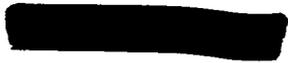


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration No. 3,093,389 -
Registered on: May 16, 2006

79,008,374



BRYAN CORPORATION,

§
§
§
§
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§
§

Petitioner,

03-26-2007

U.S. Patent & TMO's/TM Mail Rcpt Dt. #11

v.

Cancellation No. 92046037

NOVATECH SA,

Registrant.

**REGISTRANT'S RESPONSE TO PETITIONER'S MOTION TO COMPEL
DISCOVERY RESPONSES**

Pursuant to TBMP § 523, NOVATECH SA ("Registrant") for its response to the motion to compel filed by BRYAN CORPORATION ("Petitioner") (collectively "the parties") requesting the Board to compel Registrant to amend certain discovery responses, states as follows:

BACKGROUND

1. Registrant believes Petitioner is using the Trademark Trial and Appeal Board as a forum to assert a weak common law trademark claim to an obviously generic STERILE TALC POWDER term in order to harass Registrant, a legitimate company in direct competition to Petitioner's line of products. This cancellation proceeding, as explained below, is part of an ongoing effort to make it difficult for Registrant's well known products to enter the United States market. In understanding Registrant's position in this discovery dispute, the Board should be familiar with the extensive history between the two parties.

2. From 1993 to July 1994, Petitioner was United States distributor of a sterile talc product manufactured by Axion S.A.R.L., a predecessor of Registrant. See [Ex. A, Petitioner's

Response to First Set of Interrogatories, No. 35]. When Axion S.A.R.L. changed its name to Novatech SA, Petitioner began distributing Registrant's tracheal stent product in the United States. *Id.* at No. 34. In 1996, the parties attempted to work together to obtain a New Drug Application ("NDA") and Orphan Designation from the FDA for a sterile talc product, and initial application to the FDA called for the use of French-grade talc mined and processed by Talc de Luzenac, a company that had an exclusive contract with Registrant. *See* [Ex. 2 to Petitioner's Motion to Compel (Attachments)]. However, when the parties' business relationship soured for a variety of issues, including outstanding debt claims, Petitioner pursued an NDA for the sterile talc product without any input from Registrant and using talc mined and processed by a United States company. *See id.* Registrant filed its own NDA after these events, but the application was not approved, in part because of the earlier filing of Petitioner.

3. Petitioner succeeded in obtaining an NDA and Orphan Drug Designation approval for its SCLEROSOL sterile talc powder product on December 24, 1997. *See* [Ex. B, Petitioner's Response to Second Set of Interrogatories, No. 1]. The Orphan Drug approval essentially created a monopoly for the SCLEROSOL drug for a seven year period. This "monopoly" period has now expired, enabling Registrant to file another NDA at this time. Petitioner is now attempting to impede the imminent filing with this Petition for Cancellation of Registrant's STERITALC mark in the United States.

4. Petitioner has engaged in burdensome and harassing acts throughout this proceeding that has stalled the outcome and created unnecessary expense. Such behavior includes 1) demanding supplementation to Registrant's Response to Petitioner's First Set of Requests for Production and, when such demands were met, failing to reciprocate by supplementing its responses to discovery as

requested by Registrant (including simple requests for documents showing the generic name of Petitioner's drugs) and 2) serving three sets of discovery, each set more irrelevant to any of the issues within this trademark cancellation proceeding. *See* Fed. R. Civ. P. 26(g); *see* [Ex. 1-3 to Petitioner's Motion to Compel]. Petitioner's frivolous Motion to Compel continues such behavior.

5. Petitioner's failure to produce documents specifically related to its claims delays the inevitable Motion for Summary Judgment against Petitioner for lack of standing and false claim to ownership of a generic mark. Petitioner should know that each party and its attorney or other authorized representative has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. *See*, Fed. R. Civ. P. 26(g). Registrant asks that the Board not reward the gamesmanship inherent in Petitioner's harassing and baseless motion to compel, and instead deny the motion in its entirety.

ARGUMENT

6. Petitioner claims Registrant's STERITALC mark should be cancelled for the following reasons: 1) an alleged fraudulent declaration at the time of filing U.S. Application No. 79/008,374 on December 28, 2004 and 2) the use of the STERITALC mark in commerce would cause confusion between it and Petitioner's alleged common law trademark rights in the term STERILE TALC POWDER. *See* [Petitioner's Motion to Compel, pp. 3-4]; *see* [Petition for Cancellation]. It is clear that each and every document and answer to Interrogatory requested in Petitioner's Motion to Compel is completely irrelevant to either of the above-mentioned claims. *See* Fed. R. Civ. P. 26(b).

7. Documents related to the denial of Registrant's NDA by the Federal Drug Administration in 1997, should not be considered relevant to the claims above. *See* [Petitioner's Motion to Compel, p. 5]; *see* ¶ 6, *supra*. However, in the interests of avoiding a discovery dispute such as this one, documents sufficiently showing Registrant's attempt at an NDA in 1997 were attached to the Supplemental Response to the First Set of Requests for Production and Response to Petitioner's Second Set of Requests for Production. *See* [Ex. 2 to Petitioner's Motion to Compel (Attachments)]. The FDA denial of Registrant's NDA is not at issue in this case since the STERITALC mark was filed under 66(A) on a bona fide intent-to-use basis and not based on any prior use in the United States or any FDA approval.

8. Documents related to the IND procedure used by Registrant in 1996 for the sale of STERITALC, as discussed on pp. 5-6 of Petitioner's Motion to Compel, should not be considered relevant to the claims above. *See* [Petitioner's Motion to Compel, pp. 5-6]; *see* ¶ 6, *supra*. In the interests of avoiding a discovery dispute, Registrant explained the IND procedure used in 1996 within its response to the third set of discovery and attached a letter from the FDA giving permission to sell drugs under such a procedure. *See* [Ex. 3 to Petitioner's Motion to Compel]. However, Petitioner now seeks irrelevant information for purely harassing reasons regarding drug sales for a short period of time in 1996, who the drugs were sold to, and where such drugs were distributed. These sales have absolutely no relevance to 1) whether Registrant committed any type of fraud on the trademark office on December 28, 2004 or 2) whether Registrant's mark would cause confusion in U.S. commerce with Petitioner's alleged common law mark. *See* Fed. R. Civ. P. 26(b).

9. Petitioner implies in its Motion to Compel that information related to the IND procedure Registrant used in 1996 might prove wrongdoing on the part of Registrant in relation to

FDA procedure. *See* [Petitioner's Motion to Compel, pp. 8-9]. While Petitioner may believe such a "fishing expedition" will bring them evidence putting a future competitor in a bad light, such information could only be relevant for use in a forum other than this Trademark Trial & Appeal Board cancellation proceeding. Discovery through the TTAB procedure should not be a way for a party to gather information on business competitors that has nothing to do with the issue at hand. Registrant has made it clear in this proceeding that there have been no sales of STERITALC in the United States since the short period of time in 1996 and U.S. Reg. No. 3,093,389 makes it clear that the STERITALC mark was filed in 2004 on a 66(a) basis with a bona fide intent-to-use in United States commerce.

10. Petitioner argues that Registrant should "meaningfully" answer interrogatory No. 5 of Petitioner's Second Set of Interrogatories. *See* [Petitioner's Motion to Compel, pp. 6, 9]. While Registrant contends it should not be required to list all factual assertions or contentions in this case or draw legal conclusions in its response to an interrogatory, Registrant refers Petitioner to the Answer to the Petition for Cancellation and answers to Petitioner's interrogatories to see that Registrant filed for the STERITALC mark in 2004 on a 66(a) basis with a bona fide intent-to-use the mark in United States commerce and that Registrant believes it is entitled to use such mark.

WHEREFORE, Registrant respectfully requests that the board denies Petitioner's Motion to Compel Discovery Responses in its entirety. Registrant further requests that the proceeding is suspended pending the determination of this motion.

Respectfully submitted,



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Egbert Law Offices
412 Main St., 7th Floor
Houston, Texas 77002
(713)224-8080
(713)223-4873 fax
Attorney for Registrant

3-23-07

Date

CERTIFICATE OF SERVICE

I hereby certify that Registrant's Response to Petitioner's Motion to Compel Discovery Responses is being sent by first class mail on this 23rd day of March 2007 to the attorney of record for Petitioner at the following address:

Daniel G. Jarcho
Andrew J. Park
McKenna Long & Aldridge LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 496-7500
(202) 496-7756 fax
ATTORNEYS FOR PETITIONER



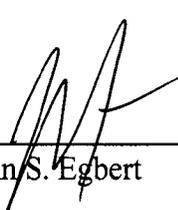
John S. Egbert
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Egbert Law Offices
412 Main Street, 7th Floor
Houston, Texas 77002
(713)224-8080
(713)223-4873 (Fax)

ATTORNEY FOR REGISTRANT

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of March 2007, this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to:

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451



John S. Egbert

Our File: 1811-71

Exhibit "A"

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

In the Matter of Registration No.
3,093,389 Registered May 16, 2006

BRYAN CORPORATION,)	
)	
Petitioner,)	
)	Cancellation No. 92046037
v.)	
)	
NOVATECH SA,)	
)	
)	
Registrant.)	
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**PETITIONER’S RESPONSE TO REGISTRANT’S FIRST SET OF
INTERROGATORIES TO PETITIONER**

Petitioner, Bryan Corporation (hereinafter “Petitioner”), hereby submits the following response to Registrant’s First Set of Interrogatories to Petitioner (“Interrogatories”).

General Objections

Various specific objections to particular interrogatories are set forth in each numbered response. In addition, Petitioner hereby asserts the following general objections to Registrant’s “Definitions” and “Instructions” to the Interrogatories.

Petitioner objects to Registrant’s Interrogatories to the extent that they request information protected by the attorney-client privilege or work product protection.

Petitioner also objects because Respondent has violated the limit of 75 interrogatories including subparts, imposed by 37 C.F.R. § 2.120(d)(1). In some cases, the text of the Interrogatories asks multiple questions. In addition, Registrant’s Interrogatories contain a

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“Definitions” and “Instructions” section which, among other things, requests Petitioner to answer a long series of questions for each of the Registrant’s Interrogatories.

Number “7” of the Definitions, for example, requests that the Petitioner answer a set of not less than eight questions for each document identified by Petitioner in response to the interrogatory, including (1) description of each document; (2) the date of each document; (3) each document’s present or last known location; (4) the custodian of each document; (5) the author; (6) the addressee; (7) the manner and date of each document’s disposition; and (8) all other means of identifying each document with sufficient particularity to satisfy the requirements for its inclusion in a demand or request.

Similarly, Number 3 (a) of the Instructions requests that the Petitioner answer a set of not less than six questions for each document identified in response to the interrogatory, including (1) the type of document; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for subpoena *duces tecum*, including, where appropriate, the author of the document, (5) the addressee of the document, and (6) the relationship of the author and addressee to one another.

Number 3(b) requests that the Petitioner answer a set of not less than five questions for each communication identified in response to the interrogatory, including (1) the name of the person making the communication; (2) the names of the persons present while the communication was being made; (3) the relationship of the persons present to the person making the communication; (4) the date and place of the communication; and (5) the general subject matter of the communication.

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Number 5 requests that the Petitioner answer a set of not less than six questions for each document identified in response to the interrogatory, including (1) a detailed description of the nature of the document and its contents; (2) identifying the person(s) who prepared or authorized the document; (3) the identifying the person(s) to whom the document or a copy thereof was sent; (4) specifying the date on which the document was prepared and transmitted; (5) specifying the date on which the document was lost or destroyed; and (6) if destroyed, the conditions and reasons for such destruction and the persons requesting and performing the destruction.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify the Petitioner, including each officer and director, giving each person's or entity's full name, address, title and duties (if applicable) with respect to Petitioner.

RESPONSE:

Petitioner is Bryan Corporation. The officers of Bryan Corporation are Frank Abrano and Bryan Abrano, 4 Plympton Street, Woburn, MA 01801. Frank Abrano is Chief Executive Officer and Bryan Abrano is Vice President.

INTERROGATORY NO. 2:

Identify and describe each and every good or service sold, distributed and/or otherwise offered by Petitioner under the designation "STERILE TALC POWDER."

RESPONSE:

STERILE TALC POWDER, NDC 63256-200-05 (NDA 21-388), a sclerosing agent for the prevention of recurrent malignant pleural effusion.

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INTERROGATORY NO. 3:

Identify and describe each and every good or service ever sold, distributed and/or otherwise offered by Petitioner under the designation "STERITALC."

RESPONSE:

No goods or services have been sold, distributed or otherwise offered by Petitioner under the designation "STERITALC."

INTERROGATORY NO. 4:

State the exact date(s) on which Petitioner will rely as to when use of the term "STERILE TALC POWDER" commenced in connection with the sale, distribution and/or other offer for any goods or services.

RESPONSE:

Petitioner's date of first use of its STERILE TALC POWDER mark as a trademark, with FDA approval for the sale of its drug and approval for the use of the STERILE TALC POWDER mark, was at least as early as December 15, 2003.

INTERROGATORY NO. 5:

Identify all documents, purchase orders, invoices, labels, electronic receipts, or any writing whatsoever, which Petitioner will rely upon to establish the date(s) specified in answer to Interrogatory No. 4.

RESPONSE:

Petitioner has not yet identified the documents that it will rely upon to establish the date specified in answer to Interrogatory No. 4.

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INTERROGATORY NO. 6:

With respect to the first use(s) of the term "STERILE TALC POWDER" in connection with the sale or distribution of each item of goods or services identified in Interrogatory No. 2, state:

(a) The manner in which the mark was used, e.g., by affixation to containers, or labels, used in advertising via the Internet, etc.;

(c) Whether the good or service was sold;

(d) Whether the good or services was distributed free of charge;

RESPONSE:

(a) The Petitioner's mark appears on the labels attached to the containers of the goods identified in response to Interrogatory No. 2, on sell sheets, and on package inserts.

(b) No sub-paragraph (b) exists in Registrant's Interrogatory.

(c) The goods identified in response to Interrogatory No. 2 were sold directly by Petitioner to end-users.

(d) The goods identified in response to Interrogatory No. 2 were not distributed free of charge.

INTERROGATORY NO. 7:

Describe how Petitioner created, conceived, selected, cleared, adopted, acquired, or otherwise made the decision to use the term "STERILE TALC POWDER," identifying all Persons responsible for selecting the Mark and all Documents related thereto.

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RESPONSE:

The FDA, during its formal consideration of the name of Petitioner's drug, advised and insisted that Petitioner use the name "STERILE TALC POWDER" whereupon Petitioner decided to use and adopted said name.

INTERROGATORY NO. 8:

Identify by name, address, and firm or corporate affiliation the person(s) who was primarily responsible for selecting the term "STERILE TALC POWDER."

RESPONSE:

Frank Abrano, Chief Executive Officer of Bryan Corporation, 4 Plympton Street, Woburn, MA 01801.

INTERROGATORY NO. 9:

Identify all writings in the possession, custody or control of Petitioner including, but not limited to, search reports, market surveys, interoffice memoranda, non-privileged written opinions of counsel, etc., referring or relating to the adoption of the term "STERILE TALC POWDER."

RESPONSE:

No writings have been identified in answer to Interrogatory No. 9.

INTERROGATORY NO. 10:

State whether Petitioner will make available for inspection and copying the writings identified in answer to Interrogatory Nos. 5 and 9, and if not, state why.

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RESPONSE:

No. No writings have been identified in answer to Interrogatory Nos. 5 and 9.

INTERROGATORY NO. 11:

If the answer to Interrogatory No. 10 is in the negative, state why.

RESPONSE:

See response to Interrogatory No. 10.

INTERROGATORY NO. 12:

If the answer to Interrogatory No. 10 is in the affirmative, attach such writing(s) to the answers to these interrogatories.

RESPONSE:

See response to Interrogatories 5, 9, and 10.

INTERROGATORY NO. 13:

Identify and describe in detail the channels of distribution in the United States of each product or service distributed and/or sold under the term "STERILE TALC POWDER"

RESPONSE:

Petitioner sells and distributes its good directly to hospital and hospital pharmacy end-users through direct sales and direct distribution.

INTERROGATORY NO. 14:

Identify and describe in detail the channels of distribution in the United States of each product or service ever distributed and/or sold under the term "STERITALC."

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RESPONSE:

Petitioner has never sold nor distributed a product or service under the term "STERITALC."

INTERROGATORY NO. 15:

State all purchasers and/or distributors, including the name, entity name, and address for each, that Petitioner uses or has used in relation to all products sold or distributed under the term "STERILE TALC POWDER."

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery, is overly burdensome, and calls for information which is proprietary and confidential.

INTERROGATORY NO. 16:

Identify all purchasers by class (e.g., retailers, general public) for each product Petitioner has distributed or sold under the terms "STERILE TALC POWDER."

RESPONSE:

Petitioner has sold and distributed goods under the term "STERILE TALC POWDER" to hospitals and hospital pharmacies.

INTERROGATORY NO. 17:

List all geographic areas (by city and/or state) in which Petitioner sells, or has sold, each product or service under the term "STERILE TALC POWDER."

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RESPONSE:

Petitioner sells and has sold its product bearing the "STERILE TALC POWDER" mark in all states and in all major metropolitan cities.

INTERROGATORY NO. 18:

List all newspapers or magazines in the United States in which Petitioner has advertised each product under the term "STERILE TALC POWDER."

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. Notwithstanding Petitioner's objection, and although Petitioner has no obligation to provide such information, in an effort to resolve discovery disputes in good faith without the need for TTAB intervention, Petitioner hereby advises Registrant that Petitioner has advertised its product under the term STERILE TALC POWDER in the Chest Journal.

INTERROGATORY NO. 19:

List all Internet Search Engines in which Petitioner has contacted or paid for listing services under the term "STERILE TALC POWDER" and the dates thereof.

RESPONSE:

There is no listing in answer to Interrogatory No. 19.

INTERROGATORY NO. 20:

List all radio and/or TV stations in the United States where Petitioner has advertised each product or service under the term "STERILE TALC POWDER" and the dates thereof.

RESPONSE:

There is no advertisement in answer to Interrogatory No. 20.

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INTERROGATORY NO. 21:

List all other media, not already identified in Interrogatories Nos. 18, 19, and 20, where Petitioner has advertised each product or service under the term "STERILE TALC POWDER" and the dates thereof.

RESPONSE:

There is no advertisement in answer to Interrogatory No. 21.

INTERROGATORY NO. 22:

State any instance of actual confusion among consumers as to the origin of any goods or services sold or distributed under the term "STERILE TALC POWDER" or actual confusion among consumers as to the origin of any goods or services sold or distributed under Registrant's "STERITALC" Mark, how such confusion was determined, and whether such confusion was as to the origin of goods or as to the origin of services, and in what specific type of commerce such actual confusion occurred.

RESPONSE:

At this early point in discovery, evidence of actual confusion has not yet been gathered.

INTERROGATORY NO. 23:

Identify all arrangements and/or contracts in which Petitioner has sold or distributed products to third parties in relation to the term "STERILE TALC POWDER"

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery, is overly burdensome, and calls for information which is proprietary and confidential. Notwithstanding Petitioner's objection, and although Petitioner has no

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obligation to provide such information, in an effort to resolve discovery disputes in good faith without the need for TTAB intervention, Petitioner hereby advises Registrant that Petitioner sells and distributes its good directly to end-users through direct sales and direct distribution. Petitioner does not sell nor distribute its products bearing the STERILE TALC POWDER mark to third parties.

INTERROGATORY NO. 24:

Identify all arrangements and/or contracts in which Petitioner has sold or distributed products to third parties in relation and/or under the term "STERITALC."

RESPONSE:

Petitioner has never sold nor distributed a product or service under the term "STERITALC."

INTERROGATORY NO. 25:

State the names and relationship to Petitioner, if any, of any witnesses, including, but not limited to, expert witnesses, Petitioner may or will use in this cancellation proceeding through direct examination, deposition, affidavit and/or declaration, and identify the topic(s) each such witness may or will provide testimony regarding.

RESPONSE:

Petitioner objects to this interrogatory to the extent that it calls for identification of consulting experts who will not testify. Petitioner has not yet identified the lay or expert witnesses it may or will use in this proceeding.

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INTERROGATORY NO. 26:

Describe any known information regarding use and/or registration by third parties of trademarks identical or similar to the term "STERILE TALC POWDER" for the same or closely related goods or services as used on the products or services of the Petitioner.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery.

INTERROGATORY NO. 27:

Identify any other litigation or controversies, past or present, involving any trademark, service mark, common law mark, or FDA approved name now or previously used or owned in whole or in part by Petitioner.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. Notwithstanding Petitioner's objection, and although Petitioner has no obligation to provide such information, in an effort to resolve discovery disputes in good faith without the need for TTAB intervention, Petitioner hereby advises Registrant that based on its knowledge and recollection, there has not been any litigation or administrative proceeding (other than the present one for cancellation) or settlement thereof involving the mark STERILE TALC POWDER to which Petitioner was a party.

INTERROGATORY NO. 28:

Identify, to the extent possible, any and all documents responsive to the foregoing interrogatories which are lost, and identify the date(s) the loss was first discovered, the person(s)

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who first discovered the loss, and the person(s) most knowledgeable about the contents of such lost documents.

RESPONSE:

Petitioner objects to this interrogatory to the extent that it calls for information regarding documents as to which Petitioner has made an objection in response to another interrogatory. As to any other documents addressed by interrogatory No. 28, Petitioner is not aware of any lost documents.

INTERROGATORY NO. 29:

State whether Petitioner has a standardized quality control program, and if so, describe Petitioner's standards and/or mechanisms for controlling the quality of the goods sold under the term "STERILE TALC POWDER."

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery and seeks information that is proprietary and confidential. Notwithstanding Petitioner's objection, and although Petitioner has no obligation to provide such information, in an effort to resolve discovery disputes in good faith without the need for TTAB intervention, Petitioner hereby advises Registrant that Petitioner has a stringent quality control program for controlling the quality of the goods sold under the STERILE TALC POWDER mark and is also subject to regular FDA inspections.

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INTERROGATORY NO. 30:

For each product on which the term "STERILE TALC POWDER" appears, identify by name, address, and firm or corporate affiliation the person(s) who was primarily responsible for designing the label.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery.

INTERROGATORY NO. 31:

Identify by name, address, and firm or corporate affiliation the person(s) who was primarily responsible for any contracts, assignments, or otherwise transfers of interest that involve the term "STERILE TALC POWDER."

RESPONSE:

There is no party in answer to Interrogatory No. 31.

INTERROGATORY NO. 32:

For each product listed in response to Interrogatory No. 2, give the manufacturer's suggested retail price of each product.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery and calls for information which is proprietary and confidential.

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INTERROGATORY NO. 33:

For each product listed in response to Interrogatory No. 2, list the business name of all retail store chains, internet sites, or catalogue services selling products under the term "STERILE TALC POWDER."

RESPONSE:

Petitioner sells and distributes its good directly to end-user hospital and hospital pharmacies through direct sales and direct distribution. Petitioner does not sell nor distribute its products bearing the STERILE TALC POWDER mark to third parties.

INTERROGATORY NO. 34:

Describe in detail the past business relationship between Petitioner and Registrant, identifying any distributorship agreements and product lists that were part of the business relationship between Petitioner and Registrant.

RESPONSE:

Petitioner acted as a U.S. distributor of tracheal stents for Registrant. The tracheal stents are not in any way related to a talc-based drug and did not bear the STERITALC mark nor a similar mark, and, therefore, are not connected in any way to the subject matter of the Cancellation Petition at issue. Petitioner never distributed nor sold any talc-based product from Registrant in the U.S.

INTERROGATORY NO. 35:

Identify all products Petitioner sold or distributed that contained talc or talcum powder prior to the sale or distribution of products under the term "STERILE TALC POWDER,"

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including the dates of such sale or distribution, the marks that such products were sold or distributed under, and the name and address of the company that manufactured such products.

RESPONSE:

From approximately 1993 to July 1994, Petitioner distributed aerosol talc powder from Axion S.A.R.L., a French company. This product was initially named MUCOSOL, but upon information and belief, the name was abandoned due to a third party's claim of ownership to the same name. The product was renamed STERILE AEROSOL TALC. Axion claimed to have FDA approval or an NDA to sell this product in the U.S., but in fact, it did not. As a result, the STERILE AEROSOL TALC product was recalled under the direction of the FDA in July 1994.

Beginning in the later part of the 1990's, Petitioner manufactured and sold an aerosol drug containing talc called SCLEROSOL and a powder-based drug containing talc called STERILE TALC.

INTERROGATORY NO. 36:

Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

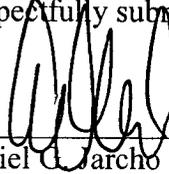
Cancellation No. 92046037
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RESPONSE:

Petitioner objects to this interrogatory under the attorney-client privilege and work product protection to the extent that it seeks information regarding Petitioner's attorneys. Frank Abrano and Bryan Abrano participated in preparation of all of the responses to these interrogatories.

Dated: September 27, 2006

Respectfully submitted,



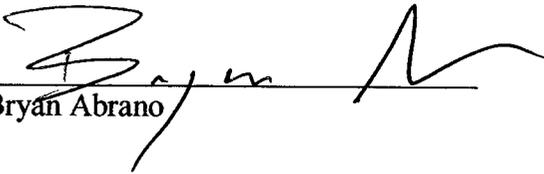
Daniel G. Jarcho
Andrew J. Park
Attorneys for Petitioner

McKenna Long & Aldridge LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 496-7500
(202) 496-7756 fax

VERIFICATION

I, Bryan Abrano, certify under penalty of perjury that the foregoing Responses to Registrant's First Set of Interrogatories to Petitioner are true and correct to the best of my information, knowledge and belief.

September 27th, 2006



Bryan Abrano

Respectfully submitted,



Daniel G. Jarcho
Andrew J. Park
Attorneys for Petitioner

September 27, 2006

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

In the Matter of Registration No.
3,093,389 Registered May 16, 2006

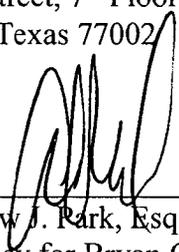
BRYAN CORPORATION,)	
)	
Petitioner,)	
)	Cancellation No. 92046037
v.)	
)	
NOVATECH SA,)	
)	
_____)	
Registrant.)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONER'S RESPONSE TO REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER** was served on Registrant by mailing a true copy thereof to the attorneys of record via UPS addressed as follows:

John S. Egbert, Esq.
Egbert Law Offices
State National Building
412 Main Street, 7th Floor
Houston, Texas 77002

this 27 day of September, 2006.



Andrew J. Park, Esq.
Attorney for Bryan Corporation, Petitioner

McKenna Long & Aldridge LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 496-7500
(202) 496-7756 fax

Exhibit "B"

Cancellation No. 92046037
Trademark Reg. No. 3,093,389

"Definitions" and "Instructions" section which, among other things, requests Petitioner to answer a long series of questions for each of the Registrant's Interrogatories.

Number 3(a) of the Definitions, for example, requests that the Petitioner answer a set of not less than six questions for each document identified in response to the interrogatory, including (1) the type of document; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document for subpoena *duces tecum*, including, where appropriate, the author of the document; (5) the addressee of the document; and (6) the relationship of the author and addressee to one another.

Number 3(b) requests that the Petitioner answer a set of not less than five questions for each communication identified in response to the interrogatory, including (1) the name of the person making the communication; (2) the names of the persons present while the communication was being made; (3) the relationship of the persons present to the person making the communication; (4) the date and place of the communication; and (5) the general subject matter of the communication.

Number 5 requests that the Petitioner answer a set of not less than six questions for each document identified in response to the interrogatory, including (1) a detailed description of the nature of the document and its contents; (2) identifying the person(s) who prepared or authorized the document; (3) the identifying the person(s) to whom the document or a copy thereof was sent; (4) specifying the date on which the document was prepared and transmitted; (5) specifying the date on which the document was lost or destroyed; and (6) if destroyed, the conditions and reasons for such destruction and the persons requesting and performing the destruction.

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Trademark Reg. No. 3,093,389

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

For each New Drug Application (NDA) Petitioner has ever filed with the Food and Drug Administration (FDA) of the United States of America seeking approval of a drug containing an active ingredient of talc, identify the file number, filing date, approval date (if any), the brand name the drug was filed under, the generic name the drug was filed under, the generic name assigned to the drug, and any special labeling requirements for the drug.

RESPONSE:

Petitioner has filed NDAs for the following:

1. File No.: NDA 20-587, August 15, 1995

Approval Date: December 24, 1997

Brand Name: SCLEROSOL

Generic Name: N/A

Special Labeling: N/A

2. File No.: NDA 21-388, September 20, 2002

Approval Date: December 15, 2003

Brand Name: STERILE TALC POWDER

Generic Name: N/A

Special labeling: N/A

INTERROGATORY NO. 2:

For each instance that Petitioner has ever filed with the Secretary of the Department of Health and Human Services seeking an orphan drug designation of a drug containing an active

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ingredient of talc, identify the date of such application, the date of approval for the application (if any), the duration of such orphan drug designation, any file number, the brand name of the drug, and the generic name of the drug given an orphan drug designation.

RESPONSE:

Petitioner has the following orphan drug designations:

1. File No.: NDA 20-587, August 15, 1995

Orphan Drug Designation: September 18, 1995

Orphan Drug Designation Approval: December 24, 1997

Brand Name: SCLEROSOL

Generic Name: N/A

2. File No.: NDA 21-388, September 20, 2002

Orphan Drug Designation: covered by the SCLEROSOL orphan drug designation

Brand Name: STERILE TALC POWDER

Generic Name: N/A

INTERROGATORY NO. 3:

Describe in detail the past business relationship between Petitioner and Axion S.A.R.L., a French company that was a predecessor to Registrant, identifying any distributorship agreements and product lists that were a part of the business relationship.

RESPONSE:

From approximately 1993 to July 1994, Petitioner distributed tracheal stents and aerosol talc from Axion S.A.R.L. This product was initially named MUCOSOL, but upon information and belief, the name was abandoned due to a third party's claim of ownership to the same name.

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The product was renamed STERILE AEROSOL TALC. Axion claimed to have FDA approval or an NDA to sell this product in the U.S., but in fact, it did not. As a result, the STERILE AEROSOL TALC product was recalled under the direction of the FDA in July 1994. Petitioner has no knowledge of the existence of a distributorship agreement or product list in connection with the business relationship it had with Axion.

INTERROGATORY NO. 4:

Describe in detail the past business relationship between Petitioner and Societe Mediterraneenne d' Aersols (SMA Corporation), a French company that was a predecessor to Registrant, identifying any distributorship agreements and product lists that were a part of the business relationship.

RESPONSE:

Petitioner has had no business relationship with Societe Mediterraneenne d' Aersols.

INTERROGATORY NO. 5:

Describe in detail the past business relationship between Petitioner and Bruno Ferreyrol, current executive director of Registrant, including the dates of such business relationship and the nature of such business relationship.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it is vague and ambiguous, not reasonably calculated to lead to admissible evidence, and is unduly burdensome since Registrant seeks information that could be easily obtained from its own records. Notwithstanding Petitioner's objections, and although Petitioner has no obligation to provide such information, in an effort to resolve discovery disputes in good faith without the need for TTAB intervention,

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Petitioner hereby advises Registrant that upon information and belief, Bruno Ferreyrol is an employee of Registrant. Any contacts Petitioner may have had with Bruno Ferreyrol were in connection with Petitioner's past relationship with Registrant concerning the U.S. distribution of tracheal stents.

INTERROGATORY NO. 6:

Describe in detail the MUCOSOL brand drug product that was distributed by Petitioner, including the dates of such distribution, the generic name of the drug, the active ingredient(s), the type of container the drug was distributed in, the manufacturer of such drug, and all uses for such drug.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it is vague and ambiguous, not reasonably calculated to lead to admissible evidence, and is unduly burdensome since Registrant seeks information that could be easily obtained from its own records.

INTERROGATORY NO. 7:

Describe in detail the SCLEROSOL brand drug product produced and/or distributed by Petitioner, including the dates of such distribution, the generic name of the drug, the active ingredient(s), the type of container the drug is in, the manufacturer of such drug, and all uses for such drug.

RESPONSE:

Petitioner objects to this interrogatory on the grounds that it seeks information beyond the proper scope of discovery. Notwithstanding Petitioner's objections, and although Petitioner has no obligation to provide such information, in an effort to resolve discovery disputes in good faith

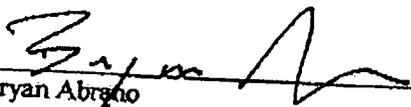
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without the need for TTAB intervention, Petitioner hereby advises Registrant that Sclerosol is an FDA approved pharmaceutical that was filed under NDA 20-587 and approved on December 24, 1997. It is indicated for the prevention of recurrent malignant pleural effusions in symptomatic patients. Petitioner has sold and distributed the SCLEROSOL product since its approval. The manufacturer is a contract manufacturer. The active ingredient of SCLEROSOL is hydrated magnesium silicate, or talc. There is no generic name for the SCLEROSOL product.

VERIFICATION

I, Bryan Abrano, certify under penalty of perjury that the foregoing Responses to Registrant's Second Set of Interrogatories to Petitioner are true and correct to the best of my information, knowledge and belief.

November 22, 2006


Bryan Abrano

Respectfully submitted as to objections,



Daniel G. Jarcho
Andrew J. Park
Attorneys for Petitioner

November 22, 2006
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