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

<b>Proceeding</b>	91161603
<b>Party</b>	Plaintiff Allergan, Inc. Allergan, Inc. 2525 Dupont Drive Irvine, CA 92612
<b>Correspondence Address</b>	SUSAN J. HINCHEY CORPORATE TRADEMARK DEPT. 2525 DUPONT DR IRVINE, CA 92612-1599
<b>Submission</b>	Opposer's Reply In Support of Its Motion to Compel Responses to Its First Sets of Interrogatories and Requests for Production of Documents and Things
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<b>Signature</b>	/Kenneth L. Wilton/
<b>Date</b>	07/01/2005
<b>Attachments</b>	Opposer's Reply in Support of Motion to Compel.pdf ( 4 pages )

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

In the Matter of Application Serial No. 78/320,975  
Published in the Official Gazette on August 3, 2004

ALLERGAN, INC.,

Opposer,

v.

BIOCENTRIC LABORATORIES, INC.,

Applicant.

Opposition No. 91161603

**CERTIFICATE OF ON-LINE FILING**

I hereby certify that this paper was filed on-line with the  
Trademark Trial and Appeal Board on July 1, 2005

  
\_\_\_\_\_  
Eleanor Elko

**OPPOSER'S REPLY IN SUPPORT OF MOTION TO COMPEL  
RESPONSES TO ITS FIRST SETS OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

On June 16, 2005 Applicant served on Opposer what it calls a “response” to Opposer’s Motion to Compel.<sup>1</sup> Interpreting that Response as an opposition to Opposer’s Motion, Opposer respectfully requests that the Board consider the following reply in support of its Motion in that it clarifies the issues presented by that Motion. *See* Trademark Rule 2.127(a); *Seculus Da Amazonia S/A v. Toyota Jidosha Kabushiki Kaisha*, 66 USPQ2d 1154, 1156 n.4 (TTAB 2003); *Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540, n. 2 (TTAB 2001).

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<sup>1</sup> Applicant sent a copy of its Response to Opposer itself, without copying Opposer’s counsel. *See* Trademark Rule 2.17(a) (“When an attorney ... signs a document in practice before the [PTO] in a trademark case, his or her ... signature shall constitute a representation ... that ... he or she is authorized to represent the particular party in whose behalf he or she acts”) and Trademark Rule 2.119(a) (“Service of papers must be on the attorney or other authorized representative of the party if there be such....”). The undersigned is counsel of record for Opposer, and all papers should have been served on him.

When stripped of its rhetoric, it appears that Applicant's position is simply that it did not receive a copy of the discovery that was served on it. As can be seen from the copies of the written discovery filed in support of the Motion, the discovery was properly served and the representation by counsel's assistant, Eleanor Elko, to that effect provides *prima facie* proof of service. Trademark Rule 2.119(a).<sup>2</sup> Taking Applicant's representation at face value, it appears that for some unknown reason mail sent to Applicant's address was not received. Accordingly, and in order to avoid further delay of these proceedings, another copy of the discovery is being served concurrently herewith upon Applicant. In light of the fact that Applicant does not seem to regularly receive mail at its Westminster address, copies of the discovery are being served on the Post Office Box address for Applicant.<sup>3</sup>

It is plain that Applicant's failure to retain counsel to represent it, or in the alternative to familiarize itself with the Trademark Rules of Practice, is continuing to have an impact on the progress of this proceeding. Opposer, however, should not be prejudiced by this failure. Opposer believes Applicant's failure to properly participate in this proceeding should result in the granting of the order initially requested herein, as well as an order deeming as admitted each of Opposer's Requests for Admission.

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<sup>2</sup> Applicant questions why the discovery was not served on its "address of record." The discovery was served on the address that appeared on Applicant's correspondence with the Board regarding its failure to timely respond to the Notice of Opposition. Because Applicant failed to serve its March 22, 2005 letter to the Board on counsel for Opposer, counsel was unaware of Applicant's desire to receive documents at its Post Office Box address. This document, however, is being sent to the Post Office Box address.

<sup>3</sup> Anticipating Applicant's question, as reflected in its Response, numbered paragraph 2, the discovery is *not* being filed with the Board in accordance with Trademark Rule 2.120(j)(8). Because Opposer has complied with the Trademark Rules of Practice in both contacting Opposer and timely filing this motion, Applicant's remaining issues — Numbers 3, 4, 5 — either implicate Opposer's work product or are otherwise moot.

Nonetheless, Opposer recognizes that it may be appropriate to accept Applicant's representation that it did not receive Opposer's written discovery. Accordingly, Opposer requests that this proceeding be removed from suspension, and the discovery and trial dates reset to allow Applicant time to respond to the outstanding discovery and for Opposer to take any follow-up discovery that would be appropriate under the circumstances. Opposer therefore requests that the discovery cutoff be set 120 days from the date the proceeding is reopened, with the trial dates set appropriately thereafter.

Dated: July 1, 2005

Respectfully submitted,

SEYFARTH SHAW LLP

By:  \_\_\_\_\_

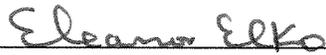
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 1, 2005, I served the foregoing Opposer's Reply In Support of Its Motion to Compel Responses to Its First Sets of Interrogatories and Requests for Production of Documents and Things on the applicant by depositing a true copy thereof in a sealed envelope, postage prepaid, in First Class U.S. mail addressed to applicant as follows:

Ms. Rebecca Spaar  
Chief Executive Officer  
BioCentric Laboratories, Inc.  
P.O. Box 1018  
Brighton, CO 80601



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Eleanor Elko