

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

TTAB

PIONEER KABUSHIKI KAISHA d/b/a)
PIONEER CORPORATION,)

Opposer,)

v.)

HITACHI HIGH TECHNOLOGIES AMERICA,)
INC., by change of name from)
NISSEI SANGYO AMERICA, LTD.,)

Applicant.)

Opposition No. 125,458

Mark: SUPERSCAN ELITE

Serial No.: 76/208,230

Published: March 19, 2002



07-12-04

U.S. Patent & TMO/TM Mail Rpt Dt. #78

**APPLICANT'S MOTION TO COMPEL PRODUCTION
OF SURVEY DOCUMENTS AND FOR OTHER RELIEF**

Applicant, Hitachi High Technologies America, Inc., moves, pursuant to Rule 37 of the Federal Rules of Civil Procedure, that the Board compel Opposer to produce certain documents relating to a survey that Opposer caused to be conducted.

Opposer, Pioneer Corporation, has retained an expert, Robert Klein, to conduct a survey regarding likelihood of confusion and to testify at trial about the survey. In the normal course of discovery, Applicant had issued several document requests pursuant to Rule 34, Fed. R. Civ. P., seeking all documents relating to any surveys. Opposer's written responses to those production requests state that documents would be produced. However, despite that representation, Opposer now has refused to produce various documents generated by and relied upon by its testifying expert in performing the survey.

Applicant needs these documents in order to rebut Opposer's expert report and testimony. Accordingly, Applicant files this motion to compel production of the requested documents.

In addition, Applicant requests that the Board issue an order suspending proceedings until this motion is determined and until the Applicant's pending Motion for Protective Order is

determined. The discovery period has closed and Opposer's testimony period begins August 1, 2004. This Opposition cannot proceed in an efficient and orderly manner if the testimony periods begin running prior to the determination of these pending motions.

In support of this motion, Applicant, through its attorneys, states as follows:

1. By letter dated April 28, 2004, Opposer first notified Applicant that Opposer intended to use Mr. Klein as an expert to testify at trial and that Mr. Klein had conducted a consumer survey of likelihood of confusion regarding the SUPERSCAN ELITE trademark. **(Exhibit 1).**

2. Two days later, Applicant's counsel responded, asking that Pioneer supplement its responses to the previously served requests for production of documents relating to surveys and expert witnesses. **(Exhibit 2).**

3. Applicant's first set of requests for production of documents, served on February 11, 2003 contains the following requests for documents:

32. All documents referring or relating to any survey or study Opposer has conducted or has caused to be conducted regarding recognition of or reaction to Opposer's mark or Applicant's mark, or any confusion among the marks.

36. All documents and things reviewed, exchanged with, sent to, or relied upon by any expert retained by Opposer in relation to this opposition proceeding.

37. All documents and things to be utilized by any expert witness in any testimony connected with this opposition proceeding.

(Exhibit 3).

4. On April 30, 2004, Pioneer served its Second Supplemental Responses to Applicant's First Set of Requests for Production of Documents. In response to each of the above requests, Opposer stated as follows:

“Responding party will produce documents responsive to this category at a mutually convenient time and location.”

(See **Exhibit 3**).

5. On May 5, 2004, Opposer provided to Applicant’s counsel a copy of Mr. Klein’s report and various exhibits.

6. On May 20, 2004, Applicant conducted the deposition of Mr. Klein. In the course of his deposition, Mr. Klein testified to the existence of various documents generated in the course of conducting the survey. These documents should have been produced in response to the above document requests, but were not produced and were not made exhibits to Mr. Klein’s report. Specifically, Mr. Klein testified as to the existence of certain data printouts (**Exhibit 4**, Klein Dep. at p. 81), the questionnaires and screening forms completed by survey respondents (pp. 81-83), and the validation documents and tally sheets (p. 87). None of these documents has been produced by Opposer in response to the Rule 34 document requests.

7. On May 28, 2004 and again on June 14, 2004, Applicant’s counsel requested these documents from opposing counsel, so that they could be reviewed in connection with the preparation of a rebuttal report. (**Exhibits 5 and 6**). Despite these requests, Pioneer has refused to produce the documents.

8. The documents identified by Mr. Klein are clearly relevant and are responsive to the document requests propounded by Applicant. The responsive documents are within the custody or control of Opposer, and have been relied upon by Opposer’s expert in reaching his opinions in this case. Since Opposer expressly stated in its supplemental responses of April 30, 2004 that it would produce documents responsive to the above-stated document requests, Applicant had every reason to believe that those documents would be produced. (See Opposer’s Response to Requests 32, 36 and 37 in **Exhibit 3**).

9. It defies common sense and fundamental fairness to allow an expert to testify about a survey without producing the very documents he relied upon in forming his opinion. In *Quadrini v. Sikorsky Aircraft Division*, 74 F.R.D. 594 (D. Conn. 1977), the court compelled production under Rule 34 of data sheets and statistical accumulations of plaintiff's experts, stating:

Expert testimony will undoubtedly be crucial to . . . this case, and effective cross-examination will be essential. Discovery of reports of experts, including reports embodying preliminary conclusions, can guard against the possibility of a sanitized presentation at trial, purged of less favorable opinions expressed at an earlier date.

10. Production of documents relied upon by an expert in forming his opinion is commonplace in federal court litigation. See, e.g., *In re Air Crash Disaster*, 720 F. Supp. 1442, 1444 (D. Colo. 1988) (allowing discovery of "all material possessed by an expert relating to the matter at hand"); *B.C.F. Oil Refining, Inc. v. Consolidated Edison Co.*, 171 F.R.D. 57, 62 (S.D.N.Y. 1997) (allowing discovery of documents generated by expert); *Mushroom Associates v. Monterey Mushrooms, Inc.*, 25 U.S.P.Q. 2d 1304, 1992 WL 442914 (N.D. Cal. 1992) (work product of a patent attorney named as an expert witness is discoverable just as documents that any expert relies on to formulate an opinion are discoverable); *Vaughan Furniture Co. v. Featureline Mfg. Inc.*, 156 F.R.D. 123, 128 (M.D.N.C. 1994) ("when a party names its attorney as an expert witness, the witness must produce all documents considered by him or her in the process of formulating the expert opinion, including documents containing opinions").

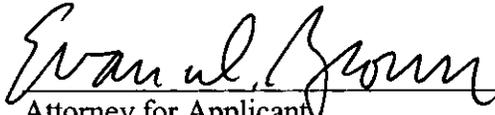
11. The documents which Opposer seeks to withhold here are not protected by the work product doctrine or by any attorney-client privilege. *B.C.F. Oil Refining, Inc. v. Consolidated Edison Co.*, 171 F.R.D. 57, 62 (S.D.N.Y. 1997); *Hager v. Bluefield Regional Med. Cent., Inc.*, 170 F.R.D. 70, 78 (D.D.C. 1997). They are necessary for Applicant to prepare a proper rebuttal report and to cross-examine Mr. Klein. If Mr. Klein conducted his survey

properly, Opposer should have nothing to hide. If his procedures or calculations were flawed, Applicant should be able to use the documents to demonstrate the deficiencies. Applicant has retained its own expert, Mr. George Mantis, to prepare a rebuttal to Mr. Klein's report and Applicant's expert should have access to all documents supporting Opposer's report.

For all the foregoing reasons, Applicant requests that the Board issue an order compelling Opposer to produce all documents responsive to Document Requests 32, 36 and 37, including those identified by Mr. Klein in his deposition.

Applicant further requests that proceedings be suspended until this motion and Applicant's pending Motion for Protective Order are decided by the Board.

Respectfully submitted,

By: 
Attorney for Applicant

William T. McGrath
Evan D. Brown
DAVIS, MANNIX & McGRATH
125 South Wacker Drive
Suite 1700
Chicago, Illinois 60606
(312) 332-3033

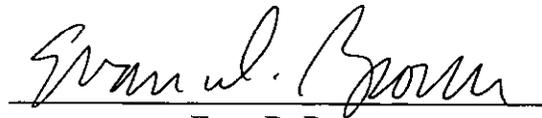
Opposition No. 125,458

Mark: SUPERSCAN ELITE

Serial No.: 76/208,230

CERTIFICATE OF MAILING

I hereby certify that the foregoing APPLICANT'S MOTION TO COMPEL PRODUCTION OF SURVEY DOCUMENTS AND FOR OTHER RELIEF is being deposited with the United States Postal Service, first class postage prepaid, in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202, BOX TTAB, on **July 9, 2004**.



Evan D. Brown

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S MOTION TO COMPEL PRODUCTION OF SURVEY DOCUMENTS AND FOR OTHER RELIEF is being transmitted by facsimile to 310-782-9579, and is being deposited with the United States Postal Service, first class postage prepaid, in an envelope addressed to Mr. Robert J. Skousen, SKOUSEN & SKOUSEN, P.C., 12400 Wilshire Boulevard, Suite 900, Los Angeles, California, 90025-1060, on **July 9, 2004**.



Evan D. Brown

SKOUSEN & SKOUSEN
A PROFESSIONAL CORPORATION
SUITE 900
12400 WILSHIRE BOULEVARD
LOS ANGELES, CALIFORNIA 90025-1060
TELEPHONE (310) 277-0444
TELECOPIER (310) 782-9579

April 28, 2004

Via Facsimile (312) 332-6376 & U.S. Mail

William T. McGrath, Esq.
Davis, Mannix & McGrath
125 South Wacker Drive, Suite 1700
Chicago, Illinois 60606

RE: Pioneer Corp. v. Hitachi High Technologies America, Inc., etc.
TTAB Opposition Number 125,458
Pioneer's Expert, Mr. Robert Klein

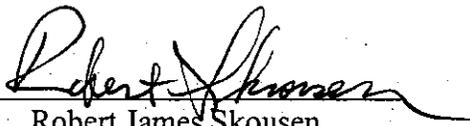
Dear Mr. McGrath:

Please be advised that Pioneer has retained Mr. Robert Klein as a survey expert. I have enclosed his C.V. Mr. Klein has conducted a consumer survey regarding likelihood of confusion and actual confusion regarding the SUPERSCAN ELITE mark and will testify at trial regarding the results of his surveys, his survey procedures, and his opinions regarding actual confusion and likelihood of confusion between the marks. Because discovery is scheduled to close on May 30, 2004, please advise me if you intend to take Mr. Klein's discovery deposition. Because Mr. Klein's office is located in Boston, if you intend to take his discovery deposition, I would propose we schedule his deposition on May 17, 18, 20, or 21, 2004.

I look forward to your response.

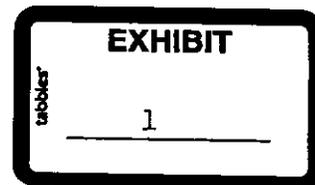
Very Truly Yours,

SKOUSEN & SKOUSEN
A Professional Corporation

By: 

Robert James Skousen

Encl.



DAVIS, MANNIX & McGRATH

ATTORNEYS AT LAW

125 SOUTH WACKER DRIVE

SUITE 1700

CHICAGO, ILLINOIS 60606-4402

(312) 332-3033

WILLIAM T. McGRATH
(312) 332-4748

FAX (312) 332-6376
wmcgrath@dmmlaw.com

April 30, 2004

VIA FACSIMILE
and FIRST CLASS MAIL

Robert Skousen, Esq.
SKOUSEN & SKOUSEN P.C.
12400 Wilshire Boulevard
Los Angeles, CA 90025-1060

RE: Pioneer v. Hitachi, Opposition No. 125458 -- Expert Discovery Issues

Dear Mr. Skousen:

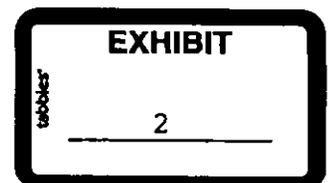
We have received your letter dated April 28, 2004 regarding Pioneer's proposed expert Robert Klein. We do intend to take the deposition of Mr. Klein. At this point, however, certain discovery requests served upon Pioneer by Hitachi relating to expert testimony and/or use of surveys have not been completely answered. Specifically, interrogatories numbered 8 and 20, which were served upon Pioneer on February 11, 2003, and requests for production of documents numbered 32, 35, 36, 37 and 38 which were also served on February 11, 2003, require supplemental responses. It will be necessary for Pioneer to provide such responses to these requests before the deposition of Mr. Klein is taken. Accordingly, please provide Pioneer's responses to these requests as soon as possible, so that we may proceed with the scheduling of Mr. Klein's deposition. Please let me know when I may expect the supplemental responses and documents.

Sincerely,

DAVIS, MANNIX & McGRATH



William T. McGrath



ORIGINAL

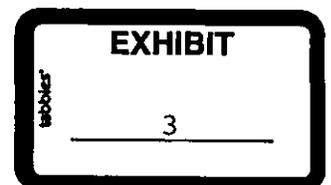
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PIONEER KABUSHIKI KAISHA dba	)	Opposition No.:	125,458
PIONEER CORPORATION,)		
	)	Mark:	SUPERSCAN ELITE
	)	Serial No.:	76/208230
Opposer,	)	Published:	March 19, 2002
)		
vs.	)	OPPOSER'S SECOND SUPPLEMENTAL	
	)	RESPONSES TO APPLICANT'S FIRST	
	)	SET OF INTERROGATORIES	
NISSEI SANGYO AMERICA, LTD.)		
	)	[Fed. R. Civ. P. 33; 37 C.F.R. §	
	)	2.120(d)]	
Applicant.)		
)		
)		

PROPOUNDING PARTY: Applicant Hitachi High Technologies
America, Inc.

RESPONDING PARTY: Pioneer Corp.

SET NUMBER: ONE



4/30/04

**OPPOSER'S SECOND SUPPLEMENTAL RESPONSES TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

Opposer Pioneer Kabushiki Kaisha dba Pioneer Corporation ("Opposer"), by and through its attorneys, hereby provides this supplemental response to Applicant Nissei Sangyo America, Ltd., nka Hitachi High Technologies America, Inc.'s First Set of Interrogatories pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure.

These responses are based upon the best information presently available to Opposer, and the best belief of its counsel, but are made without prejudice to the right of Opposer to make additional or modified answers should better or further information and belief subsequently become available to Opposer. These responses are also made without prejudice to any right of Opposer to offer evidence on its behalf or to object to the relevance, competence or admissibility on any ground of any evidence or witness offered by Opposer. These responses do not constitute an admission of competence, relevance, or admissibility of evidence or a waiver of any objection to proffered evidence on any ground.

GENERAL OBJECTIONS AND RESERVATIONS

Opposer makes the following general objections and reservations with respect to Applicant's interrogatories:

1. Opposer objects to these interrogatories to the

extent that such interrogatories seek information which is subject to the attorney-client privilege and/or work product doctrine.

2. Opposer objects to these interrogatories to the extent that they seek confidential and/or proprietary information. Such confidential and/or proprietary information, to the extent that it may be discoverable, will be produced pursuant to the January 31, 2003 Stipulated Protective Order between the parties.

3. Opposer objects to these interrogatories to the extent that they call for information that is not within Opposer's possession or control, or which cannot be determined in the course of reasonable investigation.

4. Opposer objects to these interrogatories to the extent that they call for publicly available information or information already within Opposer's possession or control, including but not limited to, information solicited during discovery depositions, or papers already exchanged between the parties or filed in connection with this opposition proceeding.

5. Opposer objects to the interrogatories in their entirety to the extent the "definitions" and "instructions" seek to impose obligations upon Opposer to a greater degree than required by the Federal Rules of Civil Procedure, or to create definitions and meanings for words other than the plain and ordinary meaning. Opposer will be guided by the

Federal Rules of Civil Procedure alone in formulating and supplementing responses to the document requests.

**OPPOSER'S SPECIFIC RESPONSES AND OBJECTIONS TO
APPLICANT'S DOCUMENT PRODUCTION CATEGORIES**

INTERROGATORY NUMBER 8

State whether Opposer has ever conducted, or authorized or caused to be conducted, any investigation regarding or relating to whether there was, or may be any confusion between Opposer's Mark and the trademark or service mark of any other person.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 8

Opposer objects on the ground that the disclosure of information responsive to this interrogatory would violate the attorney-client privilege and/or the work product doctrine.

Notwithstanding that objection, Opposer retained Robert Klein who conducted surveys involving ELITE and SUPERSCAN ELITE.

INTERROGATORY NUMBER 20

With regard to each expert witness Opposer expects to testify on Opposer's behalf in the above-styled opposition proceeding, identify each expert, state the subject matter and the substance of the facts and opinions on which each expert is expected to testify, summarize the ground for each opinion held by the expert, and provide all other information itemized in Fed. R. Civ. P. 26(b).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 20

Mr. Robert Klein; See Mr. Klein's C.V., produced in response to document request. Mr. Klein's subject matter is likelihood of confusion and actual confusion between SUPERSCAN ELITE and ELITE. Mr. Klein bases his opinion that SUPERSCAN ELITE is likely to cause confusion and actually causes confusion with ELITE on surveys he conducted.

INTERROGATORY NUMBER 22

Identify each person who participated in the preparation of the answers to the foregoing interrogatories or furnished any information in response thereto, and for each specify the interrogatory response for which each such person provided information or participated in the preparation.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NUMBER 22

Robert James Skousen, Skousen & Skousen, 12400 Wilshire Boulevard, Suite 900, Los Angeles, California 90810-1060.

Tim Lan, Skousen & Skousen, 12400 Wilshire Boulevard, Suite 900, Los Angeles, California 90810-1060.

DATED: April 26, 2004

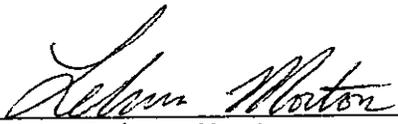
Skousen & Skousen
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By: 
Robert James Skousen
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Attorneys for Opposer Pioneer
Kabushiki Kaisha dba Pioneer
Corporation

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S SECOND SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** is being transmitted by facsimile to 312-332-6376, and is being deposited with the United States Postal Service, first class postage prepaid, in an envelope addressed to William T. McGrath, Davis, Mannix & McGrath, 125 South Wacker Drive, Suite 1700, Chicago, Illinois 60606 on April 30, 2004.



Lehua Morton

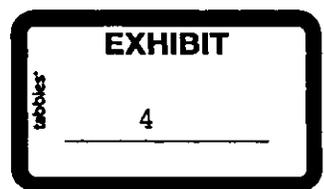
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4
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6 PIONEER KABUSHIKI KAISHA d/b/a *
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8 Opposer, *
9 vs. *
10 HITACHI HIGH TECHNOLOGIES *
11 AMERICA, INC., by change of name *
12 from NISSEI SANGYO AMERICA, LTD., *
13 Applicant. *

14 * * * * *

15
16 DEPOSITION OF ROBERT L. KLEIN
17 CATUOGNO COURT REPORTING SERVICES, INC.
18 10 Commercial Wharf
19 Boston, Massachusetts
20 May 20, 2004 10:14 a.m.

21
22
23 Maryellen Coughlin
24 Registered Professional Reporter



APPEARANCES:

Representing the Opposer:

SKOUSEN & SKOUSEN, P.C.
12400 Wilshire Boulevard
Suite 900
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Representing the Applicant:

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Suite 1700
Chicago, Illinois 60606-4402
BY: William T. McGrath, Esq.
(312) 332-4748 (312) 332-6376

PROCEEDINGS

ROBERT L. KLEIN,

having been first duly sworn, was examined
and testified as follows:

EXAMINATION

BY MR. McGRATH:

Q. Would you state your name, please?

A. **Robert L. Klein, K-L-E-I-N.**

Q. Good morning, Mr. Klein. My name is Bill McGrath, and I'm representing Hitachi High Technologies America in this deposition. You've been deposed before, I presume.

A. **Yes.**

Q. Okay. If at any time I ask you a question that you don't understand, will you ask me to explain or clarify that?

A. **Yes.**

Q. Okay. And if you don't ask me that, can I presume that you've understood the question?

A. **Yes.**

Q. Okay. Have you ever been retained

INDEX

WITNESS: ROBERT L. KLEIN

EXAMINATION: Page
Mr. McGrath 4

EXHIBITS FOR IDENTIFICATION:

No.	Description	Page
1	Report of Mr. Klein	5
2	Amended Report of Mr. Klein	7

prior to this time by Pioneer --

A. **No.**

Q. -- or any affiliate of Pioneer Corporation?

A. **Not to my knowledge.**

Q. Okay. And do you have any relationship with any people or persons at Pioneer Corporation?

A. **Not to my knowledge.**

Q. Okay. Have you previously worked with or been retained by Mr. Skousen?

A. **No.**

Q. Okay. And you've been asked to prepare an expert witness report on behalf of Pioneer Corporation?

A. **Yes.**

Q. Now, let me mark or have this marked as Klein Exhibit No. 1.

(Exhibit No. 1 was marked for identification.)

MR. SKOUSEN: And, Bill, just for the record, we've noted two small mistakes, so we have an updated version of the main report, and I think Mr. Klein is prepared to go over that with

1 either wrong or guessing?

2 **A. Which is why we subtract 7.6**
3 **percent from the Superscan Elite measures.**

4 **Q.** Is it your opinion that selections
5 of any of those names listed in paragraph 17 have
6 no affect as to the results of your survey?

7 **A. Given the test control setting that**
8 **we used here as contrasted with what happened in**
9 **the Berkshire/Sara Lee case, yes, that's my**
10 **conclusion.**

11 **Q.** So selections of -- is it correct,
12 then, is it your opinion that selections of those
13 other names is irrelevant to the ultimate
14 question you were analyzing?

15 **A. Yes.**

16 **Q.** In Table 1 there, the control
17 percentage is 7.6 percent, is that high for a
18 control test?

19 **A. No.**

20 **Q.** What's high for a control?

21 **A. Typically if you start seeing**
22 **confusion in the control cell greater than 10 or**
23 **15 percent you start to be concerned that the**
24 **control isn't acting appropriately. If we had**

1 **had that result here, I would have been**
2 **concerned.**

3 **Q.** Did you consider doing a survey of
4 the type that would not present a stimulus or a
5 catalog to the respondent?

6 **A. I guess I always felt it was**
7 **important to expose the Pioneer Elite name, and**
8 **the catalog was the -- given that it was used in**
9 **the normal course of trade, seemed the**
10 **appropriate way to do that, so I guess the direct**
11 **answer is, no, I didn't.**

12 **Q.** Isn't exposing someone to a catalog
13 like that, isn't there a danger of leading to
14 bias from that?

15 **A. In what way?**

16 **Q.** By suggesting to the respondent
17 with immediate stimulus about the questions
18 you're about to ask.

19 **A. Well, I don't think that it's a**
20 **bias issue.**

21 **Q.** Okay. Is it a leading issue?

22 **A. No, and you know, again, they were**
23 **cautioned, told that they didn't necessarily,**
24 **wouldn't necessarily see the name in the list,**

1 **and there was a control cell, so I think we've**
2 **accounted for any either bias or demand effects.**

3 **Q.** Are you aware, based on your
4 experience and your knowledge of trademark
5 surveys, of other types of likelihood of
6 confusion surveys that do not use the name of the
7 plaintiff's product?

8 **A. Yes.**

9 **Q.** And how would such a survey, what
10 type of question would such a survey use?

11 **A. Well, you know, who puts out this**
12 **product type of a question.**

13 **Q.** Why didn't you use that type of a
14 question here?

15 **A. Because I don't believe that the**
16 **Pioneer Elite brand is as widely known and**
17 **advertised as One-A-Day Vitamins which is sort of**
18 **the other case I'm familiar with that uses that**
19 **kind of a format.**

20 **Q.** And the fact that it's not widely
21 known or advertised, why is that a relevant
22 factor to you?

23 **A. Well, then people who are**
24 **legitimately, you know, Pioneer customers or**

1 **potential buyers of Pioneer who would be exposed**
2 **to the product in the course of shopping at**
3 **Tweeter, you know, may not even be aware of that**
4 **brand when shown the Superscan Elite and asked**
5 **who makes this product, so it's just not a fair**
6 **test.**

7 **Q.** Do you have all the questionnaires
8 and data from the surveys?

9 **A. Yes.**

10 **Q.** Did you turn those over to your
11 counsel? I'm sorry, he's not your counsel. Did
12 you turn those over to Mr. Skousen?

13 **A. I've given Mr. Skousen the data, a**
14 **printout of the data. I have not sent him copies**
15 **of the questionnaires.**

16 **Q.** Has all the data from the
17 questionnaires been put into some kind of a
18 database?

19 **A. Yes.**

20 **Q.** And that's in electronic form.

21 **A. It's in electronic form, yes.**

22 **Q.** Like an Excel spreadsheet or
23 something?

24 **A. Yeah.**

1 Q. And you've given Mr. Skousen a
2 printout of that data?

3 A. **That's correct.**

4 Q. So what you have is all the
5 materials that were sent back to you from the
6 five survey sites?

7 A. **That's correct.**

8 Q. Was it all complete?

9 A. **Complete?**

10 Q. Was everything there that --

11 A. **Yes.**

12 Q. -- you expected to be there?

13 A. **Yes.**

14 Q. Were any interviews that were
15 conducted all the way through excluded?

16 A. **Not to my knowledge. Well,
17 excepting any pretest interviews which are
18 appropriately excluded.**

19 Q. Right. What materials, then, did
20 you receive from the various sites? There would
21 be all the screeners.

22 A. **Right.**

23 Q. There would be all the
24 questionnaires.

1 A. **It was my interpretation that the
2 questions were asked but the interviewer
3 neglected to record the answers.**

4 Q. How do you know the questions were
5 asked?

6 A. **I don't know specifically that the
7 questions were asked.**

8 Q. All the other questionnaires do
9 have answers to the filler questions?

10 A. **Yes.**

11 Q. Describe for me the validation
12 procedures you undertook?

13 A. **Twenty percent of the respondents
14 from each site were telephoned by a independent
15 organization that we gave their names to, and
16 these people were asked if they were interviewed
17 in a shopping mall or at this specific shopping
18 mall and if they were shown a brochure. We
19 didn't try and verify, you know, what their
20 answers had been to any of the questions. We
21 wanted to make sure that the interview had in
22 fact taken place as indicated.**

23 Q. Okay. So just those two questions
24 were asked of them?

1 A. **Right.**

2 Q. What else?

3 A. **That's it.**

4 Q. All right. Tally sheets of some
5 type?

6 A. **The tallies are kept right on the
7 screener.**

8 Q. Okay. Sign-in logs or any such
9 thing?

10 A. **No, I don't believe so.**

11 Q. All right. And you have all of
12 that?

13 A. **Yes.**

14 Q. Did you personally look through all
15 the questionnaires?

16 A. **I looked through many of them. I
17 didn't look through all of them, no.**

18 Q. Did you find any irregularities?

19 A. **One of the questionnaires did not
record answers to the filler questions.**

21 Q. Did you include that or exclude
22 that?

23 A. **I included that.**

24 Q. Why?

1 A. **I believe so.**

2 Q. Okay. Did the questionnaires
3 contain any other writings or indications from
4 the interviewers of anything other than the
5 specific answers that were given?

6 A. **Not that I'm aware of.**

7 Q. Did they indicate any questions on
8 there or lack of clarity or anything like that?

9 A. **Not that I'm aware of.**

10 Q. Did any of them indicate that a
11 respondent asked some kind of a question.

12 A. **Not that I'm aware of.**

13 Q. Okay. Now, you said you looked at
14 some of the questionnaires but not all of them.

15 A. **That's correct.**

16 Q. Did anyone look at all of them --

17 A. **Sure.**

18 Q. -- from your firm?

19 A. **Yes.**

20 Q. Ms. Parr?

21 A. **Ms. Parr as well as our office**

22 **manager who did the subsequent double checking of
23 the data entry.**

24 Q. Okay. Who did the data entry?

1 A. I think Ms. Parr did the initial
2 data entry, and then our office manager did the
3 double checking.

Q. And the validation checking that
4 was done, none of that was done by your firm?

6 A. That's correct.

7 Q. It was done by a firm that your
8 firm hired?

9 A. That's correct.

10 Q. What was the name of that firm?

11 A. National Field and Focus.

12 Q. Where are they located?

13 A. Natick.

14 Q. Massachusetts?

15 A. Yes.

16 Q. What is the basis for validating
17 20 percent?

18 A. It's a standard, industry standard
19 number. I mean, it's enough that if there were a
20 problem with a particular interviewer or a site
21 you would pick that up.

22 Q. And that's a standard for the legal
23 industry or for commercial?

24 A. I don't think there's an

1 established standard for the legal industry. I
2 think 20 percent is customary.

3 Q. Now, footnote 2 on your report
4 says, "No problems with the original interviews
5 were detected."

6 A. Yes.

7 Q. Did National Field give you some
8 type of a report or something?

9 A. Yes, they gave us tally sheets.

10 Q. A tally sheet. And do you have
11 those?

12 A. Yes.

13 Q. And what did those look like?

14 A. They have names, phone numbers, and
15 responses to the questions and --

16 Q. Okay.

17 A. -- an indication of what the
18 disposition of the call was. To the extent to
19 which they reached the person, did they -- one of
20 the things that happens in mall intercept
21 interviews is that people don't want to be
22 bothered at home, and they give you a phoney
23 phone number, and so some proportion always give
24 you that kind of a response. When we reached

1 people, you know, no one said, no, I wasn't
2 interviewed.

3 Q. Is the 20 percent meaning
4 20 percent of the respondents were reached?

5 A. Yes.

6 Q. Okay. So the tally sheets, the
7 question was were you interviewed. If the person
8 said yes, the tally sheet would say yes, and if
9 they said no, they would write no?

10 A. That's correct.

11 Q. Were there any responses that said
12 no?

13 A. No, not to my knowledge.

14 Q. And were there any who were asked
15 if they were shown a brochure who said no?

16 A. Not to my knowledge.

17 Q. When was the validation conducted?

18 A. In the time following the original
19 interview, so in late April.

20 Q. How close to the interviews was it?

21 A. In some cases, it was within a
22 week. In other cases, it was four or five weeks.

23 Q. The questionnaires would show which
24 respondents selected names other than Superscan

1 Select or Superscan Elite?

2 A. Yes.

3 Q. Just looking at your resume, if you
4 want to take a look at that.

5 A. Okay.

6 Q. So you're a college and subsequent
7 to college -- well, your Bachelor's is in
8 mechanical engineering.

9 A. That's correct.

10 Q. And you have a Master's in
11 management, is that correct?

12 A. Yes.

13 Q. Do you have any other post-college
14 degrees?

15 A. No.

16 Q. Have you taken any postgraduate
17 education in connection with marketing or
18 surveying techniques?

19 A. Not from a university or not in the
20 university setting --

21 Q. Okay.

22 A. -- but in the setting of seminars
23 and so on. Two-, three-day kind of short
24 courses.

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May 28, 2004

Via Fax - 310/782-9579
and U.S. Mail

Robert J. Skousen
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12400 Wilshire Boulevard
Suite 900
Los Angeles, CA 90025-1060

Re: Pioneer Corp. v. Hitachi High
Technologies America, Inc.
Opposition No. 125,458

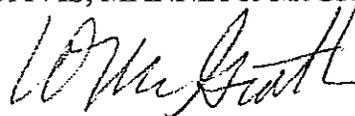
Dear Mr. Skousen:

This letter is to inform you that we have retained an expert to provide a rebuttal report responding to the report and testimony of Mr. Klein. Our rebuttal expert will be Mr. George Mantis of Chicago, Illinois. I will send you his curriculum vitae next week. We hope to have the rebuttal report in a month or so, and I will send you a copy as soon as it is completed.

On a related issue, Mr. Klein testified to the existence of various documents which should have been produced but have not been. (See Klein Dep. 81-83, 87). I would ask that you immediately produce copies of all documents in the custody or control of Mr. Klein or his firm relating to the survey he performed, including, but not limited to the data print-outs (p. 87), the completed questionnaires and screeners (p. 81-83), and the validation documents and tally sheets (p. 87). I would like to receive these documents as soon as reasonably possible so as not to delay the preparation of the rebuttal report.

Very truly yours,

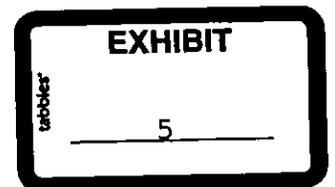
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WTM:ph

bcc: S. Snoke



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June 14, 2004

Via Fax - 310/782-9579
and U.S. Mail

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Re: Pioneer Corp. v. Hitachi High
Technologies America, Inc.
Opposition No. 125,458

Dear Mr. Skousen:

On May 28, 2004 I wrote to you asking to receive certain documents relating to Mr. Klein's survey. I have not yet received those documents from you.

I repeat our request to have copies of these documents promptly so that our expert witness may begin preparation of his rebuttal report. I ask that you deliver these documents to us no later than June 18, 2004.

Very truly yours,

DAVIS, MANNIX & McGRATH



William T. McGrath

WTM:ph

bcc: Stephen Snoke

EXHIBIT

taboo
6