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

Proceeding	91223943
Party	Plaintiff Genomma Lab Internacional, S.A.B. de C.V.
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Submission	Motion to Compel Discovery
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Date	03/17/2016
Attachments	Opposer's Motion to Compel - Opp. No. 91223943.pdf(139982 bytes) Exhibits A-G -- Motion to Compel -- Opp. No. 91223943.pdf(4245313 bytes)

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GENOMMA LAB INTERNACIONAL,	:	
S.A.B. DE C.V.,	:	Opposition No. 91223943
	:	
Opposer,	:	Application Serial No. 86591564
	:	
v.	:	
	:	
ALXIGNA INC.,	:	
	:	
Applicant.	:	
	:	

The following facts are relevant to these motions:

I. On December 15, 2015, Opposer's counsel served on Applicant "Opposer's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission" (the "Discovery Requests"), a copy of which is attached hereto as Exhibit A.

II. Applicant's served its objections and responses to the Discovery Requests on January 19, 2016 (the "Objections and Responses"), promising that it would supplement its responses and produce discovery subject to the stated objections. A copy of the Objections and Responses is attached hereto as Exhibit B.

III. On January 20, 2016, Opposer's counsel informed Matthew Swyers, counsel for Applicant, that Opposer expected Applicant to fully supplement its discovery by February 2, 2016, *i.e.*, two weeks from the date the Objections and Responses had been due. In that same correspondence, Opposer also requested that Applicant's counsel advise regarding the availability of Carlos Casas – signatory of the Application – to sit for deposition. A copy of the January 20, 2016 correspondence is attached hereto as Exhibit C.

IV. Applicant's counsel failed to respond to the January 20, 2016 correspondence.

V. On February 9, 2016, Opposer's counsel wrote counsel for Applicant, again requesting that Applicant supplement its discovery responses, and asking when Opposer might expect Applicant's production. Opposer's counsel also advised counsel for Applicant that if Applicant continued to be unresponsive with respect to its discovery obligations, Opposer would be forced to move the Board to compel production. A copy of the February 9, 2016 correspondence is attached hereto as Exhibit D.

VI. Applicant's counsel failed to respond to the February 9, 2016 correspondence.

VII. On February 18, 2016, Opposer's counsel wrote counsel for Applicant, again seeking the promised supplemental production and again warning that, in the absence of a response, Opposer would be forced to move the Board to compel production. A copy of the February 18, 2016 correspondence is attached hereto as Exhibit E.

VIII. Applicant's counsel failed to respond to the February 18, 2016 correspondence.

IX. On February 25, 2016, via email and by first class mail, Opposer's counsel wrote to Applicant, again requesting that counsel advise when Opposer might expect Applicant's supplemental responses and production, and again inquiring regarding the availability of Carlos Casas to sit for deposition, and again advising that in the absence of a reply, Opposer would be forced to move the Board to compel production. Opposer's counsel warned that the correspondence would be his last with respect to this matter. A copy of the February 25, 2016 correspondence is attached hereto as Exhibit F.

X. Applicant's counsel failed to respond to the February 25, 2016 correspondence.

XI. The discovery period in this proceeding is scheduled to close on May 29, 2016.

A. Motion to Compel.

In this opposition proceeding, the mark at issue is LAKESIA, which both Applicant and Opposer have applied to register. Opposer's application to register the identical LAKESIA mark in connection with goods identical to those claimed by Applicant was refused registration on the basis of an alleged likelihood of confusion with Applicant's earlier-filed use-based application. Opposer alleges, on information on belief derived from thorough investigation, that Applicant had not made use of the mark in U.S. commerce at the time of its Application. Opposer has formally opposed registration on the following grounds: (1) the incorrect party is identified as the Applicant; (2) lack of commercially bona fide use by the Applicant; (3) Applicant

does not offer the claimed goods; (4) the specimen relied upon the Applicant is not in use; and (5) fraud on the USPTO in connection with each of the foregoing.

Under Rule 26(b)(1) of the Federal Rules of Civil Procedure, Opposer is entitled to obtain discovery “regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Applicant has a duty to cooperate with Opposer and “to make a good faith effort to satisfy the discovery needs of its adversary.” TBMP Section 408.01. Moreover, the Board “looks with extreme disfavor on those who do not [cooperate in the discovery process].” *Id.* Under Trademark Rule 2.120(e), “If a party... fails to answer... any interrogatory, or fails to produce and permit the inspection and copying of any document or thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure, ... or an answer, or production and an opportunity to inspect and copy.” 37 C.F.R. Section 2.120(e).

Opposer respectfully submits that its discovery requests are warranted and appropriate under the Federal Rules and the rules of the Board, and thus, it is entitled to the supplemental responses herein requested.

1. Interrogatories

Opposer served less than 20 interrogatories upon Applicant. Applicant refused to provide a substantive response to a single one.

Counsel for Opposer has made a good faith effort, by correspondence that has been sent to and received by Applicant’s counsel, Matthew Swyers, to resolve with Applicant the issues presented with regard to Applicant’s responses to the interrogatories and has been unable to reach agreement with Applicant.

Applicant objected to two-thirds of the interrogatories as “overly broad and burdensome.” (Applicant also objected to some on the additional grounds that they were “compound.”) On these grounds, Opposer refused to provide, for example, the mere date upon which Applicant first used Applicant’s Mark in the U.S. (Interrogatory No. 2), the identity of a single product with which Applicant’s Mark

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