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

Proceeding	91200832
Party	Plaintiff Briggs & Stratton Corporation
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Attachments	Opposers' Motion to Compel Production of Documents [Redacted Public Version].pdf(226739 bytes) Declaration of Robert N. Phillips in Support of Opposers' Motion to Compel.pdf(139986 bytes) Exh A [Confidential Filed Under Seal].pdf(6287 bytes) Exhibit B.pdf(436268 bytes) Exhibit C.pdf(732051 bytes) Exhibit D.pdf(68054 bytes) Exhibit E.pdf(71346 bytes) Exhibit F.pdf(73589 bytes) Exhibit G.pdf(74785 bytes) Exhibit H.pdf(135722 bytes)

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposers,

v.

HONDA GIKEN KOGYO KABUSHIKI KAISHA,

Applicant.

Opposition No. 91200832 (parent)

Opposition No. 91200146

Application Serial No. 78924545

**OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS FROM APPLICANT HONDA GIKEN KOGYO
KABUSHIKI KAISHA**

[REDACTED PUBLIC VERSION]

INTRODUCTION

Although only two years ago applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda” or “Applicant”) sought documents from Opposers virtually identical to the ones Opposers Briggs & Stratton Corporation (“Briggs”) and Kohler Co. (“Kohler”) (collectively, “Opposers”) now seek from Honda, Honda has refused to provide any documents responsive to two categories of Opposers’ Requests For Production: 1) documents concerning Applicant’s GP160 and GP200 Engines (the “GP Engine Requests”) and 2) documents concerning Honda’s knowledge, purchase, and/or testing of certain engines put out by third parties that incorporate the Proposed Mark (the “Third Party Engine Requests”) (collectively, the “Requests”). Applicant’s reasons for refusing to comply with its discovery obligations consist of unfounded, boilerplate objections and a misguided notion that it does not need to produce information relating to engines sold outside the United States. However, these Requests are not burdensome, and relevant documents such as these are subject to discovery regardless of whether or not they pertain to activities in the United States.

Applicant seeks to register as a trademark an industry standard configuration of a horizontal shaft utility engine. Honda uses the standard configuration for its GX Engine series (“GX Engine”). Specifically, in its application,¹ Honda asks the United States Patent and Trademark Office to grant it exclusive rights to the overall configuration of an engine consisting of a cubic design and, when viewed from the front, a rectangular fuel tank located above and to the right of the slanted fan cover; a cubic air cleaner located to the left of the fuel tank; and a carburetor cover beneath the air cleaner with its controls in a recessed area on the front (the “Proposed Mark”). However, the overall configuration of the Proposed Mark is not a mere arbitrary, ornamental or accidental flourish; rather it serves an essential function in the use of the engine and affects the quality of the engine.

Numerous third parties put out horizontal shaft engines with an identical overall shape and configuration to the Proposed Mark. In addition to engines from Opposers and Robins Subaru, third parties such as Generac, V Power, Lifan, Blue Max, All Power and Jiang Dong all offer cubic engines that feature a rectangular fuel tank located above and to the right of a fan cover, a cubic air cleaner located to the left of the fuel tank, and a carburetor cover beneath the air cleaner with controls in a recessed area in the front (“Third Party Engines”). Applicant concedes that it has knowledge of some or all of the Third Party Engines and routinely purchases, inspects and tests them in the ordinary course of its business. For the reasons discussed herein, Applicant’s knowledge, testing and analysis of Third Party Engines is relevant to the issues of functionality, lack of secondary meaning, genericness, and abandonment.

Additionally, Applicant makes two nearly identical, less expensive engines that are almost identical in shape and configuration to the Proposed Mark. Applicant sells these engines, the GP160 and GP200 (collectively, the “GP Engines”), in emerging markets. The GP Engines

¹ Application No. 78,924,545.

embody most or almost all of the features of the Proposed Mark, and thus, Honda's consideration in designing them is relevant to functionality. In addition, Applicant distinguishes the GP Engines from the GX Engines by using a different color scheme, which supports Opposers' contention that Applicant's disclaimer of the color of the GX Engine cannot be sustained, as the secondary meaning of the design, if any, necessarily includes Honda's longstanding red, white and black color combination. Hence, documents relating to the differences and similarities in the styling, external appearance and color between the GP Engines and the GX Engine are clearly relevant to the issue of secondary meaning.

This Board has already determined that documents relating to the functionality and styling of engines similar to the GX Engine are relevant to this proceeding. Dkt. 40. Likewise, this Board has already determined that knowledge and testing of similar engines is directly relevant to the issues of lack of secondary meaning, functionality, genericness and abandonment. *Id.* The fact that some of the documents sought may relate to engines tested or sold outside the United States does not negate their relevance to the issues in this proceeding. Accordingly, Briggs and Kohler respectfully request that the Board grant this motion and order Applicant to provide documents responsive to the Requests.

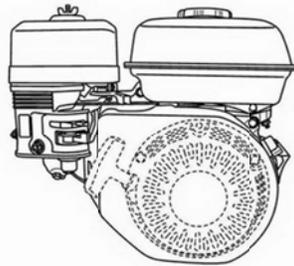
FACTS

I. Case Background

On July 7, 2006, just a few months before its nearly identical utility patent expired, Honda filed an application (the "Application") for registration of the configuration of an engine for use "in construction, maintenance and power equipment." U.S. Trademark Application Serial No. 78,924,545, available at <http://tsdr.uspto.gov/>. However, the Application was rejected several times on the basis of functionality and thus, it was not published for opposition until

January 25, 2011. Dkt. 56, Ex 3. Kohler filed its original notice of opposition on May 25, 2011 and Briggs filed its original notice of opposition to the Application on October 25, 2011.

In the Application, Honda asks for the exclusive right to “the configuration of an engine with an overall cubic design” that, when viewed from the front, has “a slanted fan cover, the fuel tank located above the fan cover on the right, and the air cleaner located to the left of the fuel tank;” “[t]he air cleaner cover features a cube shape;” “[t]he carburetor cover features . . . a recessed area where control levers are located;” and “[t]he fuel tank is roughly rectangular.” U.S. Trademark Application Serial No. 78,924,545, available at <http://tsdr.uspto.gov/>:



U.S. Trademark
Application Serial No.
78,924,545

Notably, although the GX Engines have always been exclusively advertised and promoted, and mostly sold, in Applicant’s signature red, white and black color combination, “color is not claimed as a feature of the mark.” U.S. Trademark Application Serial No. 78,924,545, available at <http://tsdr.uspto.gov/>. Opposers challenge this disclaimer as one of the issues in this proceeding. In other words, Applicant’s secondary meaning, if at all, in the front facing view of the GX Engine necessarily includes the colors red, white and black as shown above. As Opposers’ will demonstrate, the engine design does not have secondary meaning without the Honda colors.

Moreover, Opposers claim that the components in the Application are functional for several reasons, including the fact that at least nine separate utility patents either claim or disclose features of the Proposed Mark, including the “overall cubic design” and the location and orientation of the main engine components. Dkt. 56, Exs. 5 -14. Furthermore, both Honda’s Design Memo² and Italian Complaint describe the functional considerations that went into the design of the Proposed Mark.

In addition, Opposers’ contend that the overall configuration of the engine claimed in the Application is so widely used by third parties that it is generic, does not have secondary meaning for Honda, and if was ever a trademark, is abandoned.

II. The GP Engines

In August 2013, Honda announced that it had developed two lower cost general purpose engines intended to target the low-priced, light-duty markets, specifically in emerging markets. Dkt. 86, Ex. 1 [Honda News Release]. These engines are essentially cheaper versions of the GX Engine, as they share many of the same functional characteristics as the Proposed Mark, including an overall cubic design, a slanted fan cover, a roughly rectangular fuel tank located above the fan cover on the right, a cubic air cleaner located to the left of the fuel tank, and recessed controls. Additionally, like the GX Engines, the GP Engines feature a compact design to ensure compatibility with a wide range of installations. However, instead of the engines having the red, white and black combination of the GX, the GP Engines are primarily white and black, as shown below:

² Except as otherwise noted, defined terms used herein have the same meanings as set forth in Opposers’ summary judgment brief.

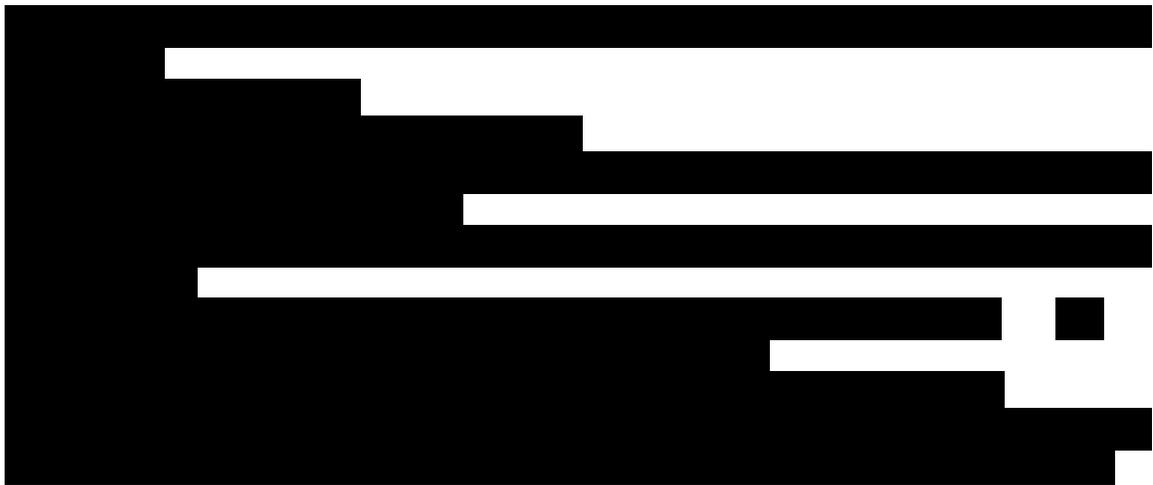


Honda GX



Honda GP160

Applicant used a different color combination for the GP Engines so that consumers could easily differentiate between the GX and the lower cost GP Engines. This was confirmed by Yukio Sugimoto, Honda's chief researcher in its Functional Component Design Department, in his deposition:



Decl. of Phillips ¶ 2, Ex. A. Notably, Applicant did not change the shape or configuration of the GP to signal to customers that it was different from the GX.

In light of the above facts, documents concerning Applicant's considerations in designing, styling and color choices for the GP Engines are directly relevant to two issues at the core of this proceeding: 1) the functionality of the overall configuration of the Proposed Mark

(i.e. that the functional advantages of the shape and compact layout of the external components of the GX are being used for the GP), and 2) lack of secondary meaning (i.e. that the secondary meaning of the front facing view of the GX, if any, necessarily depends upon the red, white and black color scheme).

A. Third Party Engines

In addition to horizontal shaft engines put out by Applicant and Opposers, at least six third parties put out similar engines: Generac, V Power, Lifan, Blue Max, All Power and Jiang Dong. Each of these engines uses the same basic configuration as the Proposed Mark. As shown in the images below, each Competitor Engine features an overall cubic design; a rectangular fuel tank located above and to the right of a slanted fan cover; a cubic air cleaner located to the left of the fuel tank on the front of the engine; a carburetor cover beneath the air cleaner; and controls in a recessed area on the front:



Generac
212CC OHV Engine



V Power Equipment
212cc Hemi Head High Performance
Engine (60363)



V Power Equipment
212CC 7HP



Jiangdong JF120



Jiangdong JF240



Lifan
LF168F-2



Blue Max 6783



All-Power APE7006V

Honda's knowledge of the Third Party Engines, as well as its purchase, inspection and testing of them is directly relevant to the issues of functionality, lack of secondary meaning, genericness, and abandonment.

III. Discovery Dispute

On April 4, 2014, Briggs served its Fifth Set of Requests for Production of Documents, which included requests for documents concerning the GP Engines [Requests Nos. 58 – 60] and documents concerning the knowledge, purchase, inspection and testing of substantially similar engines offered by six third parties [Requests Nos. 62 – 64, 67 – 69, 72 – 74, 76 – 80]. Decl. of Phillips ¶3, Ex. B. Each request was narrowly tailored to seek information relevant to lack of secondary meaning, functionality, genericness and abandonment.

On May 9, 2014, Applicant served its objections and responses to the Requests (“Objections and Responses”). Decl. of Phillips ¶4, Ex. C. Applicant's responses consisted of boilerplate objections with no supporting explanations. Additionally, Applicant refused to produce documents responsive to the GP Engine Requests because the GP Engines are not sold in the United States.

On May 19, 2014, the parties met telephonically to discuss the discovery requests. Decl. of Phillips, ¶5. Briggs wrote Applicant on the same day concerning the inadequacies in Applicant's Objections and Responses, and provided detailed explanations for the deficiencies, including an explanation that documents outside the United States are still discoverable when, like here, they are relevant to the proceedings. Decl. of Phillips ¶ 6, Ex. D. Additionally, in an attempt to further narrow the Competitor Engine Requests, Opposers limited the requests to “horizontal shaft engines with high-mount air cleaner covers sold by the identified third parties.” *Id.* On June 3, 2014, Applicant responded, reiterating that they would not produce documents

responsive to the GP Engine Requests because the GP Engines were not sold in the United States. Decl. of Phillips ¶ 7, Ex. E(email). However, Honda agreed to search its files and produce documents responsive to the Competitor Engine Requests.

Almost a month later, Opposers still had not received any documents. On June 25, 2014, Opposers inquired whether Applicant had found any responsive documents. Decl. of Phillips ¶ 8, Ex. F. Rather than produce the promised documents, on June 30, 2014, Applicant sought to unreasonably restrict the document search requests by limiting the requests to certain model numbers. Decl. of Phillips ¶ 9; Ex. G. Opposers responded that it would be improper for Honda to limit the requests to only certain model numbers. On August 5, 2014, Applicant refused to produce any documents responsive to the Competitive Engine Requests. Decl. of Phillips ¶ 10, Ex. H.

Despite Opposers' clear explanation of the relevance of its discovery requests, controlling case law, and repeated efforts to resolve this dispute through the meet and confer process, Applicant continues to refuse to provide documents responsive to either category of requests. Thus, Applicant has left Opposers no choice but to seek the Board's assistance in compelling Applicant to comply with their discovery obligations.

ARGUMENT

The scope of requests for production in *inter partes* proceedings before the Board is governed by the Federal Rule of Civil Procedure, Rule 26. *TMBP* § 406.02. Rule 26(b)(1) provides that the parties may obtain discovery “regarding any matter, not privileged, which is relevant to the claim or defense of any party.” Fed. R. Civ. P. 26(b)(1). The term “relevance” at the discovery stage is broadly construed and is given liberal treatment. *Id.*; *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581, 582 (TTAB 1975) (stating that relevancy is to be

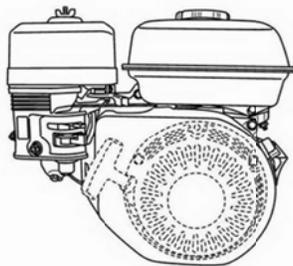
construed liberally). Discovery is so liberal that relevant information sought need not even “be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” See Fed. R. Civ. P. 26(b)(1); *Johnston Pump/General Valve, Inc., v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (“During discovery, a party may seek not only testimony and exhibits which would be admissible evidence but also information that would be inadmissible at trial if the information appears reasonably calculated to lead to discovery of admissible evidence.”).

A motion to compel may be used to require the production of documents and is appropriate where, as here, objections to discovery requests are improper. *TMBP* § 453.01.

I. THE BOARD SHOULD COMPEL THE PRODUCTION OF DOCUMENTS CONCERNING THE GP160 AND THE GP200 ENGINES BECAUSE THEY ARE RELEVANT TO THE ISSUES IN THIS PROCEEDING

A. THE GP ENGINE REQUESTS ARE RELEVANT TO FUNCTIONALITY AND SECONDARY MEANING

Applicant’s GP Engines are virtually identical to both the GX Engines and the Proposed Mark.



U.S. Trademark
Application Serial No.
78,924,545



Honda GX



Honda GP160

Documents concerning Applicant's design of the GP Engines, as well as documents related to the differences or similarities between the GP and GX engines, are therefore relevant to the issue of the functionality of the Proposed Mark.

Similarly, any decision made to differentiate GP Engines from the GX Engines through styling changes, including, but not limited to, Applicant's decision to use different coloring, is relevant to secondary meaning. Applicant intentionally made the GP Engines primarily white and black so consumers could easily distinguish them from the signature red, white and black look of the GX Engines. Decl. of Phillips ¶ 2, Ex. A. Applicant suggests that the documents are not discoverable for the issues of secondary meaning because "inquiry is focused on the relevant purchasing population" and therefore "design of the GP engines is irrelevant." Decl. of Phillips ¶ 7, Ex. E. However, Applicant's decision to help consumers distinguish between the GP Engines and the GX Engine by making the GP Engines predominantly all white is directly relevant to secondary meaning, regardless of where the engines are sold, because it evidences Honda's awareness that the GX Engines' red, white and black color combination – and not the configuration claimed in the Proposed Mark – is the source indicator. Thus, the documents are relevant and discoverable.

Applicant's refusal to produce documents responsive to these requests is unreasonable. To the extent that these documents show technical justifications for incorporating the Proposed Mark into the GP Engines, they are relevant to functionality. Similarly, to the extent that they show a desire to distinguish the GP Engines from the Proposed Mark, they are relevant to secondary meaning. These requests are narrowly tailored and seek documents relating to only two engines that have been sold for less than one year. In fact, Applicant agrees that producing documents relating to two newer products is not unduly burdensome. In its August 21, 2012

Motion to Compel Documents (“Applicant’s Motion to Compel”), it argued precisely the same thing in relation to Opposers’ engines: “This request is narrowly tailored to include only a small subset of products (currently one for each Opposer) that have a design similar to the GX Engine Trademark, and therefore would not be unduly burdensome.” Dkt.19, p. 14. Thus, by Applicant’s own admission, it would not be burdensome for it to produce the responsive documents. Additionally, boilerplate objections where a party makes little more than a conclusory statement are legally deficient. As these documents are clearly relevant and it is not burdensome for Applicant to produce documents relating to two engines, the Board should compel the production of these documents.

B. HONDA CANNOT AVOID PRODUCING RELEVANT DOCUMENTS SIMPLY BECAUSE THEY RELATE TO PRODUCTS SOLD OUTSIDE THE UNITED STATES

Applicant objects to producing documents responsive to the GP Engine Requests on the grounds that the engines “are not sold in the United States.” Decl. of Phillips ¶¶ 4, 7, Exs. C, E. However, there is no law limiting discovery of relevant documents to the United States. In fact, federal courts routinely compel discovery of documents and activities located outside the United States where such documents related to issues relevant to U.S. proceedings. *See Tequila Centinela, S.A. v. De CV v. Bacardi & Co.*, 242 F.R.D. 1,12 (D.D.C. 2007); *Laker Airways Ltd. v. Pan American World Airways*, 103 F.R.D. 42, 47 (D.D.C. 1984) (Compelling discovery of documents relating to activities outside the United States although the foreign government where the documents were located and activities occurred had prohibited their production).

Tequila Centinela is particularly instructive. Applicant Tequila Centinela appealed a decision by the TTAB denying discovery of a number of documents relating to the use of a mark similar to the applied for mark outside of the United States. The United States Court for the District of Columbia reversed the decision, finding that it was “aware of no rule which precludes

discovery of ordinary discoverable material, solely on the basis that it calls for information outside of the United States or involves facts or activities outside of the United States.” *Tequila Centinela, S.A.*, 242 F.R.D. at 12. The Court went on to explain that there was a practice of “courts in the D.C. Circuit [upholding] the discovery of facts or activities outside the United States.” *Id.* Indeed, as the court explained, D.C. district courts have compelled discovery even when the defendant is a foreign government and even when the law of the foreign country prohibits disclosure. *Id.* The *Tequila Centinela* Court had already determined that the documents were relevant pursuant to Fed.R.Civ.P 26(1) and thus, it reversed the TTAB and compelled Defendant Bacardi to produce documents in response to all requests, regardless of whether they pertained to use of a mark in the United States or elsewhere. Similarly, here, the discovery sought by Opposers is relevant to the issues of functionality and secondary meaning and is therefore ordinarily discoverable. The mere fact that the products are sold outside the United States does not preclude discovery of this information.

C. THE BOARD HAS ALREADY DETERMINED THAT DOCUMENTS LIKE THE ONES OPPOSERS ARE SEEKING ARE RELEVANT AND SUBJECT TO PRODUCTION

In Applicant’s Motion to Compel, Applicant’s requested documents were strikingly similar to the documents Opposers now seek from Applicant, namely documents pertaining to (1) the differences and similarities between Applicant’s Proposed Mark and engines made by Opposers; and (2) “documents concerning the design and manufacture of Opposers’ [] engines.” Dkt. 19, Ex. C [Applicant’s RFP]. Applicant argued that these documents were relevant because they would demonstrate “what, if any alternative designs were considered and the rationale for incorporating the various design elements.” Dkt. 40, p. 16. The documents Briggs and Kohler seek are even more relevant to the opposition because they evidence *Applicant’s* decision regarding which aesthetic and functional features to incorporate in the GP Engines.

Additionally, they evidence Applicant's considerations for how to differentiate these engines from the Proposed Mark in terms of specific styling and color, which directly relates to lack of secondary meaning. These requests are narrowly tailored so that responsive documents will provide an understanding of what Applicant thinks is functional or trade dress. As the Board said when they granted Applicant's requests, "the similarities and differences [Opposers] now seek[] to discover are those that form the basis of this proceeding." Dkt. 40, p. 13. Therefore, the Board should compel discovery of documents responsive to the GP Engine Requests as they are the "basis for this proceeding."

II. THE BOARD SHOULD COMPEL PRODUCTION OF DOCUMENTS RESPONSIVE TO REQUESTS RELATED TO SIMILAR THIRD PARTY ENGINES KNOWN TO APPLICANT BECAUSE THEY ARE RELEVANT TO FUNCTIONALITY, LACK OF SECONDARY MEANING, GENERICNESS AND ABANDONMENT [REQUESTS NOS. 62 – 64, 67 – 69, 72 – 74, 76 – 80]

The Third Party Engines Requests seek documents regarding engines put out by six third parties and are narrowly tailored to obtain information regarding Applicant's knowledge of Third Party Engines and its purchase, inspection or testing of those engines. This is an industry standard compact engine configuration and the industry does not associate this cubic shape or engine configuration with Applicant. Therefore, Applicant's knowledge of the Third Party Engines is relevant to the issue of distinctiveness, secondary meaning and abandonment. Furthermore, the purchase, inspection and testing of these engines is directly relevant to functionality, as Applicant's testing and analysis of the Third Party Engines demonstrate that this configuration is the most efficient and the compact shape is necessary to fit into larger products. Additionally, the requests are narrowly tailored to include only those third party engines with the same or similar shape and configuration as the Proposed Mark.

Furthermore, on May 19, 2014, Briggs narrowed its requests to only horizontal shaft engines with high-mount air cleaner covers sold by six identified third parties. Decl. of Phillips

¶ 6, Ex. D. However, Applicant still refuses to produce responsive documents, stating again that it believes the requests are overbroad and burdensome. Decl. of Phillips ¶10, Ex. H. Similarly, Applicant suggests that the requests be narrowed further to require Opposers to provide model numbers. *Id.* However, limiting the search by model number will preclude the discovery of relevant documents because Applicant may not reference the relevant engines by model number in its internal documents, and model numbers can vary. What does not vary, however, is the brand name and the standard overall configuration that is being used in the industry.

In fact, Applicant agrees that knowledge and testing of engines with a similar configuration is directly relevant to the issues in this case. In Applicant's Motion to Compel, it argued that Opposers should be compelled to produce all documents "evidencing the purchase of Honda's engines embodying the GX Engine Trademark" and refused to limit the request to "only documents referencing the GX Trademark." Dkt. 19, p. 9. Applicant argued that such a limitation was "not justifiable" because purchases:

"may *not* reference the GX Engine Trademark expressly, but are nonetheless highly relevant to the issues of secondary meaning and genericness. Similarly, documents relating to the purchase of engines embodying the GX Engine Trademark for testing and analysis bear on the functionality of the claimed elements of the GX Engine Trademark, even if they do not expressly reference the GX Engine Trademark."

Id. (emphasis in original). The same is true here. Limiting the requests to specific model numbers will almost certainly mean that some relevant documents are missed. Documents relating to the purchase, inspection or testing of these similar engines bear on the functionality, secondary meaning, and genericness of the Proposed Mark, even if they do not expressly reference a model number. Thus, just as the Board granted Applicant's motion to compel production of a similar category of documents, they should do so here for Opposers.

Applicant also argues that the requests are unduly burdensome because “a majority [of the testing documents] are kept in Japan.” Decl. of Phillips ¶10; Ex. H. However, the Board has already held in this case that “data [that is] disbursed globally and [] storage of information [] international[ly]” does not make discovery requests prohibitively burdensome. Dkt. 40, p. 12. Therefore, Applicant’s argument that the Third Party Requests are unduly burdensome because the majority of documents are kept in Japan is meritless.

Additionally, the fact that Opposers might have obtained some documents from third parties is irrelevant. The Third Party Engine Requests are narrowly tailored and relate to *Honda’s* testing, purchase, inspection, monitoring or knowledge of these six competitive brands. Therefore this information cannot be obtained from any source other than Honda. Because the documents Opposers seek are relevant to functionality, lack of secondary meaning, genericness and abandonment, all of which are at issue in this case, the Board should compel production.

Furthermore, the Board has already determined that the documents like the ones sought here are relevant. In Applicant’s Motion to Compel, Applicant argued that “documents embodying the GX engine as a model for testing and analysis bear on the functionality of the claimed elements of the [Proposed Mark].” Dkt. 40, p. 7. The Board found that these requests were relevant and ordered Opposers to produce responsive documents. Now, Opposers seek the same documents from Applicant: documents relating to engines that Applicant has purchased, inspected and tested. The Board has already determined that these documents are relevant and therefore, the Board should compel Applicant to comply with its discovery duties.

CONCLUSION

Applicant has improperly refused to provide discovery responsive to both the GP Engine Requests and the Third Party Engine Requests. The fact that the documents in question relate to

activities outside the United States is irrelevant because they are clearly relevant to this proceeding. Additionally, documents relating to the six specified third party engines is not unduly burdensome and is extremely relevant to this proceeding. For the reasons stated above, Briggs and Kohler respectfully request that the Board enter an order requiring Honda to produce documents responsive to these requests within ten (10) days of its Order and grant Briggs and Kohler any such further relief as is just.

Dated: October 10, 2014

By: /s/ Robert N. Phillips

Robert N. Phillips
Reed Smith LLP
101 Second Street
San Francisco, CA 94105

Attorneys for Opposer *Briggs & Stratton Corporation*

Dated: October 10, 2014

By: /s/ Donald A. Daugherty, Jr.

Donald A. Daugherty, Jr.
Whyte Hirschboeck Dudek S.C.
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Milwaukee, WI 53202

Attorneys for Opposer *Kohler Co.*

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing OPPOSERS BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS FROM APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA [REDACTED PUBLIC VERSION] was served on the following counsel of record for Applicant, by depositing in the U.S. mail this 10th day of October, 2014.

Michael J. Bevilacqua, Esq.
Wilmer Cutler Pickering Hall and Dorr LLP
60 State Street
Boston, MA 02109-1800
Phone: (617) 526-6448
Fax: (617) 526-5000

/s/ Deborah Kalahale

Deborah Kalahale

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

BRIGGS & STRATTON CORPORATION and
KOHLER CO.,

Opposers,

v.

HONDA GIKEN KOGYO KABUSHIKI KAISHA,

Applicant.

Opposition No. 91200832 (parent)

Opposition No. 91200146

Application Serial No. 78924545

**DECLARATION OF ROBERT N. PHILLIPS IN SUPPORT OF OPPOSER BRIGGS &
STRATTON CORPORATION AND KOHLER CO.'S MOTION TO COMPEL
DOCUMENTS FROM APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA**

I, Robert N. Phillips, declare as follows:

1. I am a partner in the law firm of Reed Smith LLP, counsel of record for Briggs & Stratton Corporation (“Briggs”). The matters set forth herein are based upon my personal knowledge, except where otherwise indicated, and if called as a witness I could and would testify competently thereto.

2. Attached hereto as **Exhibit A** are true and correct copies of the relevant portions of the May 25, 2014 deposition of Yukio Sugimoto.

3. On April 4, 2014, Briggs served its fifth set of requests for production on Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”). A true and correct copy of these requests is attached as **Exhibit B**.

4. On May 5, 2014, Honda served its responses to Briggs’ fifth set of requests for production. A true and correct copy of these responses is attached as **Exhibit C**.

5. On May 19, 2014, I met telephonically with Sarah Frazier and Silena Paik, Counsel for Honda, regarding Briggs' fifth set of requests for production and Honda's objections.

6. Attached hereto as **Exhibit D** is a true and correct email sent from me to Ms. Frazier, dated May 19, 2014.

7. Attached hereto as **Exhibit E** is a true and correct copy of an email from Ms. Frazier to me, dated June 3, 2014.

8. Attached hereto as **Exhibit F** is a true and correct copy of an email exchange from me to Ms. Frazier, dated June 25, 2014.

9. Attached hereto as **Exhibit G** is a true and correct copy of an email from Ms. Frazier to me, dated June 30, 2014.

10. Attached hereto as **Exhibit H** is a true and correct copy of an email string between me and Ms. Frazier, dated August 5, 2014 and August 6, 2014.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 10th day of October, 2014 at San Francisco, California.

/s/ Robert N. Phillips

Robert N. Phillips

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing DECLARATION OF ROBERT N. PHILLIPS IN SUPPORT OF OPPOSER BRIGGS & STRATTON CORPORATION AND KOHLER CO.'S MOTION TO COMPEL DOCUMENTS FROM APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA was served on the following counsel of record for Applicant, by depositing in the U.S. mail this 10th day of October, 2014.

Michael J. Bevilacqua, Esq.
Wilmer Cutler Pickering Hall and Dorr LLP
60 State Street
Boston, MA 02109-1800
Phone: (617) 526-6448
Fax: (617) 526-5000

/s/ Deborah Kalahale

Deborah Kalahale

EXHIBIT A
[CONFIDENTIAL SUBMITTED
UNDER SEAL]

EXHIBIT B

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

<p>BRIGGS & STRATTON CORPORATION, Opposer, v. HONDA GIKEN KOGYO KABUSHIKI KAISHA, Applicant.</p>	<p>Opposition No. 91200832 (Parent)</p>
<p>KOHLER CO., Opposer, v. HONDA GIKEN KOGYO KABUSHIKI KAISHA, Applicant.</p>	<p>Opposition No. 91200146</p>

**OPPOSER BRIGGS & STRATTON CORPORATION'S FIFTH SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS TO APPLICANT
HONDA GIKEN KOGYO KABUSHIKI KAISHA**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and TBMP Section 406 et seq., Opposer Briggs & Stratton Corporation (hereinafter “Opposer”) request that Applicant Honda Giken Kogyo Kabushiki Kaisha (“Applicant”) produce the following documents for inspection thirty (30) days after service of these requests at the offices Reed Smith LLP, 101 Second Street, San Francisco, CA 94105, or such other time and place as the parties may mutually agree upon.

DEFINITIONS

The following definitions shall apply to the document requests that follow:

A. The terms “YOU” and “YOUR” mean Applicant Honda Giken Kogyo Kabushiki Kaisha (Honda Motor Co., Ltd.), a corporation organized under the laws of Japan, and its predecessors, successors and assigns, including any person or entity acting under its control, or on behalf, of any and all of its parents, subsidiaries, branches, entities, affiliates, departments, divisions, operating units, partners, joint ventures or related companies, and any employee, officer, director, principal, agent, sales representative or attorney who now serves, or at any relevant time served, it in such capacity.

B. The terms “Briggs” or “Opposer” refer to Opposer Briggs & Stratton Corporation and its affiliated companies.

C. The term “document” or “documents” shall be given the broadest meaning as contemplated by Rule 34, including but not limited to, notes, letters, correspondence, communications, e-mails, telegrams, memoranda, contracts, lease agreements, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports, research reports and notebooks, charts, plans, drawings, diagrams, illustrations, photographs, video images, minutes or records of meetings, summaries of interviews, reports or

investigations, opinions or reports of consultants, opinions of counsel, agreements, reports or summaries of negotiations, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of documents and all other material fixed in a tangible or electronic medium of whatever kind known to you or in your possession or control. A draft or nonidentical copy is a separate document within the meaning of this term.

D. “Referring,” “relating”, and “regarding” include the following: pertaining to, making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

E. The terms "person" and "persons" include natural persons and entities such as any individual or firm, association, organization, joint venture, trust, partnership, corporation, or other collective organization or entity.

F. The singular includes the plural number and vice versa, any use of gender includes both genders and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

G. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

The following instructions apply to the discovery requests below and should be considered as part of each subject request:

A. If any information is withheld under a claim of privilege, state the nature of the privilege claimed and provide sufficient information to permit a full determination of whether

the claim is valid. For allegedly privileged documents, include: an identification of the sender and the recipients of the document; the date of the document; a description of the contents or nature of the document; the number of the discovery request to which the document is responsive; and a statement of the basis for the asserted claim of privilege.

B. If Applicant objects to any subpart or portion of a request for information or objects to providing certain information requested, state Applicant's objections and answer the unobjectionable subpart(s) of the request for information and supply the unobjectionable information requested.

C. If any of the following requests for information cannot be responded to in full after exercising reasonable diligence to secure the information, please so state, supply the information for those portions Applicant is able to answer, and supply whatever information it has concerning the portion which cannot be answered in full. If Applicant's response is qualified in any particular respect, set forth the details of such qualification.

D. Unless otherwise stated, the geographic scope of each of the following requests is limited to the United States of America.

DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 55:

An updated AHM GX Phase I and Phase 2 inventory report, in the form shown in Exhibit 19 to the Conner deposition.

REQUEST FOR PRODUCTION NO. 56:

Documents sufficient to show the number of Honda GX engines available for purchase in the United States bearing the precise design shown in Applicant's trademark drawing (i.e. excluding engines bearing the 2011 redesign).

REQUEST FOR PRODUCTION NO. 57:

All documents discussing or referencing the factors that effect, influence or determine whether a customer is sold a Honda GX bearing the precise design shown in Applicant's trademark drawing or the 2011 redesigned version.

REQUEST FOR PRODUCTION NO. 58:

All documents referring or relating to the design of the external appearance of the Honda GP160 or GP200 engine.

REQUEST FOR PRODUCTION NO. 59:

All documents referring or relating to the styling of the Honda GP160 or GP200, including but not limited to the decision to use a black plastic recoil cover with a white fan cover.

REQUEST FOR PRODUCTION NO. 60:

All documents referring or relating to differences in the external appearance of the Honda GP160 or GP200 engines and any of the Honda GX engines, including but not limited to differences in color.

REQUEST FOR PRODUCTION NO. 61:

All documents referring or relating to Applicant's opposition proceeding settlement agreement with Cummins Inc.

REQUEST FOR PRODUCTION NO. 62:

All documents referring or relating to Generac pressure washers, including but not limited to the pressure washers attached hereto as Ex. A.

REQUEST FOR PRODUCTION NO. 63:

All documents referring or relating to Applicant's or American Honda's knowledge of Generac horizontal shaft engines, including but not limited to Applicant's first knowledge of the engines shown on the pressure washers attached hereto as Ex. A

REQUEST FOR PRODUCTION NO. 64:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Generac horizontal shaft engines, including but not limited to the engines shown on the pressure washers attached hereto as Ex. A.

REQUEST FOR PRODUCTION NO. 65:

All documents referring or relating to Applicants's or American Honda's GX engine trade dress enforcement efforts, if any, against Generac.

REQUEST FOR PRODUCTION NO. 66:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and Generac.

REQUEST FOR PRODUCTION NO. 67:

All documents referring or relating to V Power Equipment horizontal shaft engines, including but not limited to the engines attached hereto as Ex. B.

REQUEST FOR PRODUCTION NO. 68:

All documents referring or relating to Applicant's or American Honda's knowledge of V Power Equipment horizontal shaft engines, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. B.

REQUEST FOR PRODUCTION NO. 69:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of V Power Equipment horizontal shaft engines, including but not limited to the engines hereto as Ex. B.

REQUEST FOR PRODUCTION NO. 70:

All documents referring or relating to Applicants's or American Honda's GX engine trade dress enforcement efforts, if any, against V Power Equipment.

REQUEST FOR PRODUCTION NO. 71:

All documents referring or relating to any trade dress settlement agreement between

Applicant or American Honda and V Power Equipment.

REQUEST FOR PRODUCTION NO. 72:

All documents referring or relating to Lifan horizontal shaft engines offered for sale since September 14, 2008, including but not limited to the engines attached hereto as Ex. C.

REQUEST FOR PRODUCTION NO. 73:

All documents referring or relating to Applicant's or American Honda's knowledge of Lifan horizontal shaft engines offered for sale since September 14, 2008, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. C.

REQUEST FOR PRODUCTION NO. 74:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Lifan horizontal shaft engines offered for sale September 14, 2008, including but not limited to the engines attached hereto as Ex. C.

REQUEST FOR PRODUCTION NO. 75:

All documents referring or relating to Applicants's or American Honda's GX engine trade dress enforcement efforts, if any, against Lifan horizontal shaft engines offered for sale since September 14, 2008.

REQUEST FOR PRODUCTION NO. 76:

All documents referring or relating to Jiandong horizontal shaft engines offered for sale since September 14, 2008, including but not limited to the engines attached hereto as Ex. D.

REQUEST FOR PRODUCTION NO. 77:

All documents referring or relating to Applicant's or American Honda's knowledge of Jiandong horizontal shaft engines offered for sale since September 14, 2008, including but not limited to Applicant's first knowledge of the engines attached hereto as Ex. D.

REQUEST FOR PRODUCTION NO. 78:

All documents referring or relating to Applicant's or American Honda's purchase,

inspection, or testing of Jiandong horizontal shaft engines offered for sale since September 14, 2008, including but not limited to the engines attached hereto as Ex. D.

REQUEST FOR PRODUCTION NO. 79:

All documents referring or relating to Blue Max horizontal shaft engines, including but not limited to the engines attached hereto as Ex. E.

REQUEST FOR PRODUCTION NO. 80:

All documents referring or relating to Applicant's or American Honda's knowledge of Blue Max horizontal shaft engines, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. E.

REQUEST FOR PRODUCTION NO. 81:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Blue Max horizontal shaft engines, including but not limited to the engines hereto as Ex. E.

REQUEST FOR PRODUCTION NO. 82:

All documents referring or relating to Applicants's or American Honda's GX engine trade dress enforcement efforts, if any, against Blue Max.

REQUEST FOR PRODUCTION NO. 83:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and Blue Max.

REQUEST FOR PRODUCTION NO. 84:

All documents referring or relating to All-Power horizontal shaft engines, including but not limited to the engines attached hereto as Ex. F.

REQUEST FOR PRODUCTION NO. 85:

All documents referring or relating to Applicant's or American Honda's knowledge of All-Power horizontal shaft engines, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. F.

REQUEST FOR PRODUCTION NO. 86:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of All Power horizontal shaft engines, including but not limited to the engines hereto as Ex. F.

REQUEST FOR PRODUCTION NO. 87:

All documents referring or relating to Applicants's or American Honda's GX engine trade dress enforcement efforts, if any, against All Power.

REQUEST FOR PRODUCTION NO. 88:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and All Power.

DATED: April 4, 2014

By:

/s/ Robert N. Phillips

Robert N. Phillips

Reed Smith LLP

Nina Habib Borders

Reed Smith LLP

Attorneys for Opposer

BRIGGS & STRATTON CORPORATION

EXHIBIT A





EXHIBIT B



EXHIBIT C





EXHIBIT D





EXHIBIT E





EXHIBIT F





CERTIFICATE OF SERVICE

I hereby certified that a true copy of the foregoing OPPOSER BRIGGS & STRATTON CORPORATION'S FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA was served on the following counsel of record, by depositing same in the U.S. mail, first class postage prepaid, this 4th day of April, 2014:

Michael J. Bevilacqua, Esq.
Vinita Ferrera, Esq.
Silena Y. Paik, Esq.
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Elizabeth Townsend Bridge
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Milwaukee, Wisconsin 53202
Telephone: (414) 273-2100
Facsimile: (414) 223-5000

/s/ Deborah Kalahale

Deborah L. Kalahale

EXHIBIT C

CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER

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

BRIGGS & STRATTON CORPORATION)	
and KOHLER CO.,)	
)	
Opposers,)	Opposition No. 91200832 (parent)
)	
v.)	Opposition No. 91200146
)	
HONDA GIKEN KOGYO KABUSHIKI)	Application Serial No. 78924545
KAISHA,)	
)	
Applicant.)	CONFIDENTIAL – SUBJECT TO
)	PROTECTIVE ORDER
)	
)	
)	
)	
)	
)	
)	
)	

**APPLICANT HONDA GIKEN KOGYO KABUSHIKI KAISHA’S RESPONSES AND
OBJECTIONS TO OPPOSER BRIGGS & STRATTON CORPORATION’S FIFTH SET
OF REQUESTS FOR PRODUCTION (NOS. 55-88)**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Section 406 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, Applicant Honda Giken Kogyo Kabushiki Kaisha (“Honda”) hereby objects and responds to Briggs & Stratton Corporation’s (“Opposer”) Fifth Set of Requests for Production of Documents (Nos. 55-88), as follows:

GENERAL OBJECTIONS

1. Honda objects to each Request, Definition and Instruction to the extent that it is inconsistent with or seeks to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, the Trademark Trial and Appeal Board Manual of Procedures, and/or the Orders, rules, laws or instructions of the Trademark Trial and Appeal Board.

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2. Honda objects to each Request, Definition and Instruction to the extent that it is imprecise in specifying the information which is sought.

3. Honda objects to each Request, Definition and Instruction to the extent that it seeks information that is not relevant to the claims or defenses of any party to this matter or reasonably calculated to lead to the discovery of admissible evidence.

4. Honda objects to each Request, Definition and Instruction to the extent that it is overly broad, vague, ambiguous, unduly burdensome, oppressive, or disproportionate.

5. Honda objects to each Request, Definition and Instruction to the extent it seeks information obtainable from another source that is more convenient, less burdensome, less expensive, or publicly available.

6. Honda objects to each Request, Definition and Instruction to the extent the requested information is already within the knowledge or control of Opposer.

7. Honda objects to each Request, Definition and Instruction to the extent the requested information has already been supplied to Opposer or is cumulative, redundant, or duplicative of other Requests.

8. Honda objects to each Request, Definition and Instruction to the extent it calls for information that is not known or reasonably available to Honda.

9. Honda objects to each Request, Definition and Instruction to the extent it is compound.

10. Honda objects to each Request, Definition and Instruction to the extent that it seeks information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, the joint defense privilege, the common interest privilege, or any other applicable privilege, doctrine or immunity under federal, state, or other law.

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11. Honda objects to each Request, Definition and Instruction to the extent that it seeks discovery of third party confidential materials. Honda further objects to each Request to the extent that it seeks information that Honda is prohibited from disclosing by contract, order, statute, rule, regulation, or law.

12. Honda's responses and objections are made without waiver and with preservation of: (a) all questions as to competency, relevancy, materiality, privilege and admissibility of the responses and the subject matter thereof for any purpose and in any further proceeding in this matter and in any other action or matter; (b) the right to object to the use of any such responses or the subject matter thereof, on any ground in any further proceeding in this matter and in any other action or matter; and (c) the right to object on any ground at any time to a demand or request for further response.

13. The following objections and responses are based on information reasonably available to Honda at this time. Accordingly, Honda reserves its right to amend, supplement, correct, clarify and/or add to its responses and objections at any time, pursuant to Federal Rule of Civil Procedure 26(e). Honda also reserves the right to use or rely on, at any time, subsequently discovered information or information omitted from these responses as a result of mistake, error, oversight or inadvertence.

SPECIFIC OBJECTIONS AND RESPONSES

Each of Honda's responses is subject to, and incorporates, the General Objections set forth above. Honda specifically incorporates each of these General Objections into its responses to each of the requests, whether or not each such General Objection is referenced in Honda's response to a specific request.

REQUEST FOR PRODUCTION NO. 55:

An updated AHM GX Phase I and Phase 2 inventory report, in the form shown in Exhibit 19 to the Conner deposition.

RESPONSE TO REQUEST FOR PRODUCTION NO. 55:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing General and Specific Objections, Honda will produce an updated AHM GX Phase I and Phase 2 inventory report in the form shown in Exhibit 19 to the August 2012 deposition of Scott Conner.

REQUEST FOR PRODUCTION NO. 56:

Documents sufficient to show the number of Honda GX engines available for purchase in the United States bearing the precise design shown in Applicant's trademark drawing (i.e. excluding engines bearing the 2011 redesign).

RESPONSE TO REQUEST FOR PRODUCTION NO. 56:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that the phrase "available for purchase" is vague and ambiguous. Honda further objects to this request on the grounds that the phrase "bearing the precise design shown in Applicant's trademark drawing (i.e. excluding engines bearing the 2011 redesign)" is vague and ambiguous.

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Subject to and without waiving the foregoing General and Specific Objections, Honda will produce documents sufficient to show the total number of Honda GX engines in inventory and the number of EPA Phase 3 Honda GX engines in inventory.

REQUEST FOR PRODUCTION NO. 57:

All documents discussing or referencing the factors that effect, influence or determine whether a customer is sold a Honda GX bearing the precise design shown in Applicant's trademark drawing or the 2011 redesigned version.

RESPONSE TO REQUEST FOR PRODUCTION NO. 57:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that the phrase "the factors that effect, influence or determine whether a customer is sold a Honda GX bearing the precise design shown in Applicant's trademark drawing or the 2011 redesigned version" is vague and ambiguous.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 58:

All documents referring or relating to the design of the external appearance of the Honda GP160 or GP200 engine.

RESPONSE TO REQUEST FOR PRODUCTION NO. 58:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence because neither the GP160 engine nor the GP200 engine is sold in the United

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States. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 59:

All documents referring or relating to the styling of the Honda GP160 or GP200, including but not limited to the decision to use a black plastic recoil cover with a white fan cover.

RESPONSE TO REQUEST FOR PRODUCTION NO. 59:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence because neither the GP160 engine nor the GP200 engine is sold in the United States. Honda further objects to this request on the grounds that the term “styling” is vague and ambiguous. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 60:

All documents referring or relating to differences in the external appearance of the Honda GP160 or GP200 engines and any of the Honda GX engines, including but not limited to differences in color.

RESPONSE TO REQUEST FOR PRODUCTION NO. 60:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence because neither the GP160 engine nor the GP200 engine is sold in the United States.

REQUEST FOR PRODUCTION NO. 61:

All documents referring or relating to Applicant's opposition proceeding settlement agreement with Cummins Inc.

RESPONSE TO REQUEST FOR PRODUCTION NO. 61:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda will produce the final executed settlement agreement between Honda and Cummins Inc. regarding Trademark Trial and Appeal Board Opposition No. 91/197217.

REQUEST FOR PRODUCTION NO. 62:

All documents referring or relating to Generac pressure washers, including but not limited to the pressure washers attached hereto as Ex. A.

RESPONSE TO REQUEST FOR PRODUCTION NO. 62:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 63:

All documents referring or relating to Applicant's or American Honda's knowledge of Generac horizontal shaft engines, including but not limited to Applicant's first knowledge of the engines shown on the pressure washers attached hereto as Ex. A

RESPONSE TO REQUEST FOR PRODUCTION NO. 63:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 64:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Generac horizontal shaft engines, including but not limited to the engines shown on the pressure washers attached hereto as Ex. A.

RESPONSE TO REQUEST FOR PRODUCTION NO. 64:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 65:

All documents referring or relating to Applicant's or American Honda's GX engine trade dress enforcement efforts, if any, against Generac.

RESPONSE TO REQUEST FOR PRODUCTION NO. 65:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 66:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and Generac.

RESPONSE TO REQUEST FOR PRODUCTION NO. 66:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 67:

All documents referring or relating to V Power Equipment horizontal shaft engines, including but not limited to the engines attached hereto as Ex. B.

RESPONSE TO REQUEST FOR PRODUCTION NO. 67:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 68:

All documents referring or relating to Applicant's or American Honda's knowledge of V Power Equipment horizontal shaft engines, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. B.

RESPONSE TO REQUEST FOR PRODUCTION NO. 68:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 69:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of V Power Equipment horizontal shaft engines, including but not limited to the engines hereto as Ex. B.

RESPONSE TO REQUEST FOR PRODUCTION NO. 69:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 70:

All documents referring or relating to Applicant's or American Honda's GX engine trade dress enforcement efforts, if any, against V Power Equipment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 70:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 71:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and V Power Equipment.

RESPONSE TO REQUEST FOR PRODUCTION NO. 71:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of

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admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 72:

All documents referring or relating to Lifan horizontal shaft engines offered for sale since September 14, 2008, including but not limited to the engines attached hereto as Ex. C.

RESPONSE TO REQUEST FOR PRODUCTION NO. 72:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 73:

All documents referring or relating to Applicant's or American Honda's knowledge of Lifan horizontal shaft engines offered for sale since September 14, 2008, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. C.

RESPONSE TO REQUEST FOR PRODUCTION NO. 73:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 74:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Lifan horizontal shaft engines offered for sale September 14, 2008, including but not limited to the engines attached hereto as Ex. C.

RESPONSE TO REQUEST FOR PRODUCTION NO. 74:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 75:

All documents referring or relating to Applicant's or American Honda's GX engine trade dress enforcement efforts, if any, against Lifan horizontal shaft engines offered for sale since September 14, 2008.

RESPONSE TO REQUEST FOR PRODUCTION NO. 75:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, and to the extent not already produced, Honda will produce responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 76:

All documents referring or relating to Jiandong horizontal shaft engines offered for sale since September 14, 2008, including but not limited to the engines attached hereto as Ex. D.

RESPONSE TO REQUEST FOR PRODUCTION NO. 76:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 77:

All documents referring or relating to Applicant's or American Honda's knowledge of Jiandong horizontal shaft engines offered for sale since September 14, 2008, including but not limited to Applicant's first knowledge of the engines attached hereto as Ex. D.

RESPONSE TO REQUEST FOR PRODUCTION NO. 77:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 78:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Jiandong horizontal shaft engines offered for sale since September 14, 2008, including but not limited to the engines attached hereto as Ex. D.

RESPONSE TO REQUEST FOR PRODUCTION NO. 78:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 79:

All documents referring or relating to Blue Max horizontal shaft engines, including but not limited to the engines attached hereto as Ex. E.

RESPONSE TO REQUEST FOR PRODUCTION NO. 79:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 80:

All documents referring or relating to Applicant's or American Honda's knowledge of Blue Max horizontal shaft engines, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. E.

RESPONSE TO REQUEST FOR PRODUCTION NO. 80:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 81:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of Blue Max horizontal shaft engines, including but not limited to the engines hereto as Ex. E.

RESPONSE TO REQUEST FOR PRODUCTION NO. 81:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 82:

All documents referring or relating to Applicant's or American Honda's GX engine trade dress enforcement efforts, if any, against Blue Max.

RESPONSE TO REQUEST FOR PRODUCTION NO. 82:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, and to the extent not already produced, Honda will produce responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 83:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and Blue Max.

RESPONSE TO REQUEST FOR PRODUCTION NO. 83:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

REQUEST FOR PRODUCTION NO. 84:

All documents referring or relating to All-Power horizontal shaft engines, including but not limited to the engines attached hereto as Ex. F.

RESPONSE TO REQUEST FOR PRODUCTION NO. 84:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 85:

All documents referring or relating to Applicant's or American Honda's knowledge of All-Power horizontal shaft engines, including but not limited to Applicant's or American Honda's first knowledge of the engines attached hereto as Ex. F.

RESPONSE TO REQUEST FOR PRODUCTION NO. 85:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 86:

All documents referring or relating to Applicant's or American Honda's purchase, inspection, or testing of All Power horizontal shaft engines, including but not limited to the engines hereto as Ex. F.

RESPONSE TO REQUEST FOR PRODUCTION NO. 86:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request on the grounds that it is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 87:

All documents referring or relating to Applicant's or American Honda's GX engine trade dress enforcement efforts, if any, against All Power.

RESPONSE TO REQUEST FOR PRODUCTION NO. 87:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, and to the extent not already produced, Honda will produce responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 88:

All documents referring or relating to any trade dress settlement agreement between Applicant or American Honda and All Power.

RESPONSE TO REQUEST FOR PRODUCTION NO. 88:

Honda objects to this request as seeking information that is not relevant to the claims or defenses of any party to this action and not reasonably calculated to lead to the discovery of admissible evidence. Honda further objects to this request to the extent that it seeks information that is protected from discovery pursuant to attorney-client privilege, attorney work product, or any other applicable privilege. Honda further objects to this request to the extent it is duplicative of prior requests for production.

Subject to and without waiving the foregoing General and Specific Objections, Honda states that no documents responsive to this request exist.

CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER

By:

/s/ Sarah R. Frazier

Vinita Ferrera

John Regan

Silena Paik

Sarah R. Frazier

Shira Hoffman

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

(617) 526-6000

Attorneys for Applicant HONDA GIKEN KOGYO
KABUSHIKI KAISHA (HONDA MOTOR CO., LTD.)

Dated: May 9, 2014

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Applicant Honda Giken Kogyo Kabushiki Kaisha's Responses and Objections to Opposer Briggs & Stratton Corporation's Fifth Set of Requests for Production (Nos. 55-88) was served by Federal Express, postage prepaid, this 9th day of May, 2014 upon:

Donald Daugherty
Whyte Hirschboeck Dudek S.C.
555 E. Wells Street, Suite 1900
Milwaukee, Wisconsin 53202

And

Robert N. Phillips
Seth B. Herring
Reed Smith LLP
101 Second Street
Suite 1800
San Francisco, California 94105

/s/ Shira Hoffman
Shira Hoffman

EXHIBIT D

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]
Sent: Monday, May 19, 2014 3:37 PM
To: Paik, Silena; Frazier, Sarah
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com)
Subject: Briggs and Kohler v Honda

Silena and Sarah,

I write to follow up on our meet and confer telephone conference regarding Honda's responses to Briggs' Fifth Set of Requests for Production.

Regarding Request No. 57, as I stated, we are skeptical that no responsive documents exist. Please discuss with your client, and let us know the steps Honda has taken to confirm that no responsive documents exist.

Regarding Request Nos. 58-60, as I explained on our call, these Requests are relevant to functionality and secondary meaning. These engines clearly embody most or all of the features of the applied-for mark, and thus Honda's considerations in designing them are relevant to functionality. Similarly, any decisions made to differentiate these engines from the GX via styling changes, including but not limited to the different coloring, is relevant to the secondary meaning of the GX's specific styling and color and therefore to the secondary meaning of the applied-for mark. The fact that these engines are not sold in the United States does not render the requests irrelevant. Please let us know by May 23 whether Honda will agree to produce documents responsive to these Requests.

Regarding Request Nos. 62-88, you stated on the call that Honda believed that many of these requests were overbroad in that they included information related to all horizontal shaft engines sold by the identified third parties. While Briggs disagrees that these Requests are overbroad, to address Honda's concerns, Briggs proposes to limit these requests to horizontal shaft engines with high-mount air cleaner covers sold by the identified third parties. Honda's knowledge of, inspection and testing of, and enforcement against third party engines with this configuration is clearly relevant to issues such as functionality, secondary meaning, abandonment, and genericness, and the Requests are narrowly tailored to include just those third party engines with the same or similar shape and configuration as the applied-for mark. Please let us know by May 23 whether Honda will agree to produce documents responsive to these Requests as modified herein.

We look forward to Honda's responses on these issues.

Regards,

Rob

Robert N. Phillips | Reed Smith LLP

101 Second Street - Suite 1800 San Francisco, CA 94105
Direct: 415.659.5953 | Reception: 415.543.8700 | Fax: 415.391.8269
robphillips@reedsmith.com | www.reedsmith.com

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* * *

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EXHIBIT E

From: Frazier, Sarah [<mailto:Sarah.Frazier@wilmerhale.com>]
Sent: Tuesday, June 03, 2014 7:04 AM
To: Phillips, Robert N. (Rob)
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John
Subject: RE: Briggs and Kohler v Honda

Rob,

Regarding Request No. 57, as stated in Honda's responses and during our meet and confer, no documents exist regarding whether a customer is sold an EPA Phase 3 engine or an earlier model. As Scott Conner noted during his deposition, the inventory is "mix and match," and as Mike Rudolph testified, customers know whether they are receiving

an EPA Phase 3 engine by the model number. Honda has confirmed with the appropriate individuals that no responsive documents exist.

Regarding Request Nos. 58-60, Honda maintains its objections to these requests as irrelevant, overly broad, and unduly burdensome. As confirmed during the depositions of several Honda witnesses, these engines were not developed in, nor are they sold in, the United States. Because the secondary meaning inquiry is focused on the relevant purchasing population, the design of the GP engine is thus irrelevant to that issue. Further, Mr. Sugimoto testified in his recent deposition that the GP engine was developed for a different purpose than the GX engine and that it does not use the same components. It is thus similarly irrelevant to the issue of functionality.

Regarding Request Nos. 62-88, Honda has already agreed to, and in fact has produced all documents responsive to those requests related to enforcement efforts against the third parties identified therein (Nos. 65, 75, 82, and 87). Honda has also confirmed that no documents responsive to request numbers 66, 70, 83, or 88 exist. The remaining requests, even as narrowed below, are still overly broad and unduly burdensome. Nonetheless, Honda is investigating the existence of documents (beyond those already produced) regarding the inspection or testing of the external components of engines manufactured by the identified third parties, and with the same relative placement of components (e.g., fuel tank on top of fan cover, air cleaner on the top left of engine) as shown in the exhibits to Briggs' requests.

Thanks,
Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]
Sent: Monday, May 19, 2014 3:37 PM
To: Paik, Silena; Frazier, Sarah
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com)
Subject: Briggs and Kohler v Honda

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We look forward to Honda's responses on these issues.

Regards,

Rob

Robert N. Phillips | Reed Smith LLP

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Direct: 415.659.5953 | Reception: 415.543.8700 | Fax: 415.391.8269
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EXHIBIT F

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]
Sent: Wednesday, June 25, 2014 7:05 PM
To: Frazier, Sarah
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen
Subject: RE: Briggs and Kohler v Honda

Sarah:

Without waiving our position that Requests Nos. 62-88 with regard to the identified third party engines with the high mount air cleaner design are properly tailored and highly relevant, and reserving all rights to move on such requests, have you determined whether Honda has any of the documents you indicated you were investigating below?

Rob

From: Frazier, Sarah [<mailto:Sarah.Frazier@wilmerhale.com>]
Sent: Tuesday, June 03, 2014 7:04 AM
To: Phillips, Robert N. (Rob)
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John
Subject: RE: Briggs and Kohler v Honda

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Thanks,
Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]
Sent: Monday, May 19, 2014 3:37 PM
To: Paik, Silena; Frazier, Sarah
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com)
Subject: Briggs and Kohler v Honda

Silena and Sarah,

I write to follow up on our meet and confer telephone conference regarding Honda's responses to Briggs' Fifth Set of Requests for Production.

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We look forward to Honda's responses on these issues.

Regards,

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EXHIBIT G

Robert N. Phillips | Reed Smith LLP

101 Second Street - Suite 1800 San Francisco, CA 94105
Direct: 415.659.5953 | Reception: 415.543.8700 | Fax: 415.391.8269
robphillips@reedsmith.com | www.reedsmith.com

From: Frazier, Sarah [<mailto:Sarah.Frazier@wilmerhale.com>]

Sent: Monday, June 30, 2014 5:24 AM

To: Phillips, Robert N. (Rob)

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen

Subject: RE: Briggs and Kohler v Honda

Hi Rob,

Please provide the model numbers of the engines depicted in exhibits A through F to Opposers' Fifth Set of Requests for Production.

Thanks,
Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]

Sent: Wednesday, June 25, 2014 7:05 PM

To: Frazier, Sarah

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen

Subject: RE: Briggs and Kohler v Honda

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Rob

From: Frazier, Sarah [<mailto:Sarah.Frazier@wilmerhale.com>]

Sent: Tuesday, June 03, 2014 7:04 AM

To: Phillips, Robert N. (Rob)

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John

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Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]
Sent: Monday, May 19, 2014 3:37 PM
To: Paik, Silena; Frazier, Sarah
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com)
Subject: Briggs and Kohler v Honda

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We look forward to Honda's responses on these issues.

Regards,

Rob

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EXHIBIT H

From: Phillips, Robert N. (Rob)
Sent: Wednesday, August 06, 2014 3:49 PM
To: 'Frazier, Sarah'
Cc: Herring, Seth B.; 'Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com)'; 'Giftos, Melinda MG (6076) (MGiftos@whdlaw.com)'; 'Paik, Silena'; 'Ferrera, Vinita'; 'Regan, John'; 'Dow, Colleen'
Subject: RE: Briggs and Kohler v Honda

Sarah:

Again, these requests are not limited to any specific model numbers, and so your offer to have Honda search for the specific models shown in the photos does not go far enough.

Clearly, Honda studies the competition, and will have in its possession documents regarding third party horizontal shaft engines with high mount air cleaners having overall configurations similar to the GX. It would not be burdensome to ask your client to review its files and produce those documents regarding such engines and/or or power equipment products put out by Generac, V Power, Lifan, Blue Max, All Power, and Jiang Dong. If the search were limited by model number, as you propose, it is highly likely that relevant documents would not be produced as model numbers vary or may not even be referenced in the documents. What doesn't vary, however, is the brand name, and the standard overall configuration that is being used in the industry, and this is highly relevant, and documents regarding such third party use should be produced by Honda. The fact that we have obtained some of these documents from third parties is irrelevant. Obviously, documents related to **Honda's** testing, purchase, inspection, monitoring, or knowledge of the identified engines cannot be obtained from any source but Honda, and these are relevant to functionality, lack of secondary meaning, genericness, and abandonment, which are all at issue in this case.

It appears that we are at an impasse, and will need to file a motion with the Board. If you have any other suggestions, please feel free to let me know.

Regards,

Rob

Robert N. Phillips | **Reed Smith** LLP
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robphillips@reedsmith.com | www.reedsmith.com

From: Frazier, Sarah [mailto:Sarah.Frazier@wilmerhale.com]
Sent: Tuesday, August 05, 2014 12:46 PM
To: Phillips, Robert N. (Rob)

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen
Subject: RE: Briggs and Kohler v Honda

Rob,

Honda remains willing to look for documents regarding the specific models depicted in the exhibits to Opposers' Fifth set of RFAs. However, there is not a one-to-one correspondence between the websites listed in Opposers' Fifth Set of RFAs and those exhibits, nor is the burden on Honda to define Opposers' requests. If Opposers wish to provide Honda with the list of model numbers, Honda will search its files for potentially responsive documents.

As we discussed, it is unreasonable and unduly burdensome to ask Honda to review all testing documents—a majority of which are kept in Japan—in an attempt to determine whether the engines tested had high-mount air cleaners. Furthermore, the information Opposers seek regarding these third-party engines can be more easily obtained through other sources. Indeed, as represented below, Opposers identified these engines on public websites, many of which include specifications and testing information. Opposers have also subpoenaed several of the manufacturers identified for documents related to “horizontal shaft engines with high mount air cleaners.” Honda thus maintains its objections to RFP Nos. 62-88.

Thanks,
Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]

Sent: Thursday, July 24, 2014 5:00 PM

To: Frazier, Sarah

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen

Subject: RE: Briggs and Kohler v Honda

Sarah:

My apologies for the delay in getting back to you on this. Requests Nos 62 – 88 were not limited to any specific model numbers. Rather, as we discussed, they are intended to discover Honda's information regarding third party horizontal shaft engines with high mount air cleaners in the same general overall configuration as the Honda GX, as shown in Exhibits A through F. Those photos show similarly shaped engines put out under the brand names Generac, V Power, Lifan, Blue Max, All Power, and Jiang Dong. The engine photos came from the websites referenced in the corresponding requests for admissions which will whatever additional information you seek concerning model numbers. To the extent Honda has possession of any of these engines, or documents regarding these engines, or any other horizontal shaft engines put out under those brands with high mount air cleaners, those should be produced. Please let me know whether Honda will withdraw its objections and agree to produce all such responsive documents.

Rob

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From: Frazier, Sarah [<mailto:Sarah.Frazier@wilmerhale.com>]

Sent: Monday, June 30, 2014 5:24 AM

To: Phillips, Robert N. (Rob)

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen

Subject: RE: Briggs and Kohler v Honda

Hi Rob,

Please provide the model numbers of the engines depicted in exhibits A through F to Opposers' Fifth Set of Requests for Production.

Thanks,
Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]

Sent: Wednesday, June 25, 2014 7:05 PM

To: Frazier, Sarah

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John; Dow, Colleen

Subject: RE: Briggs and Kohler v Honda

Sarah:

Without waiving our position that Requests Nos. 62-88 with regard to the identified third party engines with the high mount air cleaner design are properly tailored and highly relevant, and reserving all rights to move on such requests, have you determined whether Honda has any of the documents you indicated you were investigating below?

Rob

From: Frazier, Sarah [<mailto:Sarah.Frazier@wilmerhale.com>]

Sent: Tuesday, June 03, 2014 7:04 AM

To: Phillips, Robert N. (Rob)

Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com); Paik, Silena; Ferrera, Vinita; Regan, John

Subject: RE: Briggs and Kohler v Honda

Rob,

Regarding Request No. 57, as stated in Honda's responses and during our meet and confer, no documents exist regarding whether a customer is sold an EPA Phase 3 engine or an earlier model. As Scott Conner noted during his deposition, the inventory is "mix and match," and as Mike Rudolph testified, customers know whether they are receiving

an EPA Phase 3 engine by the model number. Honda has confirmed with the appropriate individuals that no responsive documents exist.

Regarding Request Nos. 58-60, Honda maintains its objections to these requests as irrelevant, overly broad, and unduly burdensome. As confirmed during the depositions of several Honda witnesses, these engines were not developed in, nor are they sold in, the United States. Because the secondary meaning inquiry is focused on the relevant purchasing population, the design of the GP engine is thus irrelevant to that issue. Further, Mr. Sugimoto testified in his recent deposition that the GP engine was developed for a different purpose than the GX engine and that it does not use the same components. It is thus similarly irrelevant to the issue of functionality.

Regarding Request Nos. 62-88, Honda has already agreed to, and in fact has produced all documents responsive to those requests related to enforcement efforts against the third parties identified therein (Nos. 65, 75, 82, and 87). Honda has also confirmed that no documents responsive to request numbers 66, 70, 83, or 88 exist. The remaining requests, even as narrowed below, are still overly broad and unduly burdensome. Nonetheless, Honda is investigating the existence of documents (beyond those already produced) regarding the inspection or testing of the external components of engines manufactured by the identified third parties, and with the same relative placement of components (e.g., fuel tank on top of fan cover, air cleaner on the top left of engine) as shown in the exhibits to Briggs' requests.

Thanks,
Sarah

From: Phillips, Robert N. (Rob) [<mailto:RobPhillips@ReedSmith.com>]
Sent: Monday, May 19, 2014 3:37 PM
To: Paik, Silena; Frazier, Sarah
Cc: Herring, Seth B.; Donald A. DAD Daugherty (DDAUGHERTY@whdlaw.com); Giftos, Melinda MG (6076) (MGiftos@whdlaw.com)
Subject: Briggs and Kohler v Honda

Silena and Sarah,

I write to follow up on our meet and confer telephone conference regarding Honda's responses to Briggs' Fifth Set of Requests for Production.

Regarding Request No. 57, as I stated, we are skeptical that no responsive documents exist. Please discuss with your client, and let us know the steps Honda has taken to confirm that no responsive documents exist.

Regarding Request Nos. 58-60, as I explained on our call, these Requests are relevant to functionality and secondary meaning. These engines clearly embody most or all of the features of the applied-for mark, and thus Honda's considerations in designing them are relevant to functionality. Similarly, any decisions made to differentiate these engines from the GX via styling changes, including but not limited to the different coloring, is relevant to the secondary meaning of the GX's specific styling and color and therefore to the secondary meaning of the applied-for mark. The fact that these engines are not sold in the United States does not render the requests irrelevant. Please let us know by May 23 whether Honda will agree to produce documents responsive to these Requests.

Regarding Request Nos. 62-88, you stated on the call that Honda believed that many of these requests were overbroad in that they included information related to all horizontal shaft engines sold by the identified third parties. While Briggs disagrees that these Requests are overbroad, to address Honda's concerns, Briggs proposes to limit these requests to horizontal shaft engines with high-mount air cleaner covers sold by the identified third parties. Honda's knowledge of, inspection and testing of, and enforcement against third party engines with this configuration is clearly relevant to issues such as functionality, secondary meaning, abandonment, and genericness, and the Requests are narrowly tailored to include just those third party engines with the same or similar shape and configuration as the applied-for mark. Please let us know by May 23 whether Honda will agree to produce documents responsive to these Requests as modified herein.

We look forward to Honda's responses on these issues.

Regards,

Rob

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