

TTAB

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

In the matters of:

Application Serial No. 75/843,666 published in  
the *Official Gazette* of July 31, 2001 at page TM 176

and

Application Serial No. 75/843,665 published in  
the *Official Gazette* of July 31, 2001 at page TM 487

GEL TECH, L.L.C.,

Opposer,

vs.

ZYGAM, INC.,

Applicant.

Opposition No. 91152049:

**RESPONSE TO ORDER TO SHOW CAUSE**

Opposer, GEL TECH, L.L.C. (Gel Tech) timely responds to the Board's February 26, 2004 Order to Show Cause why the Board should not treat Opposer's failure to file a brief as a concession of the case. Opposer can demonstrate that its failure to act during the time previously allotted was the result of ongoing settlement negotiations.

**Facts**

Opposer, Gel Tech has been in contact with council for Applicant, Zygam, Inc. (Zygam) since October 2001. It was during this time that Zygam approved three different Extensions of Time to File a Notice of Opposition. Gel Tech and Zygam briefly engaged in discussions regarding Zygam's filing of the ZYGAM trademark application, however no settlement was reached, and as a result, Gel Tech filed its Consolidated Notice of Opposition.



After Zygam filed its Answer to Consolidated Notice of Opposition, Gel Tech and Zygam resumed settlement discussions. The parties have been variously engaged in settlement discussions since August 2002. Gel Tech has remained optimistic that a settlement would be agreed upon, for there has been agreement on various settlement terms and the process has been amicable.

Settlement discussions broke off during the beginning of 2003, however, in November of 2003, counsel for Gel Tech attempted to resume the discussions with Zygam. As such, Gel Tech sent a new Settlement Proposal to Zygam in December 2003. As of March 2004, Zygam has not responded to the Settlement Proposal, despite numerous attempts by Gel Tech to follow-up on the matter.

Gel Tech is still hoping to reach an amicable settlement regarding this matter, as the parties have nearly reached an agreement through the ongoing settlement negotiations. However, because the parties have been unable to agree on the exact settlement terms, Gel Tech respectfully requests re-opening the discovery period for this Opposition. As such, Gel Tech proposes the new deadlines for discovery for this Opposition would be as follows:

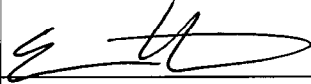
	<u>Old</u>	<u>New</u>
The Period for Discovery to Close	January 27, 2003	August 27, 2004
Testimony Period for Party in Position of Plaintiff to Close (opening 30 days prior thereto)	April 27, 2003	January 7, 2005
Testimony Period for Party in Position of Defendant to Close (opening 30 days prior thereto)	June 26, 2003	February 25, 2005
Rebuttal Testimony Period to Close (Opening 15 days prior thereto)	August 10, 2003	April 15, 2005

...

Date: March 25, 2004

Respectfully submitted,

SNELL & WILMER L.L.P.

By  for \_\_\_\_\_

Charles F. Hauff, Jr.  
Reg. No. 33,244

One Arizona Center  
400 East Van Buren  
Phoenix, Arizona 85004-2202  
Tel: (602) 382-6314  
Attorneys for Opposer  
Gel Tech, Inc.

**CERTIFICATE OF MAILING**


I hereby certify that this RESPONSE TO ORDER TO SHOW CAUSE, pursuant to 37 C.F.R. §1.8, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on:

Date: March 25, 2004

By   
Beverly Fletcher

**CERTIFICATE OF SERVICE**

I, Beverly Fletcher, hereby certify that a true and correct copy of the RESPONSE TO ORDER TO SHOW CAUSE was served on this 25th day of March, 2004, upon Gabrielle A. Holley, Pillsbury Winthrop LLP, 11682 El Camino Real, Suite 200, San Diego, California, 92230-2593, via first class mail, postage prepaid.

  
Beverly Fletcher