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

Proceeding	91173105
Party	Defendant Michael Dalton
Correspondence Address	Michael Dalton P.O. Box 18137 670 Northland Blvd. Cincinnati, OH 45218-0137 UNITED STATES DALTONME@hotmail.com
Submission	Reply in Support of Motion
Filer's Name	Michael Dalton
Filer's e-mail	DALTONME@hotmail.com
Signature	/ Michael Dalton /
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Honda Motor Co. LTD	:	
	:	
Opposer	:	
	:	
vs.	:	Opposition No. 91173105
	:	
Michael Dalton	:	
	:	
Applicant	:	

**REPLY TO PLAINTIFF'S OPPOSITION TO APPLICANT'S MOTION TO
STRIKE ENTIRE TESTIMONY OF
MICHAEL DALTON**

Now comes Defendant – Applicant, Michael Dalton, in reply to plaintiff's opposition to defendant's motion to strike the deposition of Michael Dalton.

Opposer has been less than candid with the board.

Opposer, through their attorney Dyan Finguerra-DuCharme, was fully aware that applicant, DALTON, requested that he be notified, by the officer, that the transcript was available and to permit him to review the transcript and if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

During the communication, in fact, Dyan Finguerra-DuCharme offered to photocopy her copy of the transcript, once received, and mail a copy to Dalton. The reporter, however, advised Dyan Finguerra-DuCharme that she could not provide DALTON with a copy and that she would contact Dalton and have him come to her office for review before finalizing the transcript.

The transcript, on the surface, appears to have broken the chain of custody.

Wendy L. Raymer, RPR, CRR and Notary Public conducted the deposition in the State of Ohio; however, the transcript appears to have been prepared by the Elisa Dreier Reporting Corp, 780 Third Avenue, New York, NY 10017.

The applicant was not notified that the transcript would be prepared in New York by a different court reporting office. The Opposer's suggestion that DALTON should have contacted the court reporter, reviewed, and signed the deposition is misplaced and misguided.

The Opposer's suggestion that DALTON could review the Board's filed notice of reliance copy is also misguided as the ERRATA SHEET clearly states: (UPON COMPLETION, unless otherwise instructed by counsel, forward these Errata Pages, with the original Reading and Signing Certificate to the attorney who began the questioning process.) (*emphasis added*).

Federal Rules of Civil Procedure states as follows:

Rule 30(e) Review by the Witness; Changes.

(1) Review; Statement of Changes.

On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

The transcript fails to note that DALTON requested a review and DALTON was not given the 30 days to review.

Rule 30 (b)(5) Officer's Duties.

(A) Before the Deposition. Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with an on-the-record statement that includes:

(i) the officer's name and business address;

The transcript clearly reflects that the officer did not provide her business address.

Rule 30 (b)(5)(C) After the Deposition.

At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

The officer made no statement, on the record, that the deposition was complete suggesting that the officer was aware that deponent made his review request before the deposition is completed. The deponent must be allowed 30 days after being **notified by the officer** that the transcript or recording is available in which to review and correct. (emphasis added)

The Opposer does not assert and cannot assert that the officer notified the deponent because no notice was provided.

37 C.F.R. 2.125(B) states as follows:

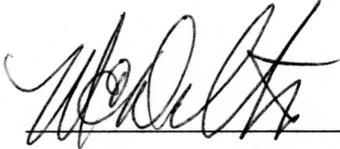
The party who takes testimony is responsible for having all typographical errors in the transcript and all errors of arrangement, indexing and form of the transcript corrected, on notice to each adverse party, prior to the filing of one certified transcript with the Trademark Trial and Appeal Board. The party who takes testimony is responsible for serving on each adverse party one copy of the corrected transcript or, if reasonably feasible, corrected pages to be inserted into the transcript previously served.

As such, the Opposer does not deny that DALTON made a request to review the transcript and make corrections. The transcript clearly reflects that the officer did not state her business address or state on the record that the deposition was complete. It is the Opposer's responsibility to assure all errors are corrected before filing a certified copy with the board.

Therefore:

The applicant is entitled to have the discovery deposition of Michael Dalton stricken from the record.

Respectfully submitted,



Michael Dalton, pro se
PO Box 18137
Cincinnati, Ohio 45218-0137
(513) 557-2901
DALTONME@hotmail.com

Certificate of Service

I, Michael Dalton, hereby certify that this Reply to Opposition to strike the deposition of Michael Dalton has been served by electronic email upon Opposor's council Dyan Finguerrs-Ducharme, dyan.finguerra-ducharme@wilmarhale.com and standard U.S. mail upon Dyan Finguerra-DuCharme at Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Ave, New York, NY 10022 this 1st day of April 2009.



Michael Dalton, pro se
PO Box 18137
Cincinnati, Ohio 45218-0137
(513) 557-2901
DALTONME@hotmail.com