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MOTION FOR AN ORDER COMPELLING THE ATTENDANCE OF  
MICHAEL LEVANS AT THE CONTINUED DEPOSITION OF  
APPLICANT HITACHI HIGH TECHNOLOGIES AMERICA, INC.

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 37 and Trademark Rule of Practice 2.120(e), Opposer Pioneer Kabushiki Kaisha dba Pioneer Corporation ("Pioneer") hereby moves the Trademark Trial and Appeal Board ("the Board") for an order compelling Applicant Hitachi High Technologies America, Inc., formerly known as Nissei Sangyo America, Ltd., ("Applicant") to produce Michael Levans for the continuation and completion of his deposition pursuant to Rule 30(b)(6) and Trademark Rule of Practice 2.120(b).

Applicant previously produced Michael Levans on March 6, 2003 and designated him pursuant to Pioneer's Notice of Deposition of Applicant in accordance with Federal Rule of Civil Procedure 30(b)(6). Nevertheless, Applicant's Rule 30(b)(6) deposition of Michael Levans was not completed and Applicant has resisted allowing Pioneer the opportunity to complete that deposition.

Counsel for Pioneer has attempted to informally resolve this matter, but Applicant's counsel has failed to permit the deposition. As indicated in the attached certificate, Pioneer has complied with Federal Rule of Civil Procedure 37 and Trademark Rule of Practice 2.120(e)(1) and attempted to secure Mr. Levans' appearance at deposition and Pioneer's attorneys have attempted to informally resolve Applicant's failure to produce Mr. Levans through correspondence. Nevertheless, counsel for the Applicant has specifically indicated that, despite a clear showing of authority supporting Pioneer's position on issue, it does not

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intend to produce Mr. Levans for the completion of his 30(b)(6) deposition.

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

Dated: July 15, 2003

Skousen & Skousen  
A Professional Corporation

By:   
Robert James Skousen

Attorneys for Pioneer Pioneer  
Kabushiki Kaisha dba Pioneer  
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MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR  
AN ORDER COMPELLING THE ATTENDANCE OF MICHAEL LEVANS AT  
APPLICANT'S RULE 30(b)(6) DESIGNEES AT CONTINUED DEPOSITION<sup>1</sup>

I.

PRELIMINARY STATEMENT

Pioneer Pioneer Kabushiki Kaisha dba Pioneer Corporation ("Pioneer"), brings this motion to compel the attendance of Applicant Hitachi High Technologies America, Inc.'s person most knowledgeable designee Michael Levans for the completion of his deposition as 30(b)(6) designee for Applicant.

This motion became necessary because of Applicant's refusal to produce Michael Levans ("Mr. Levans") for the completion of his Rule 30(b)(6) deposition. Pioneer's counsel sought to complete the 30(b)(6) deposition of Mr. Levans' but Applicant has resisted such attempts.

Applicant's refusal is based on the erroneous argument that Pioneer exhausted its opportunity to depose Applicant when it deposed Mr. Levans as 30(b)(6) designee for four hours, twenty-nine minutes on March 6, 2003. Federal Rule of Civil Procedure 30, the Advisory Committee Notes thereto, and case law each contradict Applicant's position and support Pioneer's argument that Applicant is required to produce Mr. Levans for the completion of his 30(b)(6) deposition.

Accordingly, based on the foregoing, Pioneer respectfully urges the Trademark Trial and Appeal Board ("the Board") to grant this motion to compel the Rule 30(b)(6) deposition of Applicant

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<sup>1</sup>This motion to compel the attendance of Michael Levans at his individual deposition is being filed and served concurrently, but separate from, Pioneer's motion to compel Applicant's attendance at the continued 30(b)(6) deposition.

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1 and order Applicant to produce Michael Levans for the completion  
2 of his 30(b)(6) deposition in Los Angeles, California at a date  
3 and time certain.

4 II.

5 RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

6 A. Factual Background

7 Pioneer is the owner of United States Trademark Number  
8 1,591,868 for the mark "ELITE" in International Class 009 for the  
9 following goods and services:

10 [A]udio and video products, namely, amplifiers; video  
11 disc players; compact disc players; combination video  
12 disc and compact disc players; monitor televisions;  
13 loudspeakers; tuners; and stereo radio/audio cassette  
14 players.

15 Pioneer's ELITE mark was registered on the Principal Register  
16 on April 17, 1990. Pioneer's registered mark is valid and use of  
17 the mark has been continuous. Further, Pioneer's registered mark  
18 is conclusive evidence of Pioneer's exclusive right to use the  
19 ELITE mark in commerce on the goods specified in registration  
20 number 1,591,868.

21 On February 9, 2001, Applicant<sup>2</sup> filed its application for the  
22 mark SUPERSCAN ELITE in International Class Nine by filing an  
23 application for SUPERSCAN ELITE for the following goods and  
24 services:

25 [V]ideo and audio products and systems, namely,  
26 televisions, projection televisions, plasma display  
27 televisions, video cassette recorders, DVD players, DVD  
28 players with built-in DVD recorders, televisions with  
built-in video cassette recorders, televisions with  
built-in DVD players, televisions with built-in video  
cassette recorder and DVD player, audio receivers,  
audio speakers and home theater systems consisting of  
any combination of stereo amplifiers, DVD players,

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

Ltd

1 video cassette recorders and audio speakers.

2 This proposed registration of the SUPERSCAN ELITE mark  
3 directly conflicts with Pioneer's existing registration for its  
4 "Elite" mark.

5 **B. Procedural Background**

6 On March 19, 2002, the PTO published the SUPERSCAN ELITE  
7 application for opposition in the *Official Gazette*. On April 29,  
8 2002, Pioneer timely filed this opposition to Applicant's attempt  
9 to register SUPERSCAN ELITE. On June 10, 2002, Applicant filed an  
10 answer to Pioneer's Opposition complaint.

11 On February 24, 2003, Pioneer's counsel noticed the  
12 deposition of Applicant pursuant to Federal Rule of Civil  
13 Procedure 30(b)(6). This notice requested and required Applicant  
14 to produce the person or persons most knowledgeable in 29 diverse  
15 categories of information. Declaration of Robert Skousen Ex. A  
16 ("Skousen Decl."). On February 25, 2003, Applicant was  
17 personally served with a subpoena duces tecum pursuant to Rule 45.  
18 That subpoena identified 18 categories of documents for production  
19 at Applicant's 30(b)(6) deposition. *Skousen Decl. Ex. B.*

20 On March 6, 2003, counsel for Pioneer took the first session  
21 of the deposition of Applicant. At the outset of that deposition,  
22 counsel for Applicant stated:

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

26 *Skousen Decl. Ex. C.*

27 With respect to the production of documents, Applicant's  
28 counsel also stated:

MR. McGRATH:...And then the-I guess the third thing is

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I just wanted to let you know, we haven't really had enough time to any kind of search or complete our search for the documents, let's put it that way. So I have no documents for you, we didn't bring any today. So we'll be conducting a search, and we'll get you documents when they're ready.

*Skousen Decl. Ex. C.*

During the course of that deposition, Michael Levans ("Mr. Levans") identified at least three other persons most knowledgeable with respect to certain categories of information identified in the Rule 30(b)(6) notice of deposition.

Specifically, Mr. Levans stated: [

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

*Skousen Decl. Ex. C.*

]

The deposition commenced at 10:00 a.m. on March 6<sup>th</sup> and was

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1 adjourned by counsel for Pioneer at 3:49 p.m. Counsel for Pioneer  
2 clearly stated his intent to adjourn the deposition rather than  
3 conclude the deposition:

4 MR. SKOUSEN: Well, I would adjourn the deposition at  
5 this point pending receipt of the documents that we  
6 requested in the subpoena.

6 *Skousen Decl. Ex. C.*

7 Several breaks were taken during the deposition totaling 80  
8 minutes. The actual amount of time during which deposition  
9 testimony was taken, based upon the official transcript taken by  
10 the court reporter, was 4 hours, 29 minutes. *See Skousen Decl.*  
11 *Ex. C.* Moreover, Mr. Skousen's reasoning for continuing the  
12 deposition was based on his inability to examine Mr. Levans with  
13 respect to the documents that were to have been produced during  
14 the deposition.

15 On March 11, 2003, the Trademark Trial and Appeal Board ("the  
16 Board") suspended the above-captioned proceeding pursuant to  
17 Trademark Rule of Practice 2.120(e)(2) to consider Pioneer's  
18 October 30, 2002 motion to compel further written discovery  
19 responses. The suspension was lifted on May 16, 2003 concurrent  
20 with the Board's ruling on that motion.

21 On May 22, 2003, counsel for Pioneer, Robert Skousen, sent a  
22 letter to counsel for Applicant, William McGrath, indicating  
23 Pioneer's intent to renew and complete Mr. Levans' deposition as  
24 Applicant's Rule 30(b)(6) designee. *Skousen Decl. Ex. D.* Mr.  
25 McGrath responded to Mr. Skousen's letter on May 29, 2003 by  
26 stating:

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

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1 *Skousen Decl. Ex. E.*

2       Thereafter, on June 4, 2003, Mr. Skousen, sent a detailed  
3 letter to Mr. McGrath pursuant to Trademark Rule of Practice  
4 2.120(e)(1) and Federal Rule 37 for the purpose of making a good  
5 faith effort to resolve the issue of this deposition prior to  
6 involving the Board through formal motion. Mr. Skousen's letter  
7 identified legal authority indicating Pioneer's right to complete  
8 the deposition of Mr. Levans and any other 30(b)(6) designees.

9 *Skousen Decl. Ex. F.*

10       On June 12, 2003, counsel for Pioneer noticed the continued  
11 deposition of Applicant's Rule 30(b)(6) designees. *Skousen Decl.*  
12 *Ex. G.* On June 13, 2003, Mr. Skousen received a two sentence  
13 letter from Mr. McGrath indicating that a decision still had not  
14 been made as to whether Mr. Levans would be produced his 30(b)(6)  
15 deposition. *Skousen Decl. Ex. H.*

16       On June 16, 2003, Mr. Skousen received another letter from  
17 Mr. McGrath stating that he had been unable to speak with his  
18 client and that he would contact Mr. Skousen on June 17, 2003.  
19 *Skousen Decl. Ex. I.* On June 17, 2003, Mr. Skousen received a  
20 letter from Mr. McGrath stating that he did not intend to produce  
21 Mr. Levans for the completion of his 30(b)(6) deposition. *Skousen*  
22 *Decl. Ex. J.*

23       Thereafter, on June 17, 2003, Mr. Skousen sent a response  
24 letter to Mr. McGrath stating that he would accept taking the  
25 deposition of any other 30(b)(6) designees as a possible means of  
26 resolving the outstanding issues with respect to the completion of  
27 Mr. Levans' 30(b)(6) deposition. Nevertheless, Mr. Skousen  
28 specifically stated that he intended to reserve Pioneer's right to

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bring a motion to compel the completion of Mr. Levans' 30(b)(6) deposition if the testimony given by the other 30(b)(6) designee proved insufficient. *Skousen Decl. Ex. K.*

Thereafter, on June 20, 2003, Mr. Skousen received yet another letter from Mr. McGrath with respect to the completion of Mr. Levans' 30(b)(6) deposition. In that letter, Mr. McGrath again stated that Mr. Levans had already been produced and because of that production, they were under no obligation to produce him for either his individual deposition or the completion of his 30(b)(6) deposition even though the deposition had been properly noticed. *Skousen Decl. Ex. L.* Notwithstanding, Mr. McGrath's letter failed to address or refute the authority cited by Mr. Skousen in his June 4, 2003 letter to Mr. McGrath.

On June 25, 2003, Mr. Skousen took the further deposition of Applicant's 30(b)(6) designee. During this second session of the 30(b)(6) deposition, Applicant produced its General Counsel, Steve Snoke, for testimony. During that deposition, Mr. Snoke repeatedly testified that Mr. Levans, and not Mr. Snoke, was the person most knowledgeable with respect to several categories of information listed in the Notice of 30(b)(6) Deposition, including several emails from Mr. Levans to other individuals. Specifically, there are at least nine instances where Mr. Snoke identified Mr. Levans as the person having the most knowledge on information sought by Mr. Skousen during the deposition: [

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

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*Skousen Decl. Ex. M.*

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III.

ARGUMENT

A. THE TRADEMARK TRIAL AND APPEAL BOARD IS AUTHORIZED TO HEAR AND DECIDE MOTIONS FOR ORDERS COMPELLING ATTENDANCE AT A DEPOSITION

It is well settled that the Board has authority to compel a party to provide further answers to discovery. Trademark Rule of Practice 2.120(a) states, in pertinent part:

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

37 C.F.R. § 2.120(a).

The federal rules provide for a motion to compel attendance at a discovery deposition. Federal Rule of Civil Procedure 37(a) states:

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:...(2)(B) If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)...the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

Fed. R. Civ. Proc. 37(a).

Finally, Trademark Rule of Practice 2.120(e) provides:

If a party fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, or if a party, or such designated person, or an officer, director or managing agent of a party fails

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1 to attend a deposition or fails to answer any question  
2 propounded in a discovery deposition...the party seeking  
3 discovery may file a motion before the Trademark Trial  
and Appeal Board for an order to compel a designation, or  
attendance at a deposition.

4 37 C.F.R. 2.120(e).

5 Accordingly, the Board is vested with the authority to hear  
6 and consider this motion to compel further responses to discovery.

7 **B. PURSUANT TO THE FEDERAL RULES AND THE TRADEMARK RULES OF**  
8 **PRACTICE, OPPOSER IS ENTITLED TO COMPLETE THE DEPOSITION OF**  
9 **APPLICANT'S RULE 30(b)(6) DESIGNEES**

10 1. **The Advisory Committee Notes And Case Law Support**  
11 **Pioneer's Right To Continue And Complete The Deposition**  
**Of Michael Levans As 30(b)(6) Designee.**

12 In resisting the completion of Mr. Levans' 30(b)(6)  
13 deposition, Applicant has continuously argued that Pioneer  
14 exhausted its right to depose Mr. Levans further as 30(b)(6)  
15 designee because Pioneer had an "opportunity" to depose him for  
16 seven hours. Applicant would further argue that Federal Rule  
17 30(d)(2) limits Pioneer's right to continue and complete the  
18 deposition of Mr. Levans and the other persons that should have  
19 been produced.

20 Nevertheless, based upon the Federal Rules, the Trademark  
21 Rules of Practice, and the advisory committee notes to Rule 30,  
22 Applicant's argument is not persuasive. Federal Rule 30(d)(2)  
23 states:

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

First, the amount of time during which testimony was actually

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1 taken amounted to only 4 hours and 29 minutes, thus allowing  
2 Pioneer an additional 2 hours, 31 minutes of deposition time with  
3 Mr. Levans as the 30(b)(6) designee. The Advisory Committee Notes  
4 make clear that this limitation does not require continuous  
5 questioning:

6 Paragraph (2) imposes a presumptive durational  
7 limitation of one day of seven hours for any  
8 deposition. The Committee has been informed that  
9 overlong depositions can result in undue costs and  
10 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.**

11 Committee Note, 192 F.R.D. at 395.

12 The committee notes also admonish that "[p]reoccupation with  
13 timing is to be avoided." Committee Note, 192 F.R.D. at 396.

14 Here, the deposition transcript establishes that 5 hours, 49  
15 minutes elapsed between the beginning of the deposition and the  
16 adjournment of the deposition. The transcript also establishes  
17 that only four hours, 29 minutes of that time was actually spent  
18 on the taking of testimony. The remaining 80 minutes consisted of  
19 discussions off the record, breaks, and lunch. Thus, under the  
20 auspices of 30(d)(2) and the advisory committee notes, Pioneer is  
21 entitled to an additional 2 hours, 31 minutes of testimony time.

22 To the extent Applicant argues that Rule 30(d)(2) required  
23 Pioneer to complete Mr. Levans' 30(b)(6) deposition in one day,  
24 the advisory committee notes also provide for this situation:

25 It is expected that in most instances the parties and  
26 the witness will make reasonable accommodations to  
27 avoid the need for resort to the court. **The limitation  
is phrased in terms of a single day on the assumption  
that ordinarily a single day would be preferable to a  
deposition extending over multiple days;** if alternative  
28 arrangements would better suit the parties, they may  
agree to them. It is also assumed that there will be

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1 reasonable breaks during the day. **Preoccupation with**  
2 **timing is to be avoided.**

3 Committee Note, F.R.D. at 396 (emphasis added).

4 Here, Mr. Skousen, counsel for Pioneer, clearly stated his  
5 intent to adjourn and continue the deposition subject to the  
6 production of documents listed in the subpoena. This was based in  
7 part on the fact that the deponent failed to produce the documents  
8 required under the subpoena *duces tecum*. Consequently, based on  
9 the earlier statements of Mr. McGrath stating that no documents  
10 were being produced, Mr. Skousen adjourned the deposition so he  
11 would have a subsequent opportunity to review the documents  
12 demanded in the subpoena and then exam Mr. Levans with respect to  
13 those documents.

14 Moreover, Rule 30(b) makes it a duty of the party opposing  
15 the taking of a deposition to file a timely motion and show good  
16 cause for non-appearance; no good cause has been shown by  
17 Applicant in refusing to produce Mr. Levans for the completion of  
18 his deposition. *Truxes v. Rolan Electric Corp.*, 314 F.Supp. 752,  
19 759 (1970) (granting motion to compel attendance at deposition  
20 where deponent appeared for first session but refused to appear  
21 for second session).

22 **IV.**

23 **CONCLUSION**

24 Based on the foregoing facts, arguments, and points of law,  
25 Pioneer Pioneer respectfully, yet earnestly, urges the Board to  
26 grant this motion to compel the completion of Michael Levans'  
27 30(b)(6) deposition and to compel the attendance of any and all  
28 other designees pursuant to the February 24, 2003 notice of

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deposition and the renewed June 12, 2003 notice of deposition.  
Applicant has not provided a reasonable justification for its  
refusal to produce these 30(b)(6) designees. Accordingly, the  
Board should grant this motion to compel and order Applicant to  
produce Michael Levans and all other designees for their  
depositions.

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 Applicant Hitachi High Technologies America, Inc. at its Continued 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 Applicant's 30(b)(6) designees.

4. Counsel for the Applicant has not agreed to comply with Pioneer's attempt to continue and complete the deposition of Michael Levans as 30(b)(6) designee, nor in the taking of any other 30(b)(6) designees.

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 these deponents 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 continue and complete Michael Levans' deposition as 30(b)(6) designee.

7. On May 29, 2003, I received a letter from Mr. McGrath indicating that he did not intend to produce Mr. Levans further for the completion of his 30(b)(6) deposition.

8. On June 4, 2003, I sent a second letter to Mr. McGrath

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1 for the purpose of continuing my good faith effort to resolve this  
2 issue prior to involving the Board through formal motion. My  
3 letter identified legal authority indicating Pioneer's right to  
4 complete the deposition of Mr. Levans and any other 30(b)(6)  
5 designees.

6 9. On June 12, 2003, I noticed the continued deposition of  
7 Applicant's Rule 30(b)(6) designees.

8 10. On June 13, 2003, I received a two sentence letter from  
9 Mr. McGrath indicating that a decision still had not been made as  
10 to whether Mr. Levans would be produced his 30(b)(6) deposition.

11 11. On June 16, 2003, I received another letter from Mr.  
12 McGrath stating that he had been unable to speak with his client  
13 and that he would contact Mr. Skousen on June 17, 2003.

14 12. On June 17, 2003, I received a letter from Mr. McGrath  
15 stating that he did not intend to produce Mr. Levans for the  
16 completion of his 30(b)(6) deposition.

17 13. On June 17, 2003, I sent a response letter to Mr.  
18 McGrath stating that I would accept taking the deposition of any  
19 other 30(b)(6) deponents as a possible means of resolving the  
20 outstanding issues with respect to the completion of Mr. Levans'  
21 30(b)(6) deposition. My letter also specifically stated that I  
22 intended to reserve my client's right to bring a motion to compel  
23 the completion of Mr. Levans' 30(b)(6) deposition if the testimony  
24 given by the other 30(b)(6) designee proved insufficient.

25 14. On June 20, 2003, I received yet another letter from Mr.  
26 McGrath with respect to the completion of Mr. Levans' 30(b)(6)  
27 deposition. In that letter, Mr. McGrath again stated that Mr.  
28 Levans had already been produced and because of that production,

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1 they were under no obligation to produce him for either his  
2 individual deposition or the completion of his 30(b)(6) deposition  
3 even though the deposition had been properly noticed.

4 15. On June 25, 2003, I appeared in Chicago and took the  
5 further deposition of Applicant's 30(b)(6) designee. During this  
6 second session of the 30(b)(6) deposition, Applicant produced its  
7 General Counsel, Steve Snoke, for testimony.

8 16. During that deposition, Mr. Snoke repeatedly testified  
9 that Mr. Levans, and not Mr. Snoke, was the person most  
10 knowledgeable with respect to several categories of information  
11 listed in the Notice of 30(b)(6) Deposition, including several  
12 emails from Mr. Snoke to other individuals.

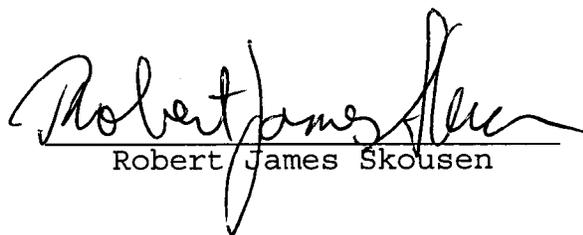
13 17. Attached hereto and incorporated herein by reference are  
14 true and correct copies of the following documents submitted in  
15 support of this motion to compel:

- 16 Exhibit A-February 24, 2003 Notice of Deposition of
- 17 Applicant Hitachi High Technologies America, Inc.;
- 18 Exhibit B-February 25, 2003 Subpoena *Duces Tecum* to
- 19 Applicant Hitachi High Technologies America, Inc.;
- 20 Exhibit C-Exerpts of March 6, 2003 Transcript of Michael
- 21 Levans' Rule 30(b)(6) Deposition Testimony;
- 22 Exhibit D-May 22, 2003 letter from Robert Skousen to
- 23 William McGrath;
- 24 Exhibit E-May 29, 2003 letter from William McGrath to
- 25 Robert Skousen;
- 26 Exhibit F-June 4, 2003 letter from Robert Skousen to
- 27 William McGrath;
- 28 Exhibit G-June 12, 2003 Notice of Continued Deposition

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of Applicant Hitachi High Technologies America, Inc.  
Exhibit H-June 13, 2003 letter from William McGrath to  
Robert Skousen;  
Exhibit I-June 16, 2003 letter from William McGrath to  
Robert Skousen;  
Exhibit J-June 17, 2003 letter from William McGrath to  
Robert Skousen;  
Exhibit K-June 17, 2003 letter from Robert Skousen to  
William McGrath;  
Exhibit L-June 20, 2003 letter from William McGrath to  
Robert Skousen;  
Exhibit M-Excerpts of Realtime Rough Draft and  
Uncertified Transcript of June 25, 2003 deposition of  
Steve Snoke: Pages 1, 12, 14, 15, 16, 26, 27, 40, 41,  
63, 74, 79, 80, 89, 103, 104.

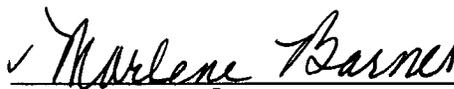
I certify under penalty of perjury under the laws of the  
United States of America that the foregoing is true and correct.  
Executed this 15<sup>th</sup> day of July 2003.

  
Robert James Skousen

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CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify that the foregoing described as: (1) MOTION FOR AN ORDER COMPELLING THE ATTENDANCE OF MICHAEL LEVANS AT THE CONTINUED DEPOSITION OF APPLICANT HITACHI HIGH TECHNOLOGIES AMERICA, INC.; (2) MEMORANDUM OF POINTS AND AUTHORITIES; and (3) CERTIFICATE OF COMPLIANCE WITH FRCP 37 & 37 C.F.R. § 2.120(e) is being deposited with the United States Postal Service, First Class postage prepaid, addressed to the Assistant Commissioner for Trademarks, Box TTAB No Fee, 2900 Crystal Drive, Arlington, Virginia 22202-3513. Executed on this, the 18<sup>th</sup> day of July 2003.

  
\_\_\_\_\_  
Marlene Barnes

CERTIFICATE OF SERVICE

I hereby certify that the foregoing (1) NOTICE OF MOTION AND MOTION FOR AN ORDER COMPELLING THE ATTENDANCE OF APPLICANT HITACHI HIGH TECHNOLOGIES AMERICA, INC. AT ITS CONTINUED DEPOSITION; (2) MEMORANDUM OF POINTS AND AUTHORITIES; (3) CERTIFICATE OF COUNSEL; and (4) CERTIFICATES OF SERVICE AND MAILING BY FIRST CLASS MAIL 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

  
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Marlene Barnes