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April 12, 2007

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

**Re: Cancellation Number 92046037
Bryan Corporation v. Novatech SA
Our Ref.: 25114.0008**

Dear Sir/Madam:

Enclosed please find Petitioner's Reply in Support of its Motion to Compel Discovery Responses from Registrant for the above-referenced cancellation. Please return the enclosed yellow postcard with a USPTO date stamp. Thank you.

Sincerely yours,



Kristin H. Landis

KHL:khl

04-12-2007

Inc. v. Kane Steel Co. Inc., 894 F.2d 1318, 1320 (Fed. Cir. 1990). Accordingly, Federal Rule of Civil Procedure 26(b), as well as TBMP rules 405 and 406, permit parties to obtain discovery regarding any matter, not privileged, that is relevant to the claims or defenses of any party. Relevant information need not be admissible if the request is reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26; TBMP 405 and 406. There is no question that Bryan Corp.'s discovery requests are relevant to its fraud claims.

Novatech erroneously asserts that Bryan Corp.'s discovery requests are not relevant because Novatech's trademark registration was based upon a "bona fide" intent-to-use STERITALC in United States commerce. Resp. ¶ 7, 9, 10. Novatech conveniently ignores, however, the fact that its "intent-to-use" application was based upon its representation to the PTO that Novatech had the "right to use" STERITALC in commerce. Bryan Corp.'s fraud claim challenges whether Novatech believed it had the right to use STERITALC, and thus, whether the application was "bona fide." Indeed, Bryan Corp. contends that Novatech falsely claimed it had a "right to use" STERITALC in commerce when, based upon its prior FDA dealings, Novatech knew the FDA has not approved STERITALC for use in commerce. In this context, FDA approval is a prerequisite to obtaining trademark rights. *See The Clorox Co.*, 214 U.S.P.Q. 850, 851 (T.T.A.B. 1982); 21 U.S.C. § 355 (2003). Bryan Corp.'s discovery requests seek information regarding only Novatech's NDA and IND procedures, which relate directly to Novatech's understanding of FDA rules and regulations regarding use of drugs in commerce. Novatech's understanding of FDA rules is indisputably relevant to whether Novatech knew, at the time it declared otherwise, that it did not have the right to use STERITALC in commerce. The question is the central focus of Bryan Corp.'s fraud claim. Accordingly, Bryan Corp.'s Motion to Compel should be granted.

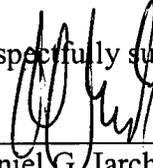
B. Novatech should be Required to Answer Bryan Corp.'s Contention Interrogatory.

Bryan Corp.'s fifth interrogatory in its Second Set of Interrogatories asks Novatech whether its statement to the PTO that Novatech had the right to use STERITALC in commerce meant Novatech believed it had the right to sell the STERITALC drug in U.S. commerce. In other words, Bryan Corp. simply seeks Novatech's state of mind at the time it filed its registration. As the Board has determined, an interrogatory that is otherwise proper is not objectionable merely because it requires a party to give an opinion or contention that relates to fact or application of law to fact. *See* Fed. R. Civ. P. 33(b), and *Johnson Pump/General Valve, Inc. v. Chromalloy American Corp.*, 10 U.S.P.Q.2d 1671, 1676 (T.T.A.B. 1978). Consequently, Novatech's "contention" that it should not be required to "list all factual assertions or contentions" lacks all merit. Moreover, Novatech's argument that it has answered the interrogatory by merely reiterating that its registration was based upon a "66(a) [application] with a bona fide intent-to-use the mark in United States commerce and that [Novatech] believes it is entitled to use such mark," also lacks merit. Novatech has not answered the question posed by the interrogatory - at the time it filed its registration, why did Novatech believe it had the right to use the STERITALC mark in commerce? For the reasons discussed above, as well as in the Motion to Compel, Novatech should be compelled to answer this question.

CONCLUSION

Based on foregoing, the Board should grant Bryan Corp.'s Motion to Compel Discovery Responses from Novatech.

Respectfully submitted,



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Dated: 4/12/07

Attorneys for Petitioner Bryan Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2007, a copy of the foregoing document was served, by first class mail, postage prepaid, upon:

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