

**EXHIBIT**

TTAB

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

SEAGATE TECHNOLOGY, INC.,

Opposer,

v.

EC-GATE NV

Applicant.

Opposition No. 114,018



01-06-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #30

CERTIFICATE OF MAILING

I hereby certify that this correspondence, including listed enclosures, is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: BOX TTAB - NO FEE, Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 this 31<sup>st</sup> day of December, 2002.

Signed: Lisa Jeanetta  
Lisa Jeanetta

**OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES**

SEAGATE TECHNOLOGY LLC. (hereinafter "Opposer") moves for an order requiring Applicant, EC-Gate NV, to answer all Interrogatories and Requests for Production of Documents previously served it, pursuant to Rule 37, Federal Rules of Civil Procedure, and 37 C.F.R. 2.120 (e).

**FACTS**

1. Opposer served its First Request for Production of Documents on Applicant on September 13, 1999. Declaration of Diane Mason ("Mason Dec."), ¶2.
2. Opposer served its First Set of Interrogatories on Applicant on September 13, 1999. Mason Dec., ¶3.
3. Opposer agreed to several extensions of time for Applicant to respond to its discovery requests while the parties attempted to negotiate a settlement of this matter. Mason

Dec., ¶4. Concurrently, several Requests for Extensions of Discovery and Trial Dates were filed by Applicant with the Board.

4. Opposer and Applicant were not able to reach a settlement of this matter, and on July 12, 2002, this Board issued an order rescheduling the trial dates in this matter. Mason Dec., ¶5.

5. On July 16, 2002, Opposer was notified that the law firm of Heller Ehrman was no longer representing Applicant. Mason Dec., ¶6.

6. On July 22, 2002, Opposer wrote to Applicant, requesting that it respond to its discovery requests by August 26, 2002. To date, Opposer has not received any response to its letter. Mason Dec., ¶7.

7. On December 11, 2002, Opposer again wrote to Applicant, warning that if Opposer did not receive any responses to its discovery requests by December 18, 2002, Opposer would file a motion to compel. Mason Dec., ¶8. To date, Opposer has not received any reply to its correspondence dated December 11, 2002.

8. To date, Opposer has not received any responses to First Request for Production of Documents, nor its First Set of Interrogatories. Mason Dec., ¶9.

#### **ARGUMENT**

Applicant has applied for registration of the mark EC-GATE, for electronic commercial and commerce products, namely, computer hardware and computer software for use in electronic commerce and for processing transactions for electronic commerce, in class 9. Opposer owns the mark SEAGATE, for various computer hardware and software in class 9, and, as set forth in its Notice of Opposition, contends that Applicant's mark is confusingly similar to its registrations for SEAGATE.

Opposition No. 114,018

Opposer first served its discovery requests on Applicant in September 1999. Thereafter, Opposer agreed to extensions of the deadline for Applicant to respond to the discovery requests while Opposer and Applicant attempted to negotiate a settlement in this matter. Concurrently, the trial dates in this matter were either extended or suspended pending the settlement negotiations of the parties.

Unfortunately, the settlement negotiations between the parties have broken down without a settlement being reached. Opposer therefore notified Applicant that its discovery responses were due. Although Opposer has given Applicant ample time to respond to its discovery requests, Applicant still has not answered Opposer's discovery requests. Furthermore, Applicant has not even responded to Opposer's attempts to resolve the issues presented in this motion without filing a motion to compel.

Opposer will be greatly prejudiced in its attempts to prosecute this proceeding if it does not receive Applicant's responses to its discovery requests. Furthermore, Opposer is entitled to learn of any facts that Applicant may rely on to establish an affirmative defense. Accordingly, Opposer moves for an order requiring Applicant to answer Opposer's First Request for Production of Documents, and its First Set of Interrogatories, copies of which are attached to the Declaration of Diane Mason.

Respectfully submitted,

Dorsey & Whitney LLP

By 

Diane J. Mason

Attorneys for Opposer

Date: December 31, 2002

Four Embarcadero Center, Suite 3400  
San Francisco, CA 94111  
(415) 781-1989  
#1100388

**STATEMENT BY COUNSEL IN AN ATTEMPT TO RESOLVE**

On July 22, 2002, the undersigned sent a letter to Applicant's last known representative, as a good faith effort to resolve with Applicant the issues presented in this motion. Applicant did not respond to Opposer's correspondence. On December 11, 2002, the undersigned sent a second letter to Applicant's last known representative, as a further good faith effort to resolve with Applicant the issues presented in this motion. Applicant again did not respond to Opposer's correspondence. True and correct copies of Opposer's correspondence to Applicant are attached to the Declaration of Diane Mason at ¶¶7-8.

Respectfully submitted,

Dorsey & Whitney LLP

Date: December 31, 2002

By 

Diane J. Mason  
Attorneys for Opposer

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(415) 781-1989

**PROOF OF SERVICE BY FACSIMILE AND U.S. POSTAL SERVICE**

I, Lisa Jeanetta, certify and declare as follows:

I am over the age of 18, and not a party to this action. My business address is Dorsey & Whitney LLP, Four Embarcadero Center, Suite 3400, San Francisco, California 94111.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 31, 2002, at my place of business at San Francisco, California, a copy of the following documents:

OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES, and  
DECLARATION OF DIANE J. MASON IN SUPPORT OF OPPOSER'S  
MOTION TO COMPEL


were sent by facsimile and were placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to Applicant, EC-GATE NV, as follows:

Thomas A.M. Veringa Controller EC-Gate Group Bergemeester Stramanweg 105-G 1101 AA Amsterdam The Netherlands Via Facsimile (011) 31 20 409 04 34	Thomas A.M. Veringa Controller EC-Gate Group 36 York Mills Road, Suite 505 P.O. Box 200 Toronto, Ontario Canada M2P 2E9 Via Facsimile (416) 221-8918
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and such envelop was sealed and placed for collection and mailing on December 31, 2002, following ordinary business practices.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 31, 2002 at San Francisco, California.

  
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Lisa Jeanetta