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

Proceeding	92059915
Party	Plaintiff GE Nutrients, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GE NUTRIENTS, INC.,

Petitioner,

vs.

CA IP HOLDINGS, LLC,

Registrant.

Cancellation No. 92,059,915

Registration No. 4,302,581

Mark: TESTOGEN-XR

**PETITIONER’S RESPONSE IN OPPOSITION TO
REGISTRANT’S MOTION TO COMPEL COMPLETE
ANSWERS TO REGISTRANT’S FIRST SET OF INTERROGATORIES**

In filing a motion to compel more complete responses to their first set of interrogatories, Registrant mischaracterizes time periods and ignores key points of communication and production by Petitioner, all in an effort to paint the Petitioner as uncooperative and dilatory. However, the evidence demonstrates that Petitioner provided Registrant with sufficient notice of delays in producing responsive documents as a result of having retained a third-party e-discovery vendor to ensure complete production of documents in this case – which in turn caused a delay in providing answers to Registrant’s Interrogatories.

Most importantly, Registrant makes no argument or discussion of Petitioner’s reference to and incorporation of documents stated in its interrogatory answers. *See* TBMP § 405.04(b) (adopting Fed. R. Civ. P. 33(d)). To be clear, Registrant has never suggested to or informed Petitioner that the documents referred to in the interrogatory answers were somehow non-responsive. Registrant’s remaining grievances appear to be solely related to Petitioner’s General Objections and other specific objections.

With the hopes of amicably resolving this discovery dispute, Petitioner waives all prior general and specific objections. For these reasons, explained more fully below, Registrant's motion to compel should be denied.

I. Delays in Petitioner's voluminous document production in turn prevented supplementation of interrogatory answers.

To fully respond to Registrant's written discovery request for documents, Petitioner retained a third party e-discovery vendor to organize Petitioner's voluminous materials. The sheer amount of documentation, couple with technical delays, prevented Petitioner from submitting corresponding supplemental interrogatory answers until October 15, 2015. Petitioner's supplemental interrogatory answers contain references to these documents by Bates-number, *see* Registrant's Exhibit G – and Registrant has never suggested that the documents referred to are somehow nonresponsive.

Contrary to Registrant's characterization of the discovery communications and timeframes in this case, the record demonstrates that Petitioner provided consistent communication as to when discovery responses would be supplemented. On September 2, 2015, upon receiving Registrant's discovery letter, within less than two hours counsel for Petitioner let Registrant know that "our client's documents are currently being culled and processed by our e-discovery vendor. We expect to have them for review and production soon." *See* Registrant's Exhibit C at 2-3. On September 11, in keeping with Registrant's unilateral deadline, counsel for Petitioner contacted Registrant to set up the September 14 call. *Id.* at 1. On September 18, Petitioner's counsel notified Registrant that Petitioner was "still reviewing a large amount of information received from our client in response to your documents requests...there is over 10GB of information to review...We hope to produce the documents by late next week and are working as diligently as possible, but I cannot be sure that we will be finished by then." *See*

Registrant's Exhibit E at 1.¹ On September 28, Petitioner's counsel informed Registrant of a delay in production resulting from a technical delay on the part of the e-discovery vendor retained by Petitioner. *See* Registrant's Exhibit F at 2.

On October 6, 2015, Petitioner's entire production was made available. *Id.* at 1. On October 15, Petitioner submitted supplemental written responses to Registrant's first set of interrogatories. *See* Registrant's Exhibit G.

II. Registrant's arguments regarding Initial Disclosures should be dismissed.

Registrant's attempts to seek, via this motion, additional initial disclosures should be rejected for several reasons. *See* Registrant's Br. at ¶¶ 8-10. First, Registrant has not conveyed any dissatisfaction to Petitioner regarding its supplemental initial disclosures since the production thereof to Registrant on September 18, 2015 – wherein Petitioner already provided the names of 102 licensees (contrary to Registrant's assertions, *see id.* at ¶ 8). 37 C.F.R. § 2.120(e)(1) and Fed. R. Civ. P. 37(a)(1) both require parties to resolve discovery disputes before seeking relief from the Board, yet Registrant provided no notice to Petitioner as to any remaining dispute regarding initial disclosures.

Second, TBMP § 402.02 at Note 3 states that “a party will not be permitted to obtain, through a motion to compel, discovery broader in scope than that actually sought in the discovery request(s) to which the motion pertains.” Additionally, “[i]nitial disclosures are not a substitute for taking comprehensive discovery.” *See* TBMP § 401.02 at Note 8. Here, Registrant has not issued an interrogatory specifically asking for the names of licensees, and this motion is

¹ Registrant's Motion to Compel ignores the entirety of Petitioner's counsel's statement, who clearly indicated that she was unsure if it was possible to provide the documents by “late next week.” *See* Registrant's Br. at ¶ 11 (misquoting Petitioner's counsel's statement, suggesting that her sentence ended with the phrase “late next week.”).

not entitled to seek relief regarding initial disclosures. Registrant's attempts to sneak new disputes into this discovery motion should be rejected.

Again, Registrant's only stated dissatisfaction following the supplementation of discovery appears to be with Petitioner's General Objections and specific objections.

III. Petitioner waives all general and specific objections.

Registrant argues that Petitioner's refusal to withdraw its general and specific objections "has necessitated the preparation and filing of this Motion." Registrant's Br. at ¶ 15. This is not so. Registrant does not even attempt to argue how the objections have prevented it from having their inquiries answered – through the documents produced and specifically referenced to in each supplemental interrogatory response. Registrant has not indicated if or how the referenced documents are unsatisfactory. It appears that Registrant merely wants the objections withdrawn, just for the sake of having them withdrawn.

Therefore, Petitioner waives all general and specific objections in their supplemental interrogatory answers.

This motion to compel should be denied.

November 20, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2015, a true and correct copy of the foregoing was served by via electronic mail on all counsel or parties of record on the Service List below:

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