

TT#13

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

JOE J. ALFARO, JR.

OPPOSITION NO. 91155188

OPPOSER

VS.

GUY A. HOFFMANN

IN RE SERIAL NO. 78110344

APPLICANT

APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO SUPPRESS  
APPLICANT'S RESPONSES TO WRITTEN QUESTIONS WITH SUPPORTING  
BRIEF

ON APRIL 27, 2005 OPPOSER FILED A MOTION TO SUPPRESS THE  
TESTIMONY OFFERED BY APPLICANT: RESPONSES TO DEPOSITION ON  
WRITTEN QUESTIONS. APPLICANT OPPOSES SAID MOTION AND  
FILES THIS BRIEF IN RESPONSE.

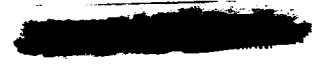
BRIEF

ON MARCH 29, 2005, APPLICANT SERVED OPPOSER A NOTICE  
OF TAKING OF DEPOSITION ON WRITTEN QUESTIONS AND  
ATTACHMENT-THE PROPOSED 50 QUESTIONS. ON APRIL 13, 2005  
APPLICANT COMPLETED THE DEPOSITION ON WRITTEN QUESTIONS  
AND SERVED HIS RESPONSE ON APRIL 14, 2005 TO OPPOSER AND  
THE BOARD BY MAIL. ON APRIL 13, 2005 OPPOSER FILED A  
MOTION TO TAKE TESTIMONY OF APPLICANT BY ORAL EXAMINATION.  
ON APRIL 25, APPLICANT FILED A BRIEF IN OPPOSITION  
TO SAID MOTION.

ON APRIL 19, 2005, THIS BOARD IN A WRITTEN ORDER STATED:  
"ON MARCH 31, 2005, WITHIN TEN DAYS FROM THE OPENING DATE  
OF DEFENDANT'S TESTIMONY PERIOD, COUNSEL FOR DEFENDANT  
FILED A NOTICE THAT THE DEPOSITION OF DEFENDANT GUY  
HOFFMAN WOULD BE TAKEN UPON WRITTEN QUESTIONS. OPPOSER,  
DID NOT, WITHIN FIFTEEN DAYS FROM THE DATE OF SERVICE OF THE  
NOTICE, EXERCISE ITS RIGHT UNDER THE TRADEMARK RULES TO  
FILE A MOTION SHOWING GOOD CAUSE FOR AN ORDER THAT THE  
DEPOSITION BE TAKEN BY ORAL QUESTIONS."

AT THIS POINT, OPPOSER HAS NOT SUBMITTED ANY CROSS  
QUESTIONS AS PROVIDED BY RULE 2.124(D)(1).

OPPOSER'S MOTION FILED ON APRIL 27, 2005



05-04-2005

**APPEARS TO BE UNTIMELY IN THAT IT WAS MADE AFTER RECEIPT OF APPLICANT'S RESPONSES TO THE WRITTEN QUESTIONS AND AFTER THIS BOARD'S RULING OF APRIL 19, 2005. OPPOSER'S BRIEF FAILS TO MENTION THIS BOARD'S ORDER OF APRIL 19, 2005 OR ITS IMPORT.**

**OPPOSER CLAIMS HE WAS COMPLETELY EXCLUDED FROM THE CROSS-EXAMINATION PROCESS. THIS IS NOT THE CASE. THE NOTICE SERVED ON OPPOSER PROVIDED THE NAME AND ADDRESS OF THE NOTARY PUBLIC AND INDICATED THAT CROSS-QUESTIONS MAY BE DULY SERVED. NONE HAVE BEEN TO THIS POINT.**

**THE RESPONSE OF APPLICANT COMPLIES WITH THE REQUIREMENTS OF RULE 2. 124. THE DEPOSITION WAS TAKEN BEFORE A NOTARY PUBLIC-AUTHORIZED BY RULE 28 FRCP. THE NOTICE WAS SERVED WITHIN 10 DAYS FROM THE OPENING DATE OF THE TESTIMONY PERIOD OF APPLICANT. THE NOTICE STATED THE NAME AND ADDRESS OF THE OFFICER BEFORE WHOM THE DEPOSITION IS TO BE TAKEN. THE OFFICER TOOK THE TESTIMONY AND RECORDED THE ANSWER BY TYPEWRITING IMMEDIATELY AFTER THE CORRESPONDING QUESTION AND CERTIFIED THE TRANSCRIPT. THE DEPOSITION AND ENCLOSED EXHIBITS WERE FILED WITH THE BOARD AND COPIES MAILED TO OPPOSER.**

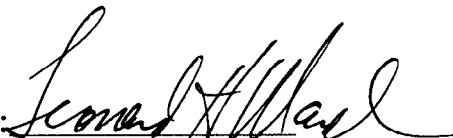
**OPPOSER CLAIMS A NOTARIZED AFFIDAVIT WAS SUBMITTED BY APPLICANT NOT A DEPOSITION UPON WRITTEN QUESTIONS.**

**OPPOSER BELIEVES THAT ONLY STENOGRAPHIC DEPOSITIONS ARE PERMITTED IN DEPOSITIONS ON WRITTEN QUESTIONS. THIS IS NOT THE EXCLUSIVE METHOD.**

37CFR SECTION 2.123(E)(2) STATES:.....DEPOSITIONS  
MAY BE TAKEN IN LONGHAND,TYPEWRITING,OR  
STENOGRAPHICALLY.  
APPLICANT'S DEPOSITION ON WRITTEN QUESTIONS  
WAS TAKEN IN TYPEWRITING.

APPLICANT RESPECTFULLY ASKS THE BOARD TO DENY  
OPPOSER'S MOTION TO SUPPRESS AND EXCLUDE THE  
RESPONSES TO WRITTEN QUESTIONS FILED BY APPLICANT  
ON APRIL 14, 2005.

DATED:MAY 2, 2005

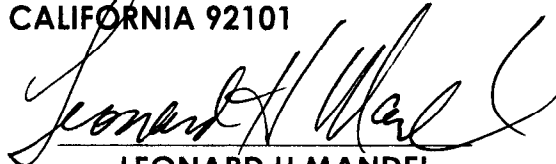
BY:   
LEONARD H. MANDEL.  
ATTORNEY FOR APPLICANT  
3034 NORTH 151<sup>ST</sup> LANE  
GOODYEAR,AZ 85338  
TELEPHONE(623) 935-3519

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY THAT, ON MAY 2, 2005, A TRUE AND CORRECT COPY OF THE FOREGOING APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO SUPPRESS APPLICANT'S RESPONSES TO WRITTEN QUESTIONS WITH SUPPORTING BRIEF WAS SERVED ON OPPOSER'S COUNSEL, VIA FIRST CLASS MAIL. POSTAGE PREPAID, AT THE FOLLOWING ADDRESS;**

**RICHARD A. CLEGG, ATTORNEY  
SELTZER CAPLAN MCMAHON VITEK  
A LAW CORPORATION  
750 B STREET, SUITE 2100  
SAN DIEGO, CALIFORNIA 92101**

**DATED: MAY 2, 2005**

  
**LEONARD H. MANDEL**