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

Proceeding	92052897
Party	Defendant Galderma Laboratories, Inc.
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Date	06/14/2013
Attachments	Registrants Response in Opposition to Petitioners Cross Motion 06-14-13.pdf(2710379 bytes )

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

**Thomas Sköld**  
Petitioner,

v.

**Galderma Laboratories, Inc.**  
Registrant.

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Cancellation No.: 92052897

Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

**REGISTRANT'S RESPONSE IN OPPOSITION TO  
PETITIONER'S CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Registrant, Galderma Laboratories, Inc., hereby responds to Petitioner's Cross Motion for Partial Summary Judgment filed May 15, 2013 ("Petitioner's Cross Motion"). For the reasons set forth below, namely, (1) that Petitioner's Cross Motion was untimely filed, and (2) that Petitioner's two requested factual findings are not supported by the record, Petitioner is not entitled to judgment as a matter of law on either requested finding.

**I. Introduction**

Following extensive discovery, Registrant moved for summary judgment based on Petitioner's failure to produce any evidence that would support Petitioner's claim that he had established trademark rights in the mark RESTORADERM prior to Registrant's filing date of February 28, 2002 ("Registrant's Motion"). Petitioner filed a Response to Registrant's Motion which, not surprisingly, contained no new evidence to support his claim, to which Registrant has already filed a Reply specifically pointing out its deficiencies. Registrant looks forward to the Board's consideration of Registrant's Motion, which should be dispositive of this proceeding.

Petitioner has now, however, after the commencement of Petitioner's testimony period, filed his own motion asking the Board to rule on two factual issues, namely, (1) that "Registrant made no use of the mark Restoraderm prior to 28 February 2002," and (2) that "Petitioner had prior use, relative to

Registrant, of the mark Restoraderm under §2(d) of the Lanham Act (15 U.S.C. §1052(d)) on 11 Sept 2001, on 12 September 2001, in November 2001, in December 2001, on or about 18 January 2002, and on 11 February 2002.” Notably, Petitioner’s Cross Motion is not seeking a ruling on the ultimate issue of priority which would require evidence of non-abandonment of any established trademark rights, among other elements, let alone on likelihood of confusion.

In response to Petitioner’s first request, Registrant shows by this Response that it did in fact use the mark Restoraderm prior to February 28, 2002, as evidenced by its use of the mark in trademark filings covering 18 nations, all officially on file prior to February 28, 2002. While such use is not “use in commerce,” Petitioner’s Cross Motion specifically asks the Board for a ruling on “use” and not “use in commerce” since, as Petitioner acknowledges in Petitioner’s Cross Motion, Registrant has already admitted in a response to a request for admission that it had not used the mark in commerce in connection with any product prior to February 28, 2002.

Turning to Petitioner’s second request regarding his own use of the mark, it is noted that here Petitioner is asking for a ruling that is based on use sufficient to establish trademark rights by referencing Section 2(d) of the Lanham Act in his request. The evidence that Petitioner relies on, however, is the same evidence that he submitted in opposition to Registrant’s Motion, and thus is insufficient to support Petitioner’s requested finding for the reasons stated in Registrant’s Reply supporting Registrant’s Motion. In particular, his relied-upon evidence consists merely of (1) testimony that he showed to, at most, 3 companies a one-page document that described some technology that he was hoping one of the companies would invest millions of dollars into in an attempt to develop the technology into a viable product, which one-page document concluded with the phrase “LipoDerm Lipoid Restoraderm Technology,”<sup>1</sup> and (2) testimony, with no physical supporting evidence, that he sent or hand-delivered himself samples of a base formulation labeled Restoraderm to Registrant’s predecessor-in-interest.<sup>2</sup> Neither piece of evidence

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<sup>1</sup> See Sköld Brief Exhibit 4, Sköld Decl., Exhibit E; Sköld Brief Exhibit 4, Sköld Decl., ¶¶ 4, 5.

<sup>2</sup> See Sköld Brief Exhibit 4, Sköld Decl., ¶ 6.

supports Petitioner's requested finding that he had prior use relative to Registrant of the mark Restoraderm under Section 2(d) of the Lanham Act, especially under the heightened standards required on summary judgment.

**II. Petitioner's Cross Motion, Filed after the Commencement of his Testimony Period, Is Untimely Pursuant to 37 C.F.R. § 2.127(e)(1).**

Petitioner's Cross Motion was filed untimely and should be denied in its entirety on that basis. A motion for summary judgment "should be filed prior to the commencement of the first testimony period." 37 C.F.R. § 2.127(e)(1). Accordingly, "[a] motion for summary judgment made after the commencement of the trial is untimely." *Rainbow Carpet v. Rainbow Int'l Carpet Dyeing & Cleaning Co.*, 226 U.S.P.Q. 718, 718 (T.T.A.B. 1985), and "[t]he Board will generally not consider it" unless it involves a matter of res judicata or collateral estoppel or unless the parties stipulated otherwise. T.B.M.P. § 528.02. Further, "the Board often will deny a summary judgment motion on the basis of untimeliness without waiting to see whether the nonmoving party raises this objection in its response." T.B.M.P. § 528.02.

The testimony period in this cancellation proceeding commenced on May 2, 2013, and Petitioner's Cross Motion was not filed until May 15, 2013. The parties have not stipulated to the consideration of Petitioner's Cross Motion, nor does it involve collateral estoppel or res judicata. Petitioner's Cross Motion, therefore, was filed untimely and should be denied.

Petitioner's Cross Motion was filed untimely despite the fact that this cancellation proceeding was suspended on May 9, 2013, following Registrant's Motion. Inter partes proceedings are not automatically suspended upon the filing of a dispositive motion. *Super Bakery Inc. v. Benedict*, 96 U.S.P.Q.2d 1134, 1136 (T.T.A.B. 2010) ("The mere filing of a motion for summary judgment . . . does not, however, automatically suspend a proceeding."); *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 229 U.S.P.Q. 955, 965 (T.T.A.B. 1986). All times continue to run after a dispositive motion is filed until the Board issues a suspension order. T.B.M.P. § 510.03(a). Thus, the present proceeding was not automatically suspended on April 30, 2013 when Registrant filed Registrant's Motion. All times relating

to the proceeding, including the opening of the first testimony period on May 2, 2013, continued to run until May 9, 2013, when the Board acted to suspended the proceeding. Yet, Petitioner did not file Petitioner's Cross Motion until a week later on May 15, 2013.

Because Petitioner's Cross Motion was filed after his testimony period opened, Petitioner's Cross Motion was untimely, and it should be denied with respect to both issues upon which Petitioner seeks judgment.

**III. There Is a Genuine Issue of Material Fact Whether Registrant Made No "Use" of the Mark RESTORADERM prior to February 28, 2002.**

Registrant is entitled to a priority date with respect to its rights in the trademark RESTORADERM of at least as early as February 28, 2002, the filing date of the trademark application for the mark maturing into U.S. Reg. No. 2,985,751, which is made of record for purposes of this proceeding pursuant to 37 C.F.R. § 2.122(b). *See Zirco Corp. v. Am. Tel. & Tel. Co.*, 21 U.S.P.Q.2d 1542, 1544-45 (T.T.A.B. 1991). Moreover, Registrant, as referenced in Petitioner's Cross Motion, has already admitted in a response to a request for admission that it had not used the mark in commerce in connection with any product prior to February 28, 2002. Petitioner, however, has now moved for the Board to rule on summary judgment that "Registrant made no use of the mark Restoraderm prior to 28 February 2002."

Petitioner, as the party who has moved for summary judgment, has the burden of showing the absence of any genuine issues of material fact, and that he is entitled to judgment on his requested findings as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Evidence submitted by Registrant, as the non-movant, is to be believed, and all justifiable inferences are to be drawn in Registrant's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Opryland USA Inc. v. Great Am. Music Show Inc.*, 23 U.S.P.Q.2d 1471, 1472 (Fed. Cir. 1992).

Prior to February 28, 2002, Registrant, through its predecessor-in-interest CollaGenex, did use the mark RESTORADERM, even if such use was not "in commerce." More than a month earlier than

February 28, 2002, CollaGenex was having trademark applications for the mark RESTORADERM prepared and filed throughout the world.<sup>3</sup> In particular, all before February 28, 2002, CollaGenex used the mark in connection with the following trademark filings covering 18 nations:<sup>4</sup>

- i. On January 14, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in the United Kingdom, which application matured into Reg. No. 2290042.
- ii. On January 14, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in the European Union (which included 15 nations at the time), which application matured into Reg. No. 002537074.
- iii. On January 15, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in Switzerland, which application matured into Reg. No. 498975.
- iv. On January 15, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in Norway, which application matured into Reg. No. 216494.
- v. On January 24, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in Israel, which application matured into Reg. No. 154752.

As the Board knows, deciding on and then implementing a far flung trademark filing program covering 18 nations requires considerable internal and external communications involving a trademark, such as engaging in clearance activities, seeking budgeting approval, providing instructions to trademark agents in many countries, getting Powers of Attorney executed, and actually filing the applications, all of which activities would have necessarily included use of the mark RESTORADERM. Based on Registrant's submission into evidence that multiple trademark applications for the mark RESTORADERM were filed by Registrant prior to February 28, 2002, the justifiable inference to be

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<sup>3</sup> See Registrant's Response Decl. of Robert, ¶ 10.

<sup>4</sup> See *id.*, and Exhibit A thereto.

drawn is that Registrant had used the mark RESTORADERM prior to February 28, 2002, thus necessitating the denial of the first finding sought in Petitioner's Cross Motion.

Notably, Petitioner has never opposed or sought to cancel any of Registrant's 99 issued trademark registrations or 10 pending trademark applications for RESTORADERM anywhere in the world, other than the two U.S. trademark registrations that are the subject of this proceeding, from which additional inferences regarding the parties' respective rights in the RESTORADERM mark can be drawn.<sup>5</sup>

**IV. There Is Also a Genuine Issue of Material Fact Whether Petitioner Has Established Prior Usage in the Mark RESTORADERM as Compared to Registrant.**

As stated earlier, Registrant is entitled to a priority date with respect to its rights in the trademark RESTORADERM of at least as early as February 28, 2002, the filing date of the trademark application for the mark maturing into U.S. Reg. No. 2,985,751, which is made of record for purposes of this proceeding pursuant to 37 C.F.R. § 2.122(b). *See Zirco Corp. v. Am. Tel. & Tel. Co.*, 21 U.S.P.Q.2d 1542, 1544-45 (T.T.A.B. 1991). Petitioner, in Petitioner's Cross Motion, now asks the Board to find that evidence of two alleged activities that pre-date Registrant's priority date were sufficient to establish trademark rights, namely, (1) testimony that he showed to, at most, 3 companies a one-page document that described some technology that he was hoping one of the companies would invest millions of dollars into in an attempt to develop the technology into a viable product, which one-page document concluded with the phrase "LipoDerm Lipoid Restoraderm Technology,"<sup>6</sup> and (2) testimony, with no physical supporting evidence, that he sent or hand-delivered himself samples of a base formulation labeled Restoraderm to Registrant's predecessor-in-interest.<sup>7</sup> Neither piece of evidence supports Petitioner's requested finding that he had prior use relative to Registrant of the mark Restoraderm under Section 2(d) of the Lanham Act, especially under the heightened standards required on summary judgment.

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<sup>5</sup> See *id.* at ¶¶ 10, 11, and Exhibit A thereto.

<sup>6</sup> See Sköld Brief Exhibit 4, Sköld Decl., Exhibit E; Sköld Brief Exhibit 4, Sköld Decl., ¶¶ 4, 5.

<sup>7</sup> See Sköld Brief Exhibit 4, Sköld Decl., ¶ 6.

To establish priority under Section 2(d), a party must prove that “it owns ‘a mark or trade name previously used in the United States . . . and not abandoned . . . .’” *Giersch v. Scripps Networks Inc.*, 90 U.S.P.Q.2d 1020, 1022 (quoting 15 U.S.C. § 1052). Absent a federal trademark registration, the party seeking to establish prior use under Section 2(d) must rely on common law trademark use or other use analogous to trademark use. *T.A.B. Sys. v. PacTel Teletrac*, 77 F.3d 1372, 1376, 37 U.S.P.Q.2d 1879, 1881 (Fed. Cir. 1996); *Giersch*, 90 U.S.P.Q.2d at 1022-23.

Common law trademark rights accrue when a party actually uses a mark in a genuine commercial transaction in the marketplace in the United States. *See Allard Enters., Inc. v. Adv. Programming Res., Inc.*, 146 F.3d 350, 358, 46 U.S.P.Q.2d 1865, 1870 (6th Cir. 1998); *American Express Co. v. Goetz*, 85 U.S.P.Q.2d 1913, 1916 (2d Cir. 2008) (“[T]here can be no trademark absent goods sold and no service mark without services rendered.”). For goods, actual use requires that goods bearing the mark be sold or transported in commerce. *Allard Enters., Inc.*, 146 F.3d at 1871 (noting that the Lanham Act, 15 U.S.C. § 1127, articulates the elements of the manner and type of usage traditionally governing the establishment of common law trademark rights). Transportation of branded goods in lieu of sales will only suffice if done in an open and public manner. *Simmons v. Western Publ’g Co.*, 834 F. Supp. 393, 397, 31 U.S.P.Q.2d 1143, 1146 (N.D. Ga. 1993). The limited delivery of material to a small number of potential business partners for purposes of developing or manufacturing a product is not sufficiently public to constitute transportation of the goods giving rise to proprietary rights. *Id.* (“[S]hipment to a potential manufacturer . . . does not constitute the kind of public use necessary to establish ownership of a mark.”). *See also* 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 19:118 (4th ed. 2005) (“‘[T]ransportation,’ as an alternative to ‘sale,’ should also require the elements of open and public use before potential customers.”).

Furthermore, the mark must be used in a regular or recurring manner in connection with the goods sold or services rendered to give rise to common law trademark rights. *Morgan Creek Prods. Inc. v. Foria Int’l Inc.*, 91 U.S.P.Q.2d 1134, 1144 (T.T.A.B. 2009) (“It is the burden of opposer to demonstrate

that it has used its mark in a regular or recurring manner so that the consuming public would be aware that opposer offers the goods under the mark and therefore associate opposer's mark with the goods."); *Giersch*, 90 U.S.P.Q.2d at 1023. Commercial transactions that are sporadic or minimal will not support use sufficient to create trademark rights. *Aktieselskabet AF 21. November 2001 v. Fame Jeans Inc.*, 86 U.S.P.Q.2d 1527, 1536 (D.C. Cir. 2008); *Zazu Designs v. L'Oreal, S.A.*, 979 F.2d 499, 503, 24 U.S.P.Q.2d 1828, 1831 (7th Cir. 1992) ("A few bottles sold over the counter . . . and a few more mailed to friends" are not sufficient use.).

Certain other usage that does not technically qualify as trademark use can support priority under Section 2(d), but only if such use is of a "nature and extent as to create public identification of the target term with the opposer's product or service." *T.A.B. Sys. v. PacTel Teletrac*, 77 F.3d 1372, 1376, 37 U.S.P.Q.2d 1879, 1882 (Fed. Cir. 1996). *See also Herbko Int'l Inc.*, 64 U.S.P.Q.2d at 1378 (finding such usage must create an association in the minds of the purchasing public between the mark and the goods or services).

Such usage must have a "substantial impact on the purchasing public." *Westrex Corp. v. New Sensor Corp.*, 83 U.S.P.Q.2d 1215, 1217 (T.T.A.B. 2007); *T.A.B. Sys.*, 37 U.S.P.Q.2d at 1882 (finding the opposer did not establish substantial impact on the public by showing a slide show presentation to seven potential customers). The number of potential customers reached is a critical factor. *Westrex Corp.*, 83 U.S.P.Q.2d at 1219 (finding that "opposer's efforts to solicit business ha[d] neither . . . any significant impact on the purchasing public as a whole nor involve[d] more than an insubstantial number of potential customers" (internal citations omitted)).

**A. Petitioner's One Page Technology Summary Sheet Did Not Establish Trademark Rights.**

Petitioner's use of "LipoDerm Lipoid Restoraderm Technology" prior to February 28, 2002 at the bottom of the one-page description of his technology, which he testified was shown to only 3 companies

likely to have the resources to invest in the needed development process,<sup>8</sup> does not support priority of rights in the mark RESTORADERM under any standard. See *Travelers Petroleum, Inc. v. Selfway, Inc.*, 195 U.S.P.Q. 578, 582 (T.T.A.B. 1977), *aff'd*, *Selfway, Inc. v. Travelers Petroleum, Inc.*, 579 F.2d 75, 198 U.S.P.Q. 271 (C.C.P.A. 1978) (finding the dissemination of a business plan in the form of a brochure to potential investors “wholly inadequate to create any awareness of the term in relation to the business he hoped to establish or the goods he hoped to sell”). The plaintiff in *Duffy v. Charles Schwab & Co.* sought to form a business partnership for purposes of offering a new financial product. His delivery of proposals to four organizations and his distribution of samples to a few companies, all identifying the proposed product as “Mutual Fund Report Card,” did not confer any proprietary rights in the designation. 54 U.S.P.Q.2d 1820, 1821, 1823-24 (D.N.J. 2000) (“The law only protects a party’s goodwill and business, not a party’s intention to create goodwill and business.”).

Similarly, the defendant in *American Express Co. v. Goetz*, who conceived of an idea for a consumer credit card feature and developed software for that purpose, sent proposals to various credit card companies describing his concept and referring to it as “My Life, My Card.” 85 U.S.P.Q.2d 1913, 1914 (2d Cir. 2008). His use of the designation in a manner not “open and notorious” only in “communications with a few commercial actors” as “a component of [the defendant’s] business proposal” was not sufficient to give him priority of rights over the subsequent commercial usage by one of the companies he contacted. *Id.* at 1916-17.

In the present case, Petitioner has provided no evidence that the one-page summary sheets established any goodwill in the RESTORADERM mark, nor could he since the evidence shows that there was no product that could be sold or marketed. All that the proffered evidence shows is that Petitioner was working on a new technology, and that he was hopeful of finding a partner, not customers, who would be willing to invest millions of dollars into additional research. Petitioner’s one-page summary

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<sup>8</sup> See Sköld Brief Exhibit 4, Sköld Decl., Exhibit E; Sköld Brief Exhibit 4, Sköld Decl., ¶¶ 4, 5.

sheet was part of his business proposal, as in the cases cited above, and was not the use of a mark that could establish common law trademark rights.

**B. Petitioner's Samples Did Not Establish Trademark Rights.**

Likewise, Petitioner's testimony, with no physical evidence, that he sent or hand-carried to CollaGenex samples of his base formulation<sup>9</sup> does not constitute the type of transaction that can support commercial usage of a trademark. *See Harod v. Sage Prods., Inc.*, 62 U.S.P.Q.2d 1022, 1028-29 (S.D. Ga. 2002) (finding that undisclosed, internal shipments and shipments to potential distributors did not confer proprietary rights in the mark at issue); *Walt Disney Prod. v. Kusan, Inc.*, 204 U.S.P.Q. 284, 287 (C.D. Cal. 1979) (“[A] shipment of a prototype game between an inventor and a manufacturer for consideration as to possible marketing . . . was not a public use for trademark purposes.”); *Richardson-Vicks Inc. v. Franklin Mint Corp.*, 216 U.S.P.Q. 989, 991-92 (T.T.A.B. 1982) (finding the applicant did not establish use of the mark for skin cream, even under the more liberal “token use” doctrine in place at the time, and noting that “[a]t the time the shipment of [skin] cream [upon which the applicant alleged first use] took place, there was no specific product or products contemplated to be sold under said mark, applicant only having a somewhat vague concept that women’s skin care products would be sold” and that the “applicant’s skin care products [were] drawing board items” at that time).

Petitioner's delivery of the samples clearly related to his efforts to enter into a business relationship with a dermatology company for purposes of *developing* a product, not selling one. His evidence shows not only that Petitioner had no product prior to February 28, 2002 to sell in which he could have developed trademark rights, but also that he had no more than a vague concept of what the final goods might even be after substantial work with a product developer. In fact, it was not until 3 years later, in May of 2005, that Registrant's development work on Petitioner's technology resulted in a product sufficiently developed and in use for Registrant to file the Statement of Use that resulted in the issuance of the first U.S. trademark registration for the RESTORADERM mark.

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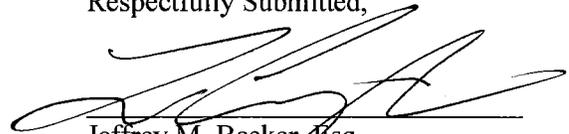
<sup>9</sup> See Sköld Brief Exhibit 4, Sköld Decl., ¶ 6.

**V. Conclusion**

Petitioner's Cross Motion, filed after the start of Petitioner's testimony period, requests the Board to rule on two very narrow factual issues, namely, (1) that "Registrant made no use of the mark Restoraderm prior to 28 February 2002," and (2) that "Petitioner had prior use, relative to Registrant, of the mark Restoraderm under §2(d) of the Lanham Act (15 U.S.C. §1052(d)) on 11 Sept 2001, on 12 September 2001, in November 2001, in December 2001, on or about 18 January 2002, and on 11 February 2002." The fact that Petitioner's Cross Motion was filed after the start of his testimony period should be enough for the Board to deny it. But, even if the Board decides to look at the evidence submitted, the Board should still deny Petitioner's Cross Motion. First, Registrant has shown by this Response that it did use the mark RESTORADERM prior to February 28, 2002 in connection with the filing of trademark applications for the mark in numerous countries. Second, Petitioner's only evidence of use is testimony that he showed 3 companies a one-page summary of his technology as part of his effort to find a development partner, and that he sent a few samples of his base formulation Registrant's predecessor-in-interest, neither of which activities is legally sufficient to establish prior rights.

Accordingly, the Board should deny Petitioner's Cross Motion in its entirety.

Respectfully Submitted,



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Our Ref.: 0032994.00024

Date: June 14, 2013

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

**Thomas Sköld**  
Petitioner,

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**Galderma Laboratories, Inc.**  
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Cancellation No.: 92052897

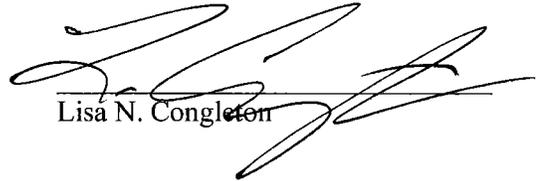
Mark: RESTORADERM

Reg. Nos.: 2,985,751 and 3,394,514

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 14th day of June, 2013, the foregoing *Registrant's Response in Opposition to Petitioner's Cross Motion for Partial Summary Judgment* was served on Petitioner's counsel of record via email to the following:

Arthur E. Jackson  
Moser IP Law Group  
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Lisa N. Congleton

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

<b>Thomas Sköld</b> Petitioner,	§ § § § § § §	Cancellation No.: 92052897
v.		Mark: RESTORADERM
<b>Galderma Laboratories, Inc.</b> Registrant.		Reg. Nos.: 2,985,751 and 3,394,514

**DECLARATION OF MAUD ROBERT**

I, MAUD ROBERT, declare as follows:

1. I am Trademark Counsel and Trademark & Copyright Manager of Galderma S.A., a Swiss company, whose head office is at Zugerstrasse 8, 6330 Cham, Switzerland.
2. I am over the age of eighteen (18) and am competent to make this declaration.
3. I have personal knowledge of the matters which are the subject of this declaration.
4. I am authorized by Galderma S.A., Galderma Laboratories, L.P., and Registrant (collectively, the "Galderma companies") to make these statements and to execute this declaration on behalf of the Galderma companies.
5. Galderma Laboratories, L.P., a Delaware limited liability company having a business address at 14501 North Freeway, Fort Worth, Texas 76177, is a wholly, indirectly-owned operating entity of Registrant Galderma Laboratories, Inc.
6. Galderma Laboratories, L.P. is the exclusive distributor and/or licensee in the United States of products and services bearing trademarks and service marks owned by Galderma S.A. and Registrant.
7. The Galderma companies collaborate closely with regard to the selection, adoption, use, and marketing of all marks used and registered by the Galderma companies.

8. The document attached hereto as Exhibit A accurately reflects the Galderma companies' global trademark registrations and pending applications for the mark RESTORADERM as of June 1, 2013.

9. The Galderma companies and their predecessors in interest, CollaGenex Pharmaceuticals, Inc. and CollaGenex International Limited (collectively, "CollaGenex"), have made 109 trademark filings for RESTORADERM in 56 jurisdictions worldwide, resulting in 99 issued registrations and 10 pending applications. *See Exhibit A.*

10. CollaGenex filed 5 trademark applications for the mark RESTORADERM in International Class 5 prior to February 28, 2002, all of which matured into registrations, which are currently valid and subsisting. The filing particulars of said trademark registrations are identified in Exhibit A and summarized as follows:

- i. On January 14, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in the United Kingdom, which application matured into Reg. No. 2290042.
- ii. On January 14, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in the European Union, which application matured into Reg. No. 002537074.
- iii. On January 15, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in Switzerland, which application matured into Reg. No. 498975.
- iv. On January 15, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in Norway, which application matured into Reg. No. 216494.
- v. On January 24, 2002, CollaGenex filed an application to register RESTORADERM in International Class 5 in Israel, which application matured into Reg. No. 154752.

11. Petitioner Thomas Sköld has never opposed or sought to cancel any of the Galderma companies' trademark registrations or pending trademark applications for RESTORADERM anywhere in

the world, other than the 2 United States trademark registrations that are the subject of the above-captioned cancellation proceeding.

I declare, under penalty of perjury under the laws of the United States of America and 28 U.S.C. § 1746, that the foregoing is true and correct, and that this declaration was executed this 13 day of June 2013 in Lausanne, Switzerland.

Maud ROBERT  
Trademark & Copyright Lawyer  
Authorized Signatory  
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Maud ROBERT

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**Sköld v. Galderma Laboratories, Inc.**

Cancellation No. 92052897

Registrant's Response in Opposition to Petitioner's Cross Motion for Partial Summary Judgment

**Exhibit A**

**Declaration of Maud Robert**

**Galderma's Portfolio of RESTORADERM Trademarks**

Jurisdiction	Mark	Classes	Status	Application Date	Application Number	Registration Date	Registration Number	Owner
Algeria	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	092725	28-Sep-2009	092725	Galderma S.A.
Argentina	RESTORADERM	3	Registered	30-Sep-2009	2948383	08-Jul-2011	2450822	Galderma S.A.
Argentina	RESTORADERM	5	Registered	30-Sep-2009	2948394	08-Jul-2011	2451145	Galderma S.A.
Argentina	RESTORADERM	10	Registered	30-Sep-2009	2948385	19-Aug-2011	2457611	Galderma S.A.
Australia	RESTORADERM	3, 5, 10	Registered	03-Feb-2010	1343464	03-Feb-2010	1343464	Galderma S.A.
Bolivia	RESTORADERM	3	Registered	05-Oct-2009	SM-3971-09	25-Aug-2010	122646-C	Galderma S.A.
Bolivia	RESTORADERM	5	Registered	05-Oct-2009	SM-3973-09	25-Aug-2010	122645-C	Galderma S.A.
Brazil	RESTORADERM	3	Pending	28-Sep-2009	830398121			Galderma S.A.
Brazil	RESTORADERM	5	Pending	28-Sep-2009	830389121			Galderma S.A.
Brazil	RESTORADERM	10	Registered	28-Sep-2009	830389105	21-Aug-2012	830389105	Galderma S.A.
Canada	RESTORADERM	3	Registered	29-Sep-2009	1453445	13-Sep-2010	TMA 776934	Galderma S.A.
Chile	RESTORADERM	3, 5, 10	Registered	30-Sep-2009	879752	13-Jul-2010	890326	Galderma S.A.
China	RESTORADERM	3	Registered	28-Sep-2009	7732106	21-Nov-2010	7732106	Galderma S.A.
China	RESTORADERM	5	Registered	28-Sep-2009	7732249	14-Dec-2010	7732249	Galderma S.A.
China	RESTORADERM	10	Registered	14-Jan-2010	7993742	28-Feb-2011	7993742	

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Colombia	RESTORADERM	3	Registered	06-Oct-2009	09109965	09-Apr-2010	399376	Galderma S.A.
Colombia	RESTORADERM	5	Registered	06-Oct-2009	09109956	09-Apr-2010	399374	Galderma S.A.
Colombia	RESTORADERM	10	Registered	06-Oct-2009	09109959	09-Apr-2010	399375	Galderma S.A.
Costa Rica	RESTORADERM	3	Registered	30-Sep-2009	2009-0008504	21-May-2010	200892	Galderma S.A.
Costa Rica	RESTORADERM	10	Registered	30-Sep-2009	2009-0008504	21-May-2010	200892	Galderma S.A.
Costa Rica	RESTORADERM	5	Registered	30-Sep-2009	2009-0008504	21-May-2010	200892	Galderma S.A.
Dominican Republic	RESTORADERM	3, 5, 10	Registered	29-Sep-2009	2009-22986	15-Jan-2010	178507	Galderma S.A.
Ecuador	RESTORADERM	3	Registered	30-Sep-2009	219923	24-Mar-2010	2306-10	Galderma S.A.
Ecuador	RESTORADERM	5	Registered	30-Sep-2009	219924	07-Apr-2010	2305-10	Galderma S.A.
Ecuador	RESTORADERM	10	Registered	30-Sep-2009	219925	07-Apr-2010	2308-10	Galderma S.A.
Egypt	RESTORADERM	3	Registered	27-Sep-2009	236319	27-Sep-2009	236319	Galderma S.A.
Egypt	RESTORADERM	5	Registered	27-Sep-2009	236320	27-Sep-2009	236320	Galderma S.A.
Egypt	RESTORADERM	10	Registered	27-Sep-2009	236321	27-Sep-2009	236321	Galderma S.A.
El Salvador	RESTORADERM	5	Registered	22-Dec-2009	22631717	20-Jul-2011	185 Book 172	Galderma S.A.
El Salvador	RESTORADERM	3	Registered	22-Dec-2009	22631717	20-Jul-2011	183 Book 172	Galderma S.A.
El Salvador	RESTORADERM	10	Registered	22-Dec-2009	22631717	20-Jul-2011	162 book 172	Galderma S.A.

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European Union	RESTORADERM	5	Registered	14-Jan-2002	002537074	14-Jan-2002	002537074	Galderma S.A.
European Union	RESTORADERM	5, 10	Registered	04-Sep-2009	008529158	25-Jul-2012	008529158	Galderma S.A.
Guatemala	RESTORADERM	3	Registered	29-Sep-2009	M-006537-2009	15-Feb-2010	168040	Galderma S.A.
Guatemala	RESTORADERM	5	Registered	29-Sep-2009	M-006539-2009	10-Feb-2010	167918	Galderma S.A.
Guatemala	RESTORADERM	10	Registered	29-Sep-2009	M-006539-2009	26-Feb-2010	168215	Galderma S.A.
Haiti	RESTORADERM	3	Registered	30-Sep-2009	1154-E	10-Feb-2010	145/169	Galderma S.A.
Haiti	RESTORADERM	5	Registered	30-Sep-2009	1155-E	10-Feb-2010	146/169	Galderma S.A.
Haiti	RESTORADERM	10	Registered	30-Sep-2009	1156-E	10-Feb-2010	147/169	Galderma S.A.
Honduras	RESTORADERM	3	Registered	06-Oct-2009	28831-09	24-Jun-2010	112 939	Galderma S.A.
Honduras	RESTORADERM	5	Registered	06-Oct-2009	28829-09	24-Jun-2010	112.940	Galderma S.A.
Honduras	RESTORADERM	10	Pending	06-Oct-2009	28830-09			Galderma S.A.
Hong Kong	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	301439523	28-Sep-2009	301439523	Galderma S.A.
Iceland	RESTORADERM	3, 5, 10	Registered	17-Nov-2009	3120/2009	04-Jan-2010	54/2010	Galderma S.A.
India	RESTORADERM	3, 5, 10	Pending	29-Sep-2009	1868020			Galderma S.A.

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Indonesia	RESTORADERM	3, 5, 10	Registered	06-Oct-2009	D00 2009 032323	06-Oct-2009	IDM000295264	Galderma S.A.
Iran	RESTORADERM	3, 5, 10	Registered	06-Oct-2009	188071033	17-Jun-2012	191627	Galderma S.A.
Israel	RESTORADERM	5	Registered	24-Jan-2002	154752	08-May-2005	154752	Galderma S.A.
Japan	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	2009-73308	12-Feb-2010	5301894	Galderma S.A.
Jordan	RESTORADERM	3	Registered	17-Nov-2009			111089	Galderma S.A.
Jordan	RESTORADERM	5	Registered	17-Nov-2009			111090	Galderma S.A.
Jordan	RESTORADERM	10	Registered	17-Nov-2009			109860	Galderma S.A.
Korea (South)	RESTORADERM	3, 5, 10	Registered	29-Sep-2009	47753/2009	17-Jan-2011	850192	Galderma S.A.
Kuwait	RESTORADERM	3	Registered	27-Sep-2009	106500	16-Oct-2011	95602	Galderma S.A.
Kuwait	RESTORADERM	5	Registered	27-Sep-2009	106501	16-Oct-2011	95603	Galderma S.A.
Kuwait	RESTORADERM	10	Registered	27-Sep-2009	106502	16-Oct-2011	95604	Galderma S.A.
Lebanon	RESTORADERM	3, 5, 10	Registered	08-Oct-2009	124484	08-Oct-2009	124484	Galderma S.A.
Macao	RESTORADERM	3	Registered	30-Oct-2009	N/45810	24-Mar-2010	45810	Galderma S.A.
Macao	RESTORADERM	5	Registered	30-Oct-2009	N/45811	24-Mar-2010	45811	Galderma S.A.
Macao	RESTORADERM	10	Registered	30-Oct-2009	N/45812	14-Apr-2011	45812	Galderma S.A.

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Malaysia	RESTORADERM	3	Registered	09-Oct-2009	2009/17647	09-Oct-2009	200917647	Galderma S.A.
Malaysia	RESTORADERM	5	Registered	09-Oct-2009	2009/17648	09-Oct-2009	2009/17648	Galderma S.A.
Malaysia	RESTORADERM	10	Registered	09-Oct-2009	09017649	10-Mar-2011	09017649	Galderma S.A.
Mexico	RESTORADERM	3	Registered	29-Sep-2009	1037014	29-Apr-2010	1155809	Galderma S.A.
Mexico	RESTORADERM	5	Registered	29-Sep-2009	1037015	29-Sep-2009	1125779	Galderma S.A.
Mexico	RESTORADERM	10	Pending	07-Jan-2010	1058308			Galderma S.A.
Morocco	RESTORADERM	3, 5, 10	Registered	05-Oct-2009	125911	12-Jan-2010	125911	Galderma S.A.
New Zealand	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	813383	28-Sep-2009	813383	Galderma S.A.
Nicaragua	RESTORADERM	3, 5, 10	Pending	28-Sep-2009	2009-02653			Galderma S.A.
Norway	RESTORADERM	5	Registered	15-Jan-2002	200200212	15-Jan-2002	216494	Galderma S.A.
Panama	RESTORADERM	3	Registered	12-Jan-2010	187024-01	24-Aug-2010	187024-01	Galderma S.A.
Panama	RESTORADERM	10	Registered	12-Jan-2010	187027-01	24-Aug-2010	187027-01	Galderma S.A.
Panama	RESTORADERM	5	Registered	12-Jan-2010	187025-01	24-Aug-2010	187025-01	Galderma S.A.
Paraguay	RESTORADERM	3	Registered	30-Sep-2009	935378	05-Jan-2011	342337	Galderma S.A.
Paraguay	RESTORADERM	5	Registered	30-Sep-2009	935379	05-Jan-2011	342338	Galderma S.A.
Paraguay	RESTORADERM	10	Registered	30-Sep-2009	35380	29-Oct-2010	339162	Galderma S.A.

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Peru	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	400882	22-Feb-2010	00000684	Galderma S.A.
Philippines	RESTORADERM	3, 5, 10	Registered	29-Sep-2009	4-2009-500762	12-Aug-2010	4-2009-500762	Galderma S.A.
Russian Federation	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	200972387	15-Jul-2010	2009723827	Galderma S.A.
Saudi Arabia	RESTORADERM	3	Registered	10-Oct-2009	147984	08-Dec-2010	1211/26	Galderma S.A.
Saudi Arabia	RESTORADERM	5	Pending	10-Oct-2009	147985			Galderma S.A.
Saudi Arabia	RESTORADERM	10	Registered	10-Oct-2009	147986	28-Feb-2011	1233/39	Galderma S.A.
Singapore	RESTORADERM	3, 5, 10	Registered	29-Sep-2009	T0910843G	29-Sep-2009	T0910843G	Galderma S.A.
South Africa	RESTORADERM	3	Registered	28-Sep-2009	2009/18947	28-Sep-2009	2009/18947	Galderma S.A.
South Africa	RESTORADERM	5	Registered	28-Sep-2009	2009/18948	28-Sep-2009	2009/18948	Galderma S.A.
South Africa	RESTORADERM	10	Registered	28-Sep-2009	2009/18949	28-Sep-2009	2009/18949	Galderma S.A.
Sri Lanka	RESTORADERM	3	Pending	05-Oct-2009	152546			Galderma S.A.
Sri Lanka	RESTORADERM	5	Pending	05-Oct-2009	152548			Galderma S.A.
Sri Lanka	RESTORADERM	10	Pending	05-Oct-2009	152547			Galderma S.A.
Switzerland	RESTORADERM	5	Registered	15-Jan-2002	00324/2002	15-Jan-2002	498975	Galderma S.A.

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Taiwan	RESTORADERM	3, 5, 10	Registered	29-Sep-2009	098042878	16-Jun-2010	1415746	Galderma S.A.
Thailand	RESTORADERM	3	Registered	15-Oct-2009	746785	15-Sep-2009	Kor 334546	Galderma S.A.
Thailand	RESTORADERM	5	Registered	15-Oct-2009	746786	15-Oct-2009	Kor334547	Galderma S.A.
Thailand	RESTORADERM	10	Registered	15-Oct-2009	746787	15-Oct-2009	Kor334548	Galderma S.A.
Trinidad & Tobago	RESTORADERM	3, 5, 10	Registered	12-Oct-2009	41511	12-Oct-2009	41511	Galderma S.A.
Tunisia	RESTORADERM	3, 5, 10	Registered	12-Oct-2009	EE092129	29-Sep-2010	TN/E/2009/2129	Galderma S.A.
Turkey	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	2009/50642	24-Jun-2010	2009 50642	Galderma S.A.
United Arab Emirates	RESTORADERM	3	Registered	27-Sep-2009	133950	02-Nov-2010	108801	Galderma S.A.
United Arab Emirates	RESTORADERM	5	Registered	27-Sep-2009	133948	29-Aug-2010	107281	Galderma S.A.
United Arab Emirates	RESTORADERM	10	Registered	27-Sep-2009	133945	29-Aug-2010	107270	Galderma S.A.
United Kingdom	RESTORADERM	5	Registered	14-Jan-2002	2290042	15-Jan-2002	2290042	Galderma S.A.
United States of America	RESTORADERM	3	Registered	06-Jul-2007	77223507	11-Mar-2008	3394514	Galderma Laboratories, Inc.

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United States of America	RESTORADERM	5	Registered	28-Feb-2002	76376659	16-Aug-2005	2985751	Galderma Laboratories, Inc.
United States of America	RESTORADERM	3, 5, 10	Pending	17-Aug-2009	77805846			Galderma Laboratories, L.P.
Uruguay	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	405964	18-Nov-2011	405964	Galderma S.A.
Venezuela	RESTORADERM	3	Registered	30-Sep-2009	16099-09	23-Jul-2010	305154	Galderma S.A.
Venezuela	RESTORADERM	5	Registered	30-Sep-2009	16097-09	23-Jul-2010	305152	Galderma S.A.
Venezuela	RESTORADERM	10	Registered	30-Sep-2009	16098-09	23-Jul-2010	305153	Galderma S.A.
Vietnam	RESTORADERM	3, 5, 10	Registered	28-Sep-2009	4-2009-20722	08-Aug-2011	169267	Galderma S.A.