath clearly stated in his letters dated June 17, 2003 and June 20, 2003 that he intend to produce Mr. Levans for his duly noticed individual deposition. Moreover, Mr. McGrath echoed these sentiments on the record during the deposition of Steve Snoke on June 25, 2003. Mr. Skousen repeatedly provided, as set forth below, binding and persuasive authority supporting Pioneer's right to take Mr. Levans' individual deposition. Notwithstanding that authority, Mr. McGrath has continually thwarted Pioneer's attempt to take this deposition.

HHTA has cited no reasonable basis for refusing to produce Mr. Levans for his deposition. Moreover, Mr. McGrath has failed to provide any authority for his position on this issue other than the argument that it is "his position" that we are not entitled to Mr. Levans' individual deposition. Consequently, it is appropriate, pursuant to Rule 2.120(g) (2) for the Board to enter an order dismissing HHTA's SUPERSCAN ELITE application.

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C. PIONEER IS ENTITLED TO AN INDEPENDENT SEVEN HOUR DEPOSITION OF MICHAEL LEVANS AS AN INDIVIDUAL, IRRESPECTIVE OF HIS TESTIMONY AS 30(b)(6) DESIGNEE

Federal Rule of Civil Procedure 30(a)(1) states:

A Party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2).

Fed. R. Civ. P. 30(a)(1).

Further, Federal Rule 30(d)(2) states:

Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination.

Fed. R. Civ. P. 30(d)(2).

Trademark Rule of Practice 2.120(c) also states:

The responsibility rests wholly with the party taking discovery to secure the attendance of a proposed deponent **other than a party or anyone who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party**, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure.

37 C.F.R. § 2.120(c) (emphasis added).

During Mr. Levans' March 6, 2003 30(b)(6) deposition, Mr. Levans testified as to his role as the managing agent of Applicant:

Q And what is your title currently?
A Vice-president and general manager electronic products division.
Q How long have you been the vice-president and general manager of electronic products division?
A Since June of 2002.
Q And what are your duties as vice-president and general manager of electronic products division?
A I'm responsible for all operations of the electronic products division. I have a staff of 13 people, and I'm responsible for all activities for that division.

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Thus, Mr. Levans' deposition as an individual can be noticed pursuant to Rule 30(b)(1) of the Federal Rules. Rule 30(d)(2) is the basis for Applicant's argument that Mr. Levans' deposition has been completed. Nevertheless, Applicant's argument is misguided. Case law and the Advisory Committee Notes are clear that where a person is noticed for deposition both as an individual and a 30(b)(6) designee, two separate seven hour time limits are imposed. The Advisory Committee Notes state:

Paragraph (2) imposes a presumptive durational limitation of one day of seven hours for any deposition. The Committee has been informed that overlong depositions can result in undue costs and delays in some circumstances. This limitation contemplates that there will be reasonable breaks during the day for lunch and other reasons, and that the only time to be counted is the time occupied by the actual deposition. **For purposes of this durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition.**

Committee Note, 192 F.R.D. at 395 (emphasis added).

Significantly, in interpreting this advisory note, the courts also require a separate deposition where a 30(b)(6) deponent has also been noticed for his individual deposition. In *Sabre v. First Dominion Capital, Inc.*, 51 Fed.R.Serv.3d 1405 (S.D.N.Y. 2001), the court considered a discovery dispute as to whether the "presumptive seven-hour limit" applied cumulatively to the testimony given by a witness in both his individual capacity and as a corporate representative. In citing to the Advisory Committee Notes, the court stated:

I conclude that the latter interpretation is correct and that depositions of an individual who is noticed as an individual witness pursuant to [Rule] 30(b)(1) and who is also produced as a corporate representative pursuant to [Rule] 30(b)(6) are presumptively subject to **independent seven-hour time limits.**

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Id (emphasis added).

In making this holding, the court explained the relevant distinctions between a 30(b)(6) deposition and an individual deposition by noting that a 30(b)(6) deponent's testimony binds the corporation and bestows a responsibility on the deponent to provide all relevant information on behalf of the corporation. *Id.*, citing 8A Charles A. Wright, Arthur R. Miller, Richard L. Marcus, *Federal Practice & Procedure*, § 2103 (2d ed. 1994, Supp. 2003). This logic, the court opined, is confirmed by the Advisory Committee Notes to the 1993 amendments to Rule 30:

The distinct status of a 30(b)(6) deposition is confirmed by the Advisory Committee Notes to the 1993 amendments to the Federal Rules of Civil Procedure which expressly state that for purposes of calculating the number of a depositions in a case, a 30(b)(6) deposition is separately counted as a single deposition, regardless of the number of witnesses designated. **As a separate deposition that probes the knowledge of the entity and not the personal knowledge of the individual testifying, a 30(b)(6) deposition should be subject to its own independent seven-hour limit.**

Id. (emphasis added).

The court further reasoned that if a deponent is only subject to a single seven-hour deposition even though he had been designated in more than just his individual capacity, there would be "substantial potential for over-reaching. For example, any entity that wanted to limit the testimony of an individual could accomplish that goal by designating the individual as a 30(b)(6) witness." *Id.*

Here, a similar situation is presented. Mr. Levans' individual deposition was noticed on February 24, 2003. Applicant's 30(b)(6) deposition was also noticed on February 24,

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2003. During the 30(b)(6) deposition on March 6, 2003, Mr. McGrath specifically identified Mr. Levans' as having been produced as Applicant's 30(b)(6) deponent. Moreover, Pioneer "re-noticed" Mr. Levans' individual deposition on June 12, 2003 by noticing his deposition for June 25, 2003 in Chicago in accordance with the applicable Trademark Rules of Practice. Thus, it is clear that Mr. Levans has never been produced by Applicant for his individual deposition. Applicant cannot now hide behind the "one day, seven-hour" limit where such reliance is inconsistent with the legislative intent of 30(d)(2) and the case law decided thereunder. Accordingly, in the event the Board is not inclined to grant the request for dismissal of HHTA's application, the Board should grant the alternative portion of this motion and order that HHTA produce Mr. Levans for his deposition in Los Angeles, California at a place and time convenient for Pioneer.

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IV.

CONCLUSION

Based on the foregoing facts, arguments, and points of law, Pioneer respectfully, yet earnestly, urges the Board to grant this motion for sanctions and order the dismissal of HHTA's SUPERSCAN ELITE application as an appropriate for complete failure to comply with discovery. Alternatively, the Board should grant the motion to compel and order HHTA to produce Mr. Levans for his deposition in Los Angeles, California at a place and time convenient for Pioneer.

DATED: July 15, 2003

SKOUSEN & SKOUSEN
A Professional Corporation

By: 
Robert James Skousen

Skousen & Skousen
A Professional Corporation
12400 Wilshire Blvd., Suite 900
Los Angeles, CA 90025-1060
Telephone: 310-277-0444
Facsimile: 310-782-9579

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CERTIFICATE OF COMPLIANCE WITH FRCP 37 & 37 C.F.R. § 2.120(e)

I Robert James Skousen, certify as follows:

1. I am one of the attorneys for the Pioneer, Pioneer Kabushiki Kaisha dba Pioneer Corporation, in the above-captioned opposition now pending before the Trademark Trial and Appeal Board as Opposition Number 125,458.

2. I make this certification in support of Pioneer's Motion for an Order Compelling the Attendance of Michael Levans at his individual deposition

3. I hereby certify that counsel for the two parties in this opposition proceeding have met and conferred through written correspondence to discuss the substance of Pioneer's motion for an order compelling the attendance of Michael Levans at his individual deposition pursuant to Federal Rule of Civil Procedure 30(a)(1)

4. Counsel for the Applicant has not agreed to comply with Pioneer's attempt to take the deposition of Michael Levans as an individual deponent.

5. I have complied with Federal Rule of Civil Procedure 37 and Trademark Rule of Practice 2.120(e) and attempted to secure the attendance of Mr. Levans without Board intervention. 6. On May 22, 2003, following the May 16, 2003 lifting of the suspension of this proceeding, I sent a letter to William McGrath, counsel for Applicant, indicating my intent to take Michael Levans' deposition.

7. On May 29, 2003, I received a letter from Mr. McGrath indicating that he did not intend to produce Mr. Levans for his individual deposition because, he argued, I had been given a full

1 seven-hour opportunity to depose Mr. Levans pursuant to his
2 designation as Rule 30(b)(6) designee for Applicant.

3 8. On June 4, 2003, I sent a second letter to Mr. McGrath
4 for the purpose of continuing my good faith effort to resolve this
5 issue prior to involving the Board through formal motion. My
6 letter identified legal authority indicating Pioneer's right to
7 Mr. Levans' deposition separate and apart from his designation as
8 30(b)(6) designee for Applicant.

9 9. On June 12, 2003, I re-noticed the deposition of Michael
10 Levans as an individual deponent. Mr. Levans' deposition has been
11 re-set for June 25, 2003 in Chicago, Illinois.

12 10. On June 13, 2003, I received a short letter from Mr.
13 McGrath indicating that a decision still had not been made as to
14 whether Mr. Levans would be produced for his individual
15 deposition. The letter also stated that Mr. McGrath would contact
16 me on Monday, June 16, 2003, for the purpose of discussing the
17 deposition.

18 11. On Monday, June 16, 2003, I received another letter from
19 Mr. McGrath stating that he had not had an opportunity to speak
20 with his client about the deposition of Mr. Levans. The letter
21 further stated he would contact me on Tuesday, June 17, 2003 with
22 a substantive response.

23 12. On Tuesday, June 17, 2003, I received a letter from Mr.
24 McGrath stating that my attempt to take Mr. Levans' individual
25 deposition was harassment and generally indicating that Applicant
26 does not intend to produce him for his deposition.

27 13. On June 17, 2003, I sent an additional letter to Mr.
28 McGrath stating that we would accept taking the deposition of any

1 other 30(b)(6) deponents as a possible means of resolving the
2 outstanding issues with respect to Mr. Levans' individual
3 deposition. I also specifically indicated that I intended to
4 reserve my client's rights to bring a motion to compel Mr. Levans'
5 individual testimony if the testimony given by the 30(b)(6)
6 designee proved insufficient.

7 14. On June 20, 2003, I received yet another letter from Mr.
8 McGrath with respect to the deposition of Mr. Levans. In that
9 letter, Mr. McGrath again stated that Mr. Levans had already been
10 produced and because of that production, they were under no
11 obligation to produce him for his individual deposition even
12 though the deposition had been properly noticed.

13 15. On June 25, 2003, I took the deposition of Steve Snoke
14 as 30(b)(6) designee for Applicant.

15 16. Attached hereto and incorporated herein by reference are
16 true and correct copies of the following documents submitted in
17 support of this motion to compel:

18 Exhibit A-February 24, 2003 Notice of Deposition of
19 Michael Levans;

20 Exhibit B-Excerpt of March 6, 2003 Transcript of Michael
21 Levans' Rule 30(b)(6) Deposition Testimony;

22 Exhibit C-May 22, 2003 letter from Robert Skousen to
23 William McGrath;

24 Exhibit D-May 29, 2003 letter from William McGrath to
25 Robert Skousen;

26 Exhibit E-June 4, 2003 letter from Robert Skousen to
27 William McGrath;

28 Exhibit F-June 12, 2003 Notice of Deposition of Michael

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Levans;

Exhibit G-June 13, 2003 letter from William McGrath to Robert Skousen;

Exhibit H-June 16, 2003 letter from William McGrath to Robert Skousen;

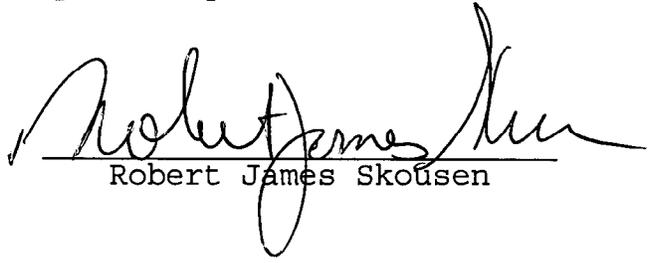
Exhibit I-June 17, 2003 letter from William McGrath to Robert Skousen;

Exhibit J-June 17, 2003 letter from Robert Skousen to William McGrath;

Exhibit K-June 20, 2003 letter from William McGrath to Robert Skousen;

Exhibit L-Excerpts of Realtime Rough Draft and Uncertified Transcript of June 25, 2003 deposition of Steve Snoke.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15th day of July 2003.



Robert James Skousen

06/04/0009TTAS

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify that the foregoing (1) MOTION FOR SANCTIONS PURSUANT TO TRADEMARK RULE OF PRACTICE 2.120(g) (2) AND FEDERAL RULE OF CIVIL PROCEDURE 37, AND ALTERNATIVELY TO COMPEL THE ATTENDANCE OF MICHAEL LEVANS AT DEPOSITION IN LOS ANGELES; (2) MEMORANDUM OF POINTS AND AUTHORITIES; (3) CERTIFICATE OF ROBERT JAMES SKOUSEN 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 July 18, 2003.


Marlene Barnes

CERTIFICATE OF SERVICE

I hereby certify that the foregoing (1) MOTION FOR SANCTIONS PURSUANT TO TRADEMARK RULE OF PRACTICE 2.120(g) (2) AND FEDERAL RULE OF CIVIL PROCEDURE 37, AND ALTERNATIVELY TO COMPEL THE ATTENDANCE OF MICHAEL LEVANS AT DEPOSITION IN LOS ANGELES; (2) MEMORANDUM OF POINTS AND AUTHORITIES; (3) CERTIFICATE OF ROBERT JAMES SKOUSEN is being deposited with the United States Postal Service, first class postage prepaid, in an envelope addressed to William T. McGrath, Esq., Davis, Mannix & McGrath, 125 South Wacker Drive, Suite 1700, Chicago, Illinois 60606.

DATED: July 18, 2003


Marlene Barnes