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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
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Submission	Other Motions/Papers
Filer's Name	Michael Dalton
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Signature	/ Michael Dalton /
Date	01/11/2010
Attachments	ReplyOppositononJudicialNotice001.pdf (3 pages)(1241567 bytes)

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 OPPOSER'S OPPOSITION FOR APPLICANT TO BE HEARD OR ALTERNATIVE MOTION TO EXPAND APPLICANTS PAGE LIMIT AND RESET REPLY BRIEF AND REBUTTAL BRIEF

Now comes, Michael Dalton, defendant – applicant and in reply to Opposer's opposition hereby states that the right to be heard is well established and an additional ten pages is not unreasonable to reply to Opposer's request for Judicial Notice, see Federal Rules of Evidence 201(e) [1].

The Opposer's Notice of Reliance and request for Judicial Notice was submitted, at the last hour, during Opposer's rebuttal period and is well beyond the scope of rebuttal.

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[1] **Federal Rules of Evidence (e) Opportunity to be heard.**

A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

The Opposer, as intermeddler, is merely attempting to supplement deficient pleadings and supplement insufficient evidence presented during their case in chief.

The Opposer's actions and trial brief serve to amend the Notice of Opposition by adding non-pleaded party opposers and attempts to amend Opposer's Trial Testimony via Notice of Reliance of 09/14/2009 during rebuttal. Opposer's Notice of Reliance and Judicial Notice is well beyond the scope of rebuttal.

Applicant will object and move to strike, or alternatively give no consideration or weight to, Opposer's Notice of Reliance of 09/14/2009, and attachments. as well beyond the scope of rebuttal[2], *see May Department Stores Co. v. Prince, 200 USPQ 803, 805 n.1 (TTAB 1978)* (untimely notice of reliance on official records filed after expiration of testimony period not considered).

Additionally, Opposer is attempting to utilize the Judicial Notice as foundation for non-pleaded claims, legal theories, and their insufficient case in chief which has unduly prejudiced the Applicant.

The issues are not as simple as Opposer would have the board assume.

The Applicant has diligently tried to maintain the schedule in this matter, however, because the Opposer has requested an alleged Judicial Notice, at the last hour during and beyond the scope of rebuttal, the page allotment does do permit the arguments for the points on Judicial Notice and Applicants affirmative defense and on the merits.

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[2] May Department Stores Co. v. Prince, 200 USPQ 803, 805 n.1 (TTAB 1978) (untimely notice of reliance on official records filed after expiration of testimony period not considered).

Since the Judicial Notice was a surprise and Applicant has not had an opportunity to be heard the Applicant's motion or alternative should be granted.

Respectfully submitted,

Michael Dalton, Applicant pro se

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Certificate of Service

I, Michael Dalton, hereby certify that this Stipulated Motion For Time Extension has been served by electronic email upon Opposor's attorney Dyan Finguerra-DuCharme, dyan.finguerraiducharme@wilmerhale.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 11th day of January, 2010.

Michael Dalton