



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

COLOPLAST A/S,

Opposer,

VS.

JIRO TAKASHIMA,

Applicant.

Opposition No. 165,588

79,409,841



01-06-2006

U.S. Patent & TMO/TM Mail Rpt. Dt. #11

**OPPOSER'S MOTION TO COMPEL AND TO TEST THE  
SUFFICIENCY OF APPLICANT'S ANSWERS TO REQUESTS FOR ADMISSION,  
TO SUSPEND THE PROCEEDINGS AND TO RESET THE TRIAL DATES BY  
EXTENDING THE DISCOVERY PERIOD FOR OPPOSER ALONE**

COMES NOW the Opposer, Coloplast A/S, through its counsel, and hereby moves for an Order from the Trademark Trial and Appeal Board (the "Board") compelling Applicant to serve a privilege log, as well as amended and/or supplemental responses to Opposer's interrogatories, document requests, and requests for admissions. Additionally, Opposer respectfully requests that the Board impose its standard Protective Order. Finally, Opposer asks that the Board suspend these proceedings and reset the trial dates upon lifting the suspension – extending the discovery period for Opposer alone. In further support of this Motion, Opposer states as follows:

## **I. General Background**

Applicant's discovery responses are woefully lacking, with the number and breadth of the obvious deficiencies evincing Applicant's bad faith. However, these responses are but one example of Applicant's continued bad faith conduct in this proceeding. Other instances have preceded<sup>1</sup> and followed the service of the deficient discovery responses at issue in this Motion. Most recently, Applicant served written discovery on Opposer on January 3, 2006, which (on initial review) appears to be virtually identical to Opposer's written discovery. Opposer does not contest Applicant's right to serve written discovery; however, it is manifestly unjust for Applicant, on the one hand, to find Opposer's written discovery to be so problematic that virtually no information is disclosed; and yet, on the other hand, embrace the very same discovery and serve it as its own – signed pursuant to Rule 11. These starkly different positions are fundamentally irreconcilable.

Moreover, Applicant has remained steadfastly inert in the face of Opposer's several attempts to remedy the outstanding discovery issues in an effort to avoid filing any discovery motions with the Board. Thus, the fact that Applicant found the time to address this case by serving written discovery, makes his persistent failure to address the discovery issues – or to even pick up the phone to consent to an extension of time – that much more egregious. It is apparent that the service of Applicant's discovery is nothing but a thinly veiled retaliatory tactic.

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<sup>1</sup> See generally, Opposer's counsel's October 20, 2005 letter and October 27, 2005 reminder letter, attached hereto as Exhibit A, concerning objectionable conduct, including Applicant's counsel's wasteful refusal to contact Applicant concerning his interest in defending the proceeding. Applicant's counsel did not respond to these letters.

## II. Discovery-Related Background

On November 14, 2005, Opposer served on Applicant Opposer's First Set of Interrogatories, Opposer's First Request for Production of Documents, and Opposer's First Set of Request for Admissions. *See* Exhibit B.

Applicant served discovery responses on December 12, 2005. *See* Applicant's Responses to First Set of Interrogatories, Applicant's Responses to Request for Production of Documents, and Applicant's Responses to Request for Admissions, attached hereto as Exhibit C. Applicant did not produce any documents.

On December 23, 2005, counsel for Opposer sent a letter, by mail and facsimile, to Applicant's counsel, setting forth Opposer's concerns with Applicant's discovery responses. *See* Opposer's counsel's December 23, 2005 letter, attached hereto as Exhibit D. Additionally, the letter suggested that the Board's standard Protective Order be adopted by the parties. Moreover, the letter requested that Applicant produce documents in response to Opposer's document requests, as well as a privilege log. Finally, the letter suggested an extension of all deadlines to allow the parties time to address the discovery issues.

Not receiving any response, Opposer's counsel sent a second letter to Applicant's counsel requesting a response. *See* Opposer's counsel's December 30, 2005 letter, attached hereto as Exhibit E.

Still, there was no response from Applicant. Accordingly, Opposer's counsel called Applicant's counsel on January 4, 2006 and, not reaching Applicant's counsel, left a voice-mail message requesting a return call.

To date, Applicant has not amended and/or supplemented his discovery responses; has not agreed to adopt the Board's standard Protective Order (or suggest modifications to same); has not produced a privilege log; has not substantively responded to Coloplast's good faith letter; has not produced documents; and has not even returned Opposer's counsel's telephone call. However, while remaining inert and unresponsive on these discovery issues, Applicant found the time on January 3, 2006 to serve written discovery which appears to closely parallel Opposer's discovery (to which Applicant objected). *See* Applicant's written discovery, attached hereto as Exhibit F. Accordingly, with the impending close of the discovery period and in light of Applicant's determined intransigence in addressing the discovery issues, Opposer respectfully requests that the Board grant Opposer's Motion, as set forth more fully below.

### **III. Argument**

#### **A. Privilege Log**

Applicant (conditionally) has interposed privilege objections, but failed to provide a privilege log. This failure is contrary to the governing rules, and the instructions in Coloplast's discovery. Opposer requested Applicant to serve a privilege log with sufficient detail to allow Opposer (and, if necessary, the Board) to test Applicant's assertions of privilege. Applicant has not provided the requested privilege log; nor has Applicant even addressed the request itself. Accordingly, Opposer requests that the Board compel Applicant to provide a detailed privilege log.

B. Entry of the Board's Standard Protective Order

Applicant objected to providing answers to numerous interrogatories and the production of documents on the basis that the responsive information and documents are confidential. In response, Opposer proposed that the parties adopt the Board's standard Protective Order, and seek its entry by the Board. Applicant's counsel has ignored this suggestion. Rather, to date, Applicant has neither agreed to adopt the Board's standard Protective Order, to propose acceptable edits thereto, or to propose a wholly different Protective Order. Indeed, Applicant has simply remained silent, wholly ignoring Opposer's suggestions. Accordingly, Opposer respectfully requests the Board to enter its standard Protective Order.

Additionally, Applicant has refused to produce documents in response to certain requests on the grounds that the requested documents are confidential. However, Opposer believes that non-confidential, responsive documents may exist which should have been produced (without awaiting the entry of a Protective Order). Moreover, it is disingenuous for Applicant to refuse to produce *non-confidential* documents on the erroneous basis that no Protective Order has been entered, especially when Applicant has ignored Opposer's efforts to negotiate such an Order. Of course, after the Protective Order is entered, Applicant should then provide confidential information and documents.

C. Applicant Should Be Ordered to Produce Documents

Opposer has sought Applicant's document production, but Applicant has simply ignored this request. In light of this coupled with Applicant's failure to cooperate generally on discovery issues, as recited in this Motion, Opposer respectfully requests that the Board order Applicant to mail its document production to Opposer's counsel's office.

D. Applicant's Answers to Opposer's Discovery Are Inadequate and Should Be Amended or Supplemented

Applicant's deficient responses<sup>2</sup> to Opposer's discovery requests are so inadequate that Coloplast's ability to properly evaluate the responses is quite limited. This is further complicated by Applicant's refusal to engage in any dialogue with Opposer on the sufficiency of the responses. Moreover, in challenging the sufficiency of Applicant's objections and responses, Coloplast will not speculate as to every possible basis for Applicant's position and then argue against such phantasms. Thus, this Motion is, of necessity, preliminary in nature, and Coloplast reserves the right to further address Applicant's deficient and/or objectionable discovery responses and/or document production, after Applicant's supplementation and production is made.

INTERROGATORIES

Answers to interrogatories are to be verified by the answering party. *See* TBMP §405.04(c). However, Applicant's answers to Coloplast's interrogatories appear to be unverified, or have been verified by counsel. Opposer requested that Applicant serve properly verified answers. *See* Exhibit D. However, to date, Applicant has failed to do so, or to even respond to the request. Accordingly, Opposer respectfully requests that the Board compel Applicant to serve properly verified answers.

The entirety of Applicant's answers to nearly half of Coloplast's interrogatories is the boilerplate response: the "trademark is not presently in use in the United States." *See e.g.*, Answer Nos. 1- 9, 12. This answer is problematic for several reasons. First, it is not clear what "presently" means. For example, if Applicant was using the mark until the opposition was filed, the answer is

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<sup>2</sup> For simplicity, Opposer has summarized the disputed discovery requests and responses. However, such treatment is not intended to, nor should it, restrict the scope of the discovery requests – the requests should be answered as served.

misleading and disingenuous (and, in any event, such information should have been disclosed in response to Coloplast's discovery). Moreover, since Applicant's PERISTAL products are sold on the Internet (that global network of computers accessible in the United States), *see* Applicant's responses to request for admission nos. 37 and 41, the veracity of Applicant's above-quoted claim is questionable.

In any event, even if Applicant had never used the opposed mark, his answers are unresponsive since the interrogatories seek, *inter alia*, information concerning Applicant's *intent* to use the mark. For example, disclosure of the following information is not dependent on Applicant's actual use of the mark: the selection, creation and/or decision to adopt the mark (No. 8); the identification of each product with which Applicant's mark is intended to be used (No. 2); the identification of surveys, searches or other investigations (No. 3); the earliest date on which Applicant will rely in this proceeding to establish any rights in Applicant's mark vis-a-vis Coloplast's mark and the basis for such claim of right (No. 1); intended channels of trade (No. 5 & 6); each medium (including the Internet websites in which Applicant's product is marketed and sold, *see* Applicant's responses to request for admission nos. 37 and 41) in which Applicant's Mark has been or is intended to be advertised or promoted (No. 4(b)) assignments, licenses, consents or other agreements (No. 7); relevant registrations and/or marks (Nos. 12 and 15); and proposed marketing (No. 9). Opposer contends that Applicant can answer these interrogatories even *if* the mark is not "presently" in use in the United States.

Next, Opposer turns to the following specific answers to Opposer's interrogatories:

Interrogatory No. 10: Applicant only answered as to "Opposer's use or<sup>3</sup> Opposer's marks;" ignoring the queries as to Opposer and the products bearing Opposer's marks. Moreover, the limited information provided is insufficient since Applicant has failed to adequately identify the "circumstances", in light of Definition K found in Opposer's interrogatories. *See* Exhibit B. Applicant should be compelled to supplement this interrogatory.

Interrogatory Nos. 12/15: As noted above, Applicant's claimed (non)use of the opposed mark is wholly irrelevant to these interrogatories. Coloplast respectfully requests that the Board compel Applicant to disclose the requested information or be precluded from relying at trial on any testimony or evidence that would have been responsive thereto.

Interrogatory Nos. 17/18: These interrogatories seek information (facts and documents) concerning Applicant's Answer. Applicant objected to providing any information because some of it may be confidential. This is improper. Applicant should disclose the non-confidential information immediately, and the confidential information (if there is any) after a Protective Order has been entered.

Interrogatory No. 19: Applicant should be compelled to indicate who provided what information and whether the information was based on personal knowledge.

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<sup>3</sup> (Emphasis supplied). Additionally, it is not clear whether the disjunctive is a typographical error, and should have been the preposition "of." This should be clarified by Applicant.



Interrogatory No. 20: The identification of an expert does not constitute confidential information, and Applicant's confidentiality objection is inappropriate. Coloplast respectfully requests that the Board compel Applicant to disclose the requested information or be precluded from relying at trial on any expert testimony.

Interrogatory No. 21: Applicant refused to provide any information pending entry of a Protective Order. Since Applicant failed to respond to Coloplast's inquiries, the bases for the objections are not known. For example, assuming *arguendo*, that there might be some instances where the requested information might be considered "confidential," surely there is other information which is not (*e.g.*, the identification of the persons, most summaries of information).

Interrogatory No. 22: Applicant has conditionally objected on privilege grounds and has promised to supplement the interrogatory after entry of a Protective Order. However, the requested information (identification of discovery requests for which Applicant has not produced documents) does not implicate any privilege and is not confidential. Applicant should be compelled to respond.

For the reasons stated above, Coloplast respectfully requests that Applicant serve amended and/or supplemental responses to the interrogatories.

### REQUESTS FOR ADMISSION

Applicant refused to answer numerous requests on the basis that “the allegation calls for a legal conclusion on the part of the Applicant.” *See e.g.* response to nos. 1,2, 5-7, 9-11, 24, 28, 29, and 76. However, a request for discovery is not necessarily objectionable merely because it requires a party to give an opinion or contention that relates to fact or the application of law to fact.

In any event, the complained of requests are not objectionable on the stated ground. For example, some of the disputed requests seek, *inter alia*, Applicant’s knowledge of Opposer, Opposer’s mark and Opposer’s application. These are discoverable topic areas. Moreover, Applicant found nearly identical requests in Opposer’s discovery requests to not be objectionable. Finally, since Applicant served requests for admissions which included these requests, *see* Exhibit F, the Board should not credit Applicant’s claim that they are so objectionable that no answer can be made. Accordingly, the responses should be struck and the requests deemed admitted (alternatively, Applicant should be compelled to respond to these requests).

Applicant denied numerous requests by stating that it “is without knowledge of the truth of” the admission sought in the request. *See e.g.* response to nos. 30, 31, 32, 33, 64, 69, 74, and 77. However, Applicant failed to state that he has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable him to admit or deny the request – as required by the governing rules. *See* Fed. R. Civ. P. 36(a); TBMP 407.03(b). Moreover, some of the requests would seem readily answerable by Applicant, including whether the type of goods listed in the opposed application is marketed or sold at retail. Accordingly, the responses should be struck and the requests deemed admitted (alternatively, Applicant should be compelled to respond to these requests).

Since Applicant has failed to engage in any dialogue with Opposer concerning the discovery issues, Opposer is at a loss to understand the basis for the denial of Request Nos. 66 and 73. They should be deemed admitted, in light of Applicant's answers to other requests (*e.g.*, no. 65) and the opposed application itself.

#### DOCUMENT REQUESTS

In essence, Applicant only offered one of two "canned" responses to Coloplast's varied document requests: 1) he possesses no discoverable documents, or 2) he interposes a series of identical boiler plate objections with no promise to produce any documents. Each will be discussed in turn.

##### A. No Discoverable Documents

In response to nearly half of Coloplast's document requests, Applicant answered that there are no discoverable documents. *See* responses to Request Nos. 2, 6-16, 21-23, 25, 29-31, 35, 37-39, 45-46, 52-53, and 57. It is not clear how Applicant came to this conclusion, but Coloplast is concerned that in responding to these requests, Applicant has mirrored its improper approach to answering the interrogatories – not providing any answer because the mark is not "presently" in use. Of course, a review of the discovery demonstrates that responses are required whether the mark has been in use or not. Moreover, based on the scant information Applicant has provided in response to Opposer's discovery requests, Applicant's claim to not have *any* documents responsive to *any* of these requests would seem improbable. This suspicion is heightened by Applicant's conduct to date.

For example, while Applicant claims that it possesses no documents responsive to Request No. 9 (seeking sample advertisements, including Internet websites printouts) or Nos. 12/13 (websites where Applicant's products are or are intended to be sold), Applicant admits to selling and marketing its products on the Internet. *See* admission response nos. 37 (Applicant sells its PERISTAL products on the Internet); and 41 (Applicant markets its PERISTAL products on the Internet). Thus, Applicant's position appears contradicted by his own admissions. Similarly, it would seem that Applicant would have documents responsive to document request no. 31 (channels of trade actually used or intended to be used, *e.g.*, the Internet).

Moreover, while Applicant admits to knowing of Opposer and visiting Opposer's website before selecting the opposed mark (*see* responses to admission request nos. 3-4), Applicant claims that there are no documents responsive to document request nos. 15-16 (documents referring to Applicant's knowledge of Opposer and Opposer's mark); 21-23 (documents referring to Opposer, Opposer's Mark and Opposer's products), and 25 (documents referring to Applicant's knowledge of Opposer's use of Opposer's Mark).

Additionally, there are other requests which do not condition production on actual use of the mark: Request No. 6 seeks samples of products sold *or intended to be sold* under Applicant's Mark; Request Nos. 7 & 8 seek promotional and related materials – "whether or not such have ever been used, displayed or disseminated"; Request nos. 45 and 46 address marketing plans for the sale or *proposed* sale of Applicant's products. Nonetheless, Applicant claimed to possess no responsive documents, notwithstanding that he admits to Internet sales.

Accordingly, Coloplast requests that the Board compel Applicant's counsel to review these responses with Applicant and confirm or amend the responses.

## B. Boiler Plate Objections

In response to the remainder of Opposer's document requests, Applicant interposed a series of identical boilerplate objections. This is improper as it does not put Coloplast on notice as to what, if any, responses have been narrowed as a result of Applicant's reliance on said objections.<sup>4</sup> Indeed, the requests cannot be so objectionable that no response may be given since Applicant served the same discovery on Opposer, which Applicant's counsel signed pursuant to Rule 11. *Compare* Exhibits B *with* Exhibit F. Additionally, Applicant failed to indicate whether any responsive documents exist or will be produced, contrary to Opposer's interrogatories, discovery instructions and the governing rules.

Applicant interposed (or contingently interposed) privilege objections for each such request, including, *for example*, requests seeking documents: sufficient to show annual sales (nos. 28 and 29); sufficient to show continuous use of the mark (no. 54); sufficient to identify retail locations (no. 59) and the states (no. 61) in which Applicant's products are sold; and product packaging (no. 60). Clearly, Applicant's indiscriminate use of the asserted privilege is inappropriate, and the responses should be amended.

## IV. Rule 2.120(e) Statement

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice, Opposer states that it has made good faith efforts by correspondence and by telephone to resolve with the other party or the attorney therefor the issues presented in this Motion, and has been unable to reach agreement due to Applicant's persistent failure to respond to same.

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<sup>4</sup> Similarly improper is Applicant's interposition of numerous objections to Coloplast's discovery requests under the heading "General Objection."

Coloplast has sought to avoid filing this discovery motion. Indeed, it proposed an extension of time to allow Applicant time to adequately respond to Opposer's discovery requests, produce documents and negotiate and submit a Protective Order. *See e.g.*, Exhibits D and E. Notwithstanding Opposer's attempts to frame, discuss and achieve a resolution to the various discovery disputes, Applicant has remained inexplicably inert. While the issues in this Motion have not been narrowed through good faith negotiations, Opposer notes that such requires Applicant's participation – which has been wholly lacking. That is, Rule 2.120(e) requires the good faith efforts of *both* parties.

**V. Request for Suspension and, Upon Resumption,  
Extension of the Discovery Period for Coloplast Alone.**

Opposer understands that this proceeding will be suspended based on the filing of this discovery Motion, pursuant to Trademark Rule 2.120(e) (*When a party files a motion for an order to compel discovery, the case will be suspended by the Trademark Trial and Appeal Board . . . .*) (Emphasis supplied). However, to the extent that Opposer is incorrect, it respectfully requests that the proceeding be suspended to allow the Board to consider the present Motion (and any responsive filings). Opposer further requests that following a ruling on this Motion, the schedule be reset, as requested below.

The discovery period closes today, January 6, 2006. Coloplast served its discovery early enough in the discovery period to allow it time to pursue follow up discovery, as suggested by the TBMP. *See* TBMP §403.05. However, Applicant's woefully inadequate discovery responses coupled with Applicant's persistent failure to respond to (or even acknowledge) Coloplast's

efforts to resolve the discovery issues have effectively deprived Coloplast of its opportunity to engage in follow up discovery. Indeed, Applicant has not even responded to Coloplast's invitation to extend all deadlines so that the parties would have additional time to address the discovery issues. Accordingly, Coloplast respectfully requests that upon resetting of the schedule, the Board extend the discovery period *for Opposer alone*<sup>5</sup> by five weeks after the deadline for Applicant to supplement its discovery.<sup>6</sup>

## VI. Conclusion

For all the foregoing reasons, Opposer respectfully requests that the Board GRANT Opposer's Motion to Compel and Test Sufficiency; and issue an Order: 1) suspending these proceedings; 2) compelling Applicant to immediately serve amended and/or supplemental answers to Opposer's interrogatories, requests for admission and document requests; 3) compelling Applicant to produce responsive documents by mail; 4) compelling Applicant to serve a privilege log; 5) entering the Board's Standard Protective Order; and 6) resetting the

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<sup>5</sup> Such an extension should not be granted to Applicant in light of Applicant's bad faith conduct which necessitated this very request, since it is axiomatic that one should not benefit from his own improper conduct. Moreover, Applicant chose to wait until the "waning days of the discovery period" to serve any discovery, and therefore can have no reasonable expectation for an extension. See TBMP §403.04 ("Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period. Thus, a party which waits until the waning days of the discovery period to serve interrogatories, requests for production of documents and things, and/or requests for admission will not be heard to complain, when it receives responses thereto after the close of the discovery period, that it needs an extension of the discovery period in order to take 'follow-up' discovery.").

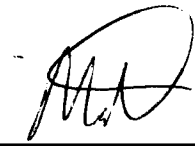
<sup>6</sup> Alternatively, if the Board declines to compel Applicant to supplement any of the disputed discovery responses, then Opposer requests an extension of five weeks from the issuance of such an Order.

schedule upon lifting the suspension, including an extension of the discovery period for Opposer alone.

Respectfully Submitted,

COLOPLAST A/S,

By:



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Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
(202) 638-6666

Dated: January 6, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 6<sup>th</sup> day of January, 2006, a true copy of the foregoing Opposer's Motion to Compel and to Test the Sufficiency of Applicant's Answers to Requests for Admission, to Suspend the Proceedings and to Reset the Trial Dates By Extending the Discovery Period for Opposer Alone, was served by first-class mail, postage prepaid, upon counsel for Applicant:

John S. Egbert  
Egbert Law Offices  
412 Main Street  
7th Floor  
Houston, Texas 77002

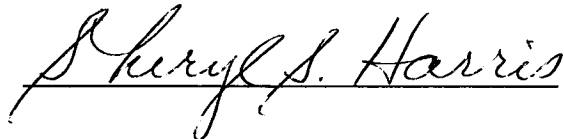




EXHIBIT A

COLOPLAST A/S,	:	
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OPPOSER,	:	
	:	
vs.	:	OPPOSITION NO. 165,588
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JIRO TAKASHIMA,	:	
	:	
APPLICANT.	:	

**OPPOSER’S MOTION TO COMPEL AND TO TEST THE SUFFICIENCY OF APPLICANT’S ANSWERS TO REQUESTS FOR ADMISSION, TO SUSPEND THE PROCEEDINGS AND TO RESET THE TRIAL DATES BY EXTENDING THE DISCOVERY PERIOD FOR OPPOSER ALONE**



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 Firm e-mail: lp@jhip.com

~~October 20, 2005~~

**REMINDER VIA FACSIMILE**  
**(713)223-4873**  
**October 26, 2005**

John S. Egbert, Esquire  
 Harrison & Egbert  
 412 Main St., 7<sup>th</sup> Floor  
 Houston, TX 77002

Re: Coloplast A/S v. Jiro Takashima  
 Mark: PERISTAL  
 Opposition No. 91/165,588  
Our Ref.: 11072/I-5240

Dear Mr. Egbert:

This will refer to our April 1, 1005 letter and our telephone conversations of May 12, 2005 and September 22, 2005, regarding the above-referenced matter.

Our April 1, 2005 letter to you sought information about the Applicant, Mr. Takashima, regarding his PERISTAL product, as well as its promotion, channels of trade, and ultimate consumer. Despite our several reminders, we received no response from you.

When we finally spoke on May 12, 2005 you said that you had no instructions from Mr. Takashima. We asked whether additional time might be helpful for collecting the documents and information requested in our April 1, 2005 letter. You responded in the negative, saying that the opposed mark was not "a big deal" for Mr. Takashima, and that he would likely not even respond to any Notice of Opposition that might be filed. You further advised that Applicant would certainly not use the opposed mark, which was the subject of an intent to use application.

Accordingly, we were surprised to receive Applicant's Answer. I called you on September 22, 2005, and you advised that the Answer was filed as a precautionary step since you had not received any instructions from your client. In light of this, I requested that you confer with your client and determine whether he wished to defend the opposition proceeding, abandon the application, or respond to our request for information. You declined. You said that we would have to serve written discovery, at which point you thought that Mr. Takashima might lose interest in the application. I noted that your refusal to communicate with your client constitutes a colossal waste of time, effort, money and energy; and suggested that it would be more productive if you would simply communicate with your client regarding his intentions (indeed, it is not clear whether Mr. Takashima has even been apprised of this proceeding). However, you again declined, repeating that we would have to go through the exercise and expense of serving written discovery.

Jacobson Holman PLLC

John S. Egbert, Esquire  
October 20, 2005  
Page 2

We again call upon you to reconsider this improper and wasteful position.

Very truly yours,

Matthew J. Cuccias  
JACOBSON HOLMAN PLLC

SLM/MJC/as

TRANSMITTED/STORED : OCT. 26. 2005 4:43PM  
FILE MODE OPTION

ADDRESS

RESULT

PAGE

211 MEMORY TX

17132234873

OK

2/2

REASON FOR ERROR OR LINE FAIL  
E-1) HANG UP OR  
E-3) NO ANSWER

E-2) BUSY  
E-4) NO FACSIMILE CONNECTION



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~~October 20, 2005~~

**REMINDER VIA FACSIMILE**  
**(713)223-4873**  
**October 26, 2005**

John S. Egbert, Esquire  
Harrison & Egbert  
412 Main St., 7<sup>th</sup> Floor  
Houston, TX 77002

Re: Coloplast A/S v. Jiro Takashima  
Mark: PERISTAL  
Opposition No. 91/165,588  
Our Ref.: 11072/A-5240

Dear Mr. Egbert:

This will refer to our April 1, 1005 letter and our telephone conversations of May 12, 2005 and September 22, 2005, regarding the above-referenced matter.

Our April 1, 2005 letter to you sought information about the Applicant, Mr. Takashima, regarding his PERISTAL product, as well as its promotion, channels of trade, and ultimate consumer. Despite our several reminders, we received no response from you.

When we finally spoke on May 12, 2005 you said that you had no instructions from Mr. Takashima. We asked whether additional time might be helpful for collecting the documents and information requested in our April 1, 2005 letter. You responded in the negative, saying that the opposed mark was not "a big deal" for Mr. Takashima, and that he would likely not even respond to any Notice of Opposition that might be filed. You further advised that Applicant would certainly not use the opposed mark, which was the subject of an intent to use application.

Accordingly, we were surprised to receive Applicant's Answer. I called you on September 22, 2005, and you advised that the Answer was filed as a precautionary step since you had not received any instructions from your client. In light of this, I requested that you confer with your client and determine whether he wished to defend the opposition proceeding, abandon the application, or respond to our request for information. You declined. You said that we would have to serve written discovery, at which point you thought that Mr. Takashima might lose interest in the application. I noted that your refusal to communicate with your client constitutes a colossal waste of time, effort, money and energy; and suggested that it would be more productive if you would simply communicate with your client regarding his intentions (indeed, it is not clear whether Mr. Takashima has even been apprised of this proceeding). However, you again declined, repeating that we would have to go through the exercise and expense of serving written discovery.

# EXHIBIT B

COLOPLAST A/S,

OPPOSER,

vs.

JIRO TAKASHIMA,

APPLICANT.

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OPPOSITION NO. 165,588

**OPPOSER'S MOTION TO COMPEL AND TO TEST THE  
SUFFICIENCY OF APPLICANT'S ANSWERS TO REQUESTS FOR ADMISSION,  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Applicant.

Opposition No. 165,588

**OPPOSER'S REQUESTS FOR ADMISSION TO APPLICANT**

Opposer, through its counsel, hereby requests Applicant, within thirty (30) days after service of these requests, to make the following admissions, pursuant to Rule 36, Fed.R.Civ.P. and 37 C.F.R. § 2.120(h), and subject to all pertinent objections to admissibility which may be interposed at trial:

**INSTRUCTIONS**

A. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference and made a part hereof, as if fully stated herein.

B. These Requests are continuing and to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by Applicant subsequent to the service of answers hereto, Applicant is requested promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

C. In answering these Requests, Applicant is required to admit or deny each request based on information as is available to Applicant and its agents, including information in the possession of Applicant's attorneys, investigators and other representatives.

D. For each of these Requests to which Applicant responds by asserting that it lacks sufficient information and/or knowledge, state in detail the information required to answer said admission, and the steps taken by Applicant to investigate and/or obtain information in order to answer said admission request.

### REQUESTS

1. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer's Mark.
2. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer's pleaded application.
3. Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer.
4. Prior to Applicant's selection of Applicant's Mark, Applicant visited Opposer's website.
5. Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer's Mark.
6. Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer's pleaded application.
7. Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer.

8. Prior to the filing of the opposed application, Applicant visited Opposer's website.

9. Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer's Mark.

10. Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer's pleaded application.

11. Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer.

12. Prior to using Applicant's Mark, Applicant visited Opposer's website.

13. Opposer is an international medical device company.

14. Opposer sells ostomy products.

15. Opposer sells incontinence products.

16. Opposer promotes ostomy products at its Internet website.

17. Opposer promotes incontinence products at its Internet website.

18. Opposer is well-known in the United States.

19. Opposer is well-known in the United States ostomy care market.

20. Opposer is well known in the United States incontinence care market.

21. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with hemorrhoid treatment devices (other than marks involved in this proceeding).

22. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with surgical or medical instruments and apparatus for incontinence (other than marks involved in this proceeding).



23. Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with ostomy products (other than marks involved in this proceeding).

24. Applicant does not possess any documents which support Applicant's Affirmative Defense, as pleaded in Applicant's Answer to Notice of Opposition.

25. Applicant is not aware of any evidence which supports Applicant's Affirmative Defense, as pleaded in Applicant's Answer to Notice of Opposition.

26. Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Affirmative Defense in Applicant's Answer to Notice of Opposition.

27. All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are genuine pursuant to the Federal Rules of Evidence.

28. All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are part of the business records of Applicant kept in the normal course of Applicant's business.

29. All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Applicant on the grounds of relevance.

30. Goods of the same type as those listed in the opposed application are marketed at retail.

31. Goods of the same type as those listed in the opposed application are sold at retail.

32. The goods listed in the opposed application are marketed at retail.

33. The goods listed in the opposed application are intended to be marketed at retail.
34. The goods listed in the opposed application are marketed at retail under Applicant's Mark.
35. The goods listed in the opposed application are intended to be marketed at retail.
36. The goods listed in the opposed application are similar to the goods listed in the pleaded application.
37. Applicant sell its PERISTAL products on the Internet.
38. Applicant sell its PERISTAL products to hospitals.
39. Applicant sell its PERISTAL products to medical device retailers.
40. Applicant sell its PERISTAL products to pharmacists.
41. Applicant markets its PERISTAL products on the Internet.
42. Applicant markets its PERISTAL products to hospitals.
43. Applicant markets its PERISTAL products to nurses.
44. Applicant markets its PERISTAL products to medical device retailers.
45. Applicant markets its PERISTAL products to pharmacists.
46. Applicant intends to sell its PERISTAL products on the Internet.
47. Applicant intends to sell its PERISTAL products to hospitals.
48. Applicant intends to sell its PERISTAL products to medical device retailers.
49. Applicant intends to sell its PERISTAL products to pharmacists.
50. Applicant intends to market its PERISTAL products on the Internet.
51. Applicant intends to market its PERISTAL products to hospitals.
52. Applicant intends to market its PERISTAL products to nurses.

53. Applicant intends to market its PERISTAL products to medical device retailers.
54. Applicant intends to market its PERISTAL products to pharmacists.
55. Applicant intends for its PERISTAL products to be sold on the Internet.
56. Applicant intends for its PERISTAL products to be sold to hospitals.
57. Applicant intends for its PERISTAL products to be sold to medical device retailers.
58. Applicant intends for its PERISTAL products to be sold to pharmacists.
59. Applicant intends for its PERISTAL products to be marketed to hospitals.
60. Applicant intends for its PERISTAL products to be marketed to nurses.
61. Applicant intends for its PERISTAL products to be marketed to medical device  
retailers.

62. Applicant intends for its PERISTAL products to be marketed to pharmacists.

63. The mark of the opposed application is similar to Opposer's Mark.

64. Attached hereto as Exhibit A is a printout from the Wikipedia website, located at <http://en.wikipedia.org/wiki/Peristalsis>.

65. The document labeled as Exhibit A contains a definition of the term "peristalsis", namely: "the process of involuntary wave-like successive muscular contractions by which food is moved through the digestive tract."

66. The term "peristalsis" is defined as the process of involuntary wave-like successive muscular contractions by which food is moved through the digestive tract.

67. The document labeled as Exhibit A contains the following: "the process of peristalsis is used by peristaltic pumps."

68. The process of peristalsis is used by peristaltic pumps.

69. Attached hereto as Exhibit B is a printout from the Wikipedia website, located at [http://en.wikipedia.org/wiki/Peristaltic\\_pump](http://en.wikipedia.org/wiki/Peristaltic_pump).

70. The document labeled as Exhibit B contains a definition of “peristaltic pump.”

71. The document labeled as Exhibit B states, in part: peristalsis “is used in many biological systems such as the gastrointestinal tract.”

72. Peristalsis is used in many biological systems such as the gastrointestinal tract.

73. The goods listed in the opposed application are directed to “hemorrhoid treatment devices.”

74. Attached hereto as Exhibit C is a printout from the Wikipedia website, located at <http://en.wikipedia.org/wiki/Hemorrhoid>.

75. The document labeled as Exhibit C contains the following: “hemorrhoids (also known as haemorrhoids or piles) are varicosities or swelling and inflammation of veins in the rectum and anus.”

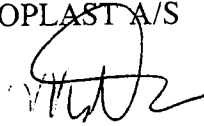
76. Hemorrhoids are varicosities or swelling and inflammation of veins in the rectum and anus.

77. Attached hereto as Exhibit D is a printout from the Wikipedia website, located at <http://en.wikipedia.org/wiki/Rectum>.

78. The document labeled as Exhibit D contains the following: the rectum “is the final straight portion of the large intestine in some mammals, and the gut in others, terminating in the anus.”

79. The rectum is the final straight portion of the large intestine in some mammals, and the gut in others, terminating in the anus.

COLOPLAST A/S



By: \_\_\_\_\_

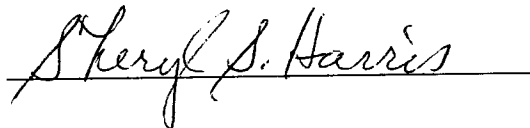
Simor L. Moskowitz  
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Washington, D.C. 20004  
(202) 638-6666  
Attorneys for Opposer

Dated: November 14, 2005  
Attorney Docket No.: I-5240

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of November, 2005, a true copy of the foregoing OPPOSER'S REQUESTS FOR ADMISSION TO APPLICANT was served by first-class mail, postage prepaid, upon counsel for Applicant:

John S. Egbert  
Egbert Law Offices  
412 Main Street  
7th Floor  
Houston, Texas 77002



# Peristalsis

From Wikipedia, the free encyclopedia.

**Peristalsis** is the process of involuntary wave-like successive muscular contractions by which food is moved through the digestive tract.

The large, hollow organs of the digestive system contain muscle that enables their walls to move. The movement of organ walls can propel food and liquid and also can mix the contents within each organ. Typical movement of the Oesophagus, stomach, and intestine is called peristalsis. The action of peristalsis looks like an ocean wave moving through the muscle. The muscle of the organ produces a narrowing and then propels the narrowed portion slowly down the length of the organ. These waves of narrowing push the food and fluid in front of them through each hollow organ.

The process of peristalsis is used by peristaltic pumps.

Peristalsis is also used at oviducts, ureters and other tube-like organs.

In the digestive tract, the muscularis externa (which consists of circular and longitudinal muscle) propels the material along the alimentary canal. During a peristaltic movement, the circular muscles contract behind the digested material; then a contraction of the longitudinal muscle follows which pushes the digested food further along the oesophagus. (These peristaltic movements also occur in the large and small intestines.)

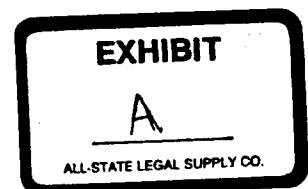
## See also

- borborygmus

Retrieved from "<http://en.wikipedia.org/wiki/Peristalsis>"

Categories: Biology stubs | Digestive system

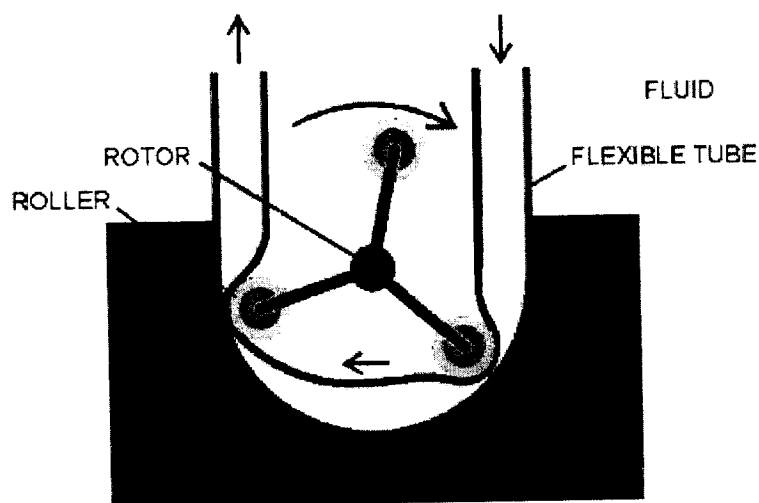
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# Peristaltic pump

From Wikipedia, the free encyclopedia.

A **peristaltic pump** is a type of positive displacement pump used for pumping a variety of fluids. The fluid is contained within a flexible tube fitted inside a circular pump casing (though linear peristaltic pumps have been made). A rotor with a number of cams ('rollers', 'shoes' or 'wipers') attached to the external circumference compresses the flexible tube. As the rotor turns, the part of tube under compression closes (or 'occludes') thus forcing the fluid to be pumped to move through the tube. Additionally, as the tube opens to its natural state after the passing of the cam ('restitution') fluid flow is induced to the pump. This process is called peristalsis and is used in many biological systems such as the gastrointestinal tract.



Peristaltic pumps are typically used to pump clean or sterile fluids because the pump cannot contaminate the fluid, or to pump aggressive fluids because the fluid cannot contaminate the pump. Some common applications include pumping aggressive chemicals, high solids slurries and other materials where isolation of the product from the environment, and the environment from the product, are critical.

Higher pressure peristaltic pumps which can typically operate against up to 16 bar, typically use shoes and have casings filled with lubricant to prevent abrasion of the exterior of the pump tube and to aid in the dissipation of heat. Lower pressure peristaltic pumps, typically have dry casings and use rollers. High pressure peristaltic pumps typically use reinforced tubes, often called 'hoses', and the class of pump is often called a 'hose pump'. Lower pressure peristaltic pumps typically use non-reinforced tubing, and the class of pump is sometimes called a 'tube pump' or 'tubing pump'.

Since the only part of the pump in contact with the fluid being pumped is the interior of the tube, it is easy to sterilise and clean the inside surfaces of the pump. Furthermore, since there are no moving parts in contact with the fluid, peristaltic pumps are inexpensive to manufacture. Their lack of valves, seals and glands makes them comparatively inexpensive to maintain, and the use of a hose or tube makes for a relatively low-cost maintenance item compared to other pump types.

## Typical applications

- Dialysis machines
- Food manufacturing
- Beverage dispensing



- Pharmaceutical production
- Sewage sludge
- tabletop decorative fountains and waterwalls

Retrieved from "http://en.wikipedia.org/wiki/Peristaltic\_pump"

Category: Pumps

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# Hemorrhoid

From Wikipedia, the free encyclopedia.

**Hemorrhoids** (also known as **haemorrhoids** or **piles**) are varicosities or swelling and inflammation of veins in the rectum and anus.

## Contents

- 1 Types and symptoms of hemorrhoids
- 2 Prevalence
- 3 Causes
- 4 Prevention
- 5 Examination
- 6 Treatments
  - 6.1 Temporary relief
  - 6.2 Natural treatments
  - 6.3 Medical treatments
  - 6.4 Diseases with similar symptoms
- 7 See also
- 8 External links
- 9 References

## Types and symptoms of hemorrhoids

Two of the most common types of hemorrhoids are external and internal hemorrhoids. **External hemorrhoids** are those that occur outside of the anal verge (the distal end of the anal canal). They are sometimes painful, and can be accompanied by swelling and irritation. Itching, although often thought to be a symptom from external hemorrhoids, is more commonly due to skin irritation. If the vein ruptures and a blood clot develops, the hemorrhoid becomes a **thrombosed hemorrhoid**.

**Internal hemorrhoids** are those that occur inside the rectum. As this area lacks pain receptors, internal hemorrhoids are usually not painful and most people are not aware that they have them. Internal hemorrhoids, however, may bleed when irritated.

Untreated internal hemorrhoids can lead to two severe forms of hemorrhoids: prolapsed and strangulated hemorrhoids. **Prolapsed hemorrhoids** are internal hemorrhoids that are so distended that they are pushed outside of the anus. If the anal sphincter muscle goes into spasm and traps a prolapsed hemorrhoid outside of the anal opening, the supply of blood is cut off, and the hemorrhoid becomes a **strangulated hemorrhoid**.

## Prevalence

Hemorrhoids are very common. It is estimated that approximately one half of all Americans have this condition by the age of 50. However, only a small number seek medical treatment. Annually, only about 500,000 people are medically treated for hemorrhoids, with 10 to 20% of them requiring surgeries.

## Causes

The causes of hemorrhoids include genetic predisposition (weak rectal vein walls and/or valves), straining during bowel movements, and too much pressure on the rectal veins due to poor posture or muscle tone. Constipation, chronic diarrhea, poor bathroom habits (reading on the toilet or excessive cleaning attempts), pregnancy, postponing bowel movements, and fiber-deprived diet can also contribute.

EXHIBIT

C

Insufficient hydration (caused by not drinking enough water, or drinking too much of diuretic liquids such as coffee or colas) can cause a hard stool, which can lead to hemorrhoidal irritation.

An excess of lactic acid in the stool, a product of excessive consumption of milk products such as cheese can cause irritation and a reduction of consumption can bring relief.

Additional factors that can cause hemorrhoids (mostly by increasing rectal vein pressure), especially for those with a genetic predisposition, are obesity and a sedentary lifestyle.

## Prevention

Prevention of hemorrhoids includes drinking more fluids, eating more dietary fiber, exercising, practicing better posture, and reducing bowel movement strain and time. Hemorrhoid sufferers should avoid using laxatives and should strictly limit time straining during bowel movement.

## Examination

After visual examination of the anus and surrounding area for external or prolapsed hemorrhoids, your doctor would conduct a digital examination. In addition to probing for hemorrhoidal bulges, your doctor would also look for indications of rectal tumor or polyp, enlarged prostates and abscesses.

Visual confirmation of hemorrhoids can be done using a medical device called an anoscope. This device is basically a hollow tube with a light attached at one end that allows the doctor to see the internal hemorrhoids, as well as polyps in the rectum.

If warranted, more detailed examinations, such as sigmoidoscopy and colonoscopy can be performed. In sigmoidoscopy, the last 25 inches of the colon and rectum are examined whereas in colonoscopy the entire bowel is examined.

## Treatments

Treatments for hemorrhoids vary in their cost, risk, and effectiveness. Different cultures and individuals approach treatment differently. Some of the treatments used are listed here in increasing order of intrusiveness and cost.

### Temporary relief

For many people, hemorrhoids are mild and temporary conditions that heal spontaneously or by the same measures recommended for prevention. In these cases, warm sitz bath using a bidet, extendable showerhead, cold compress, or topical analgesic (such as Preparation H), is sufficient to provide temporary relief.

### Natural treatments

Some people successfully apply natural procedures for treatment or reversal of chronic conditions. These procedures largely echo the prevention measures. They include:

- Reducing regional pressure in such ways as improving posture and muscle tone
- Taking herbs and dietary supplements that strengthen vein walls, such as butcher's broom, horse chestnut, bromelain, and Japanese pagoda tree extracts
- Topical application of natural astringents and soothing agents, such as Witch hazel (astringent), cranesbill and aloe vera
- Eating fiber-rich bulking agents such as plantain and psyllium to help create soft stool that is easy to pass to lessen the irritation of existing hemorrhoids.
- Using the squatting position for bowel movements. (See external links below)

A recent review found that oral dietary supplementation helps treat and prevent many complications of hemorrhoids (1). The review recommended natural botanicals such as Butcher's Broom, Horse Chestnut, and bioflavonoids as an effective addition to hemorrhoid treatment.

**Butcher's Broom:** Butcher's broom extract, or *Ruscus aculeatus*, contains ruscogenins that have anti-inflammatory and vasoconstrictor effects. Supplementation with Butcher's Broom helps tighten and strengthen veins. Butcher's broom has traditionally been used to treat venous problems including hemorrhoids and varicose veins. (2-4)

**Horse Chestnut:** Horse chestnut extract, or *Aesculus hippocastanum*, contains a saponin known as aescin, that has anti-inflammatory, anti-edema, and venotonic actions. Aescin improves tone in vein walls, thereby strengthening the support structure of the vein. Double blind studies have shown that supplementation with horse chestnut helps relieve the pain and swelling associated with chronic venous insufficiency. (5,6)

**Bilberry Bioflavonoid:** Bilberry extract, or *Vaccinium myrtillus*, is an anthocyanoside bioflavonoid. Supplementation with this potent flavonoid protects and maintains venous strength and function. (2,7)

More research on hemorrhoids and supplements can be found at Supplement News (<http://www.supplementnews.org/>).

## Medical treatments

Some people require the following medical treatments for chronic or severe hemorrhoids:

- **Dilation:** stretching of the anal sphincter muscle. Although no longer popular due to potential side effects, this treatment can be successfully applied to select cases of strangulated hemorrhoids.
- **Rubber band ligation:** elastic bands are applied onto an internal hemorrhoid to cut off its blood supply. Within several weeks, the withered hemorrhoid is sloughed off during normal bowel movement.
- **Sclerotherapy (injection therapy):** sclerosant or hardening agent is injected into hemorrhoids. This causes the vein walls to collapse and the hemorrhoids to shrivel up.
- **Cryosurgery:** a frozen tip of a cryoprobe is used to destroy hemorrhoidal tissues. Rarely used anymore.
- **Laser, infrared or BICAP coagulation:** laser, infrared beam, or electricity is used to cauterize the affected tissues.
- **Hemorrhoidectomy:** a true surgical procedure to excise and remove hemorrhoids.

For some people, surgery may be the only treatment option for very severe cases, chronic or resistant cases of hemorrhoids, such as prolapsed, thrombosed, or strangulated hemorrhoids.

## Diseases with similar symptoms

Symptoms associated with rectal cancer, fissure, anal abscess, fistula, and other diseases may be similar to those produced by hemorrhoids and may be reduced by the topical analgesic methods described above. For this reason, it is a good idea to consult with a physician when these symptoms are encountered, particularly for the first time, and periodically should the problem continue.

## See also

- Anal fissure

## External links

- NIDDK-NIH Hemorrhoid (<http://digestive.niddk.nih.gov/ddiseases/pubs/hemorrhoids/index.htm>)
- eMedicine Hemorrhoids (<http://www.emedicine.com/med/topic2821.htm>)
- MEDLINEplus Hemorrhoids (<http://www.nlm.nih.gov/medlineplus/hemorrhoids.html>)
- Hemorrhoids In Plain English (<http://www.hemorrhoidsinplainenglish.com/>)

- American Society of Colon & Rectal Surgeons (<http://www.fascrs.org/displaycommon.cfm?an=1&subarticlenbr=12>)
- Squatting for the Prevention of Hemorrhoids (<http://www.uow.edu.au/arts/sts/bmartin/pubs/96tldp.html>) Article published in the Townsend Letter for Doctors & Patients, Issue No. 159, October 1996, pp. 66-70

## References

1. MacKay D. Hemorrhoids and varicose veins: a review of treatment options. *Altern Med Rev.* Apr2001;6(2):126-40.
2. Pizzorno JE and Murray MT, eds. *Encyclopedia of Natural Medicine*, revised 2nd edition, CA: Prima Publishing, 1998: 829.
3. Rudofsky G. Improving venous tone and capillary sealing: effect of a combination of ruscus extract and hesperidine methyl chalcone in healthy probands in heat stree. *Fortschr Med* 1989 107(19):55-.
4. Cappelli R et al. Use of extract of ruscus aculeatus in venous disease in the lower limbs. *Drugs Exp Clin Res* 1988 14(4):277-83.
5. Pittler MH, Ernst E. Horse Chestnut seed extract for chronic venous insufficiency: a criteria-based systematic review. *Arch Dermatol* 1998;134:1356-60.
6. Diehm C et al. Comparison of leg compression stocking and oral horse chestnut seed extract therapy in patients with chronic venous insufficiency. *Lancet* 1996;347:292-4.
7. Murray MT. *Encyclopedia of Nutritional Supplements*, NY: Three Rivers Press, 1996: 326.

Retrieved from "<http://en.wikipedia.org/wiki/Hemorrhoid>"

Categories: Gastroenterology | Proctology

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# Rectum

From Wikipedia, the free encyclopedia.

The **rectum** (from the Latin verb *regere* "to straighten, correct, rule" hence the rectum is "that which is ruled, controlled") is the final straight portion of the large intestine in some mammals, and the gut in others, terminating in the anus.

## Contents

- 1 Medical procedures
- 2 The rectum in human defecation
- 3 Muscular anatomy of the human pelvis and rectum
- 4 Sexual stimuli
- 5 See also

## Medical procedures

For the diagnosis of certain ailments, a rectal exam may be done. Suppositories may be inserted into the rectum as a route of administration for medicine.

Body temperature can also be taken in the rectum. Rectal temperature can be taken by inserting a mercury thermometer for 3 to 5 minutes, or a digital thermometer until it "beeps", not more than 25 mm (1 inch) into the rectum via the anus. Due to recent concerns related to mercury poisoning, the use of mercury thermometers is now discouraged. Normal rectal temperature generally ranges from 97.6 to 100.4 °F (36 to 38 °C) and is about 1 °F (0.5 °C) above oral (mouth) temperature and about 2 °F (1 °C) above axillary (armpit) temperature. On average, the rectal temperature is 0.7 °F (0.4 °C) higher than oral temperature. Many pediatricians recommend that parents take infants and toddler's temperature in the rectum for two reasons: (1) Rectal temperature is the closest to core body temperature and in children that young, accuracy is critical. (2) Younger children are unable to cooperate when having their temperature taken by mouth (oral) which is recommended for children, ages 6 and above and for adults. In recent years, the introduction of ear (tympanic) thermometers and changing attitudes on privacy and modesty have led some parents and doctors to discontinue taking rectal temperatures.

## The rectum in human defecation

The rectum ampulla acts as a temporary storage facility for feces. As the rectal walls expand due to the materials filling it from within, stretch receptors from the nervous system located in the rectal walls stimulate the desire to defecate. If the urge is not acted upon, the material in the rectum is often returned to the colon where more water is absorbed. If defecation is delayed for a prolonged period constipation and hardened feces results.

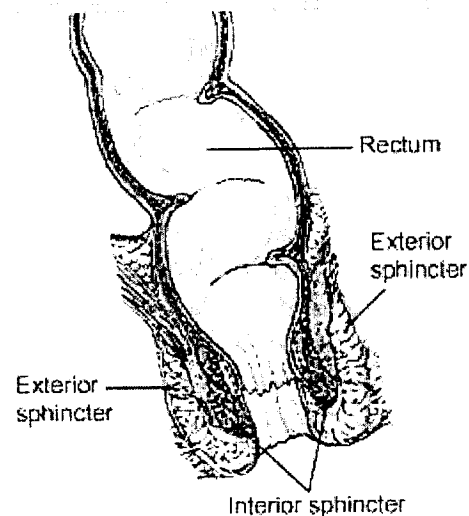
When the rectum is full the increase in intrarectal pressure forces the walls of the anal canal apart allowing the fecal matter to enter the canal. The rectum shortens as material is forced into the anal canal and peristaltic waves propel the feces out of the rectum. The internal and external sphincter allow the feces to be passed by muscles pulling the anus up over the exiting feces.

See defecation for more on waste expulsion.

## Muscular anatomy of the human pelvis and



The posterior aspect of the rectum exposed by removing the lower part of the sacrum and the coccyx.



Anatomy of the anus and rectum

EXHIBIT

D

## rectum

The Levatores ani constrict the lower end of the rectum and vagina. They elevate and invert the lower end of the rectum after it has been protruded and everted during the expulsion of the feces. They are also muscles of forced expiration. The Coccygei pull forward and support the coccyx, after it has been pressed backward during defecation or parturition. The Levatores ani and Coccygei together form a muscular diaphragm which supports the pelvic viscera.

## Sexual stimuli

Due to the proximity of the anterior wall of the rectum to the vagina in females or to the prostate in males and the shared nerves thereof, rectal stimulation can result in sexual arousal. As a human sexual behavior, often this takes the form of anal intercourse or penetration with specialised anal sex toys.

## See also

- Gastrointestinal tract
- Conical section
- (semi-)Latus rectum

### Digestive system

Mouth - Pharynx - Crop - Esophagus - Stomach - Pancreas - Gallbladder - Liver - Small intestine (duodenum, jejunum, ileum) - Colon - Cecum - **Rectum** - Anus

Retrieved from "http://en.wikipedia.org/wiki/Rectum"

Categories: Digestive system | Pelvis

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

COLOPLAST A/S,

Opposer,

VS.

JIRO TAKASHIMA,

Applicant.

Opposition No. 165,588

**OPPOSER'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer hereby requests that Applicant produce for inspection and copying the documents listed below at the place where such documents usually are kept, or at such other time and place as agreed upon by the parties.

**INSTRUCTIONS AND DEFINITIONS**

A. The Instructions and Definitions set forth in Opposer's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference and made a part hereof, as if fully stated herein.

B. Applicant shall designate in its responses with respect to each document requested, whether any documents responsive to the request exist; whether such documents will be produced by Applicant, when and where the documents will be produced, and where such documents usually are kept.

## DOCUMENT REQUESTS

1. The documents requested to be identified in Opposer's First Set of Interrogatories, served on Applicant concurrently herewith.
2. The documents referenced or identified by Applicant in response to Opposer's First Set of Interrogatories.
3. All documents that constitute, contain, comment on, refer to, relate to, reflect, describe, and/or disclose, any consideration, proposal or decision to adopt and/or use Applicant's Mark.
4. All documents which do, or may, support any claims or defenses of Applicant herein, and/or which Applicant believes would be admissible evidence on its behalf at the trial of this proceeding.
5. All documents which list, show, explain or describe each of the products sold and/or services offered by Applicant under Applicant's Mark and/or planned to be offered and/or sold under Applicant's Mark, including without limitation, each catalogue, brochure, or other printed materials or video/audio tapes.
6. A sample (or if due to the physical size of same, in lieu thereof a photograph sufficiently legible to show the product and any writing or marks thereon) of each product sold and/or intended to be sold under Applicant's Mark, and each display, tag, label, warranty, insert, and any other material included and/or intended to be included with such product when offered for sale, sold, and/or shipped in interstate commerce.
7. A sample of each sign, brochure, handbill, stationery, advertisement, business card, identification card, display, pre-printed contract or form, decal, badge, label, and other



advertising, promotional, and/or printed materials on which Applicant's Mark has been displayed or has appeared.

8. All materials which have been produced, drafted, or proposed for use, including mock-ups for same, which display, refer or relate, in any way, to Applicant's Mark, whether or not such have ever been used, displayed, and/or disseminated.

9. A sample of each advertisement (including, but not limited to, television and/or radio commercials or spots) and promotional material (including, but not limited to audio and video tapes and CD's, Internet web site(s) and other material intended for viewing and/or listening by computer or other machine), bearing, mentioning or displaying Applicant's Mark and/or the products sold and/or offered for sale under Applicant's Mark.

10. A specimen of each label, tag, nameplate, packaging and other material (including, but not limited to, packaging, warranty cards, instruction sheets, promotional items, etc.) bearing, displaying and/or containing Applicant's Mark.

11. A sample of each and every document and thing bearing Applicant's Mark, or to which Applicant's Mark is affixed, whether or not such material ever has been used, distributed, disseminated, or displayed.

12. Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Applicant's services or goods are advertised, promoted, sold, offered for sale, and/or distributed under Applicant's Mark.

13. Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Applicant intends

to have its services or goods advertised, promoted, sold, offered for sale, and/or distributed under Applicant's Mark.

14. All mailing lists and other lists of actual or potential customers, clients, sales representatives, brokers, dealers, and/or distributors of Applicant with respect to the products sold and/or to be sold in connection with Applicant's Mark.

15. All documents which evidence, refer, or relate to Applicant's knowledge of Opposer's Mark, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents referring or relating to Opposer's Mark.

16. All documents which evidence, support, refer, or relate to Applicant's knowledge of Opposer, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents referring or relating to Opposer.

17. All documents which evidence, support, or show the denials in Applicant's Answer to the Notice of Opposition.

18. All documents which were reviewed, consulted and/or relied upon by Applicant in making the denials in Applicant's Answer to the Notice of Opposition.

19. All documents which evidence, support, or show Applicant's Affirmative Defense as pleaded in Applicant's Answer to the Notice of Opposition.

20. All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Affirmative Defense in Applicant's Answer to the Notice of Opposition.

21. All documents which refer or relate to Opposer.

22. All documents which refer or relate to Opposer's Mark.

23. All documents which refer or relate to Opposer's products.

24. All documents which refer or relate to the application pleaded by Opposer in the Notice of Opposition.

25. All documents which refer or relate to the circumstances under which Applicant first became aware of the actual or possible use of Opposer's Mark.

26. All documents which evidence, relate or refer to the time Applicant first learned of Opposer.

27. All documents which evidence, relate or refer to the time Applicant first learned of Opposer's website.

28. Documents sufficient to show Applicant's annual sales in numbers of units and in gross revenues, for products sold under Applicant's Mark, from the date of alleged first use of Applicant's Mark to the present.

29. Documents sufficient to show Applicant's annual sales in numbers of units and in gross revenues, for services (if any) offered under Applicant's Mark, from the date of alleged first use of Applicant's Mark to the present.

30. Documents sufficient to show or evidence Applicant's advertising expenditures in connection with Applicant's Mark and/or the products sold and/or services offered under Applicant's Mark, for each year from the date of alleged first use of Applicant's Mark through the present.

31. All documents relating and/or referring to the channels of trade through which services offered under, or products bearing, Applicant's Mark have been sold or are intended to be sold, including but not limited to documents describing the types of customers to whom Applicant does, or intends to, advertise, promote, and/or sell Applicant's products, and/or the

retail and wholesale outlets in which Applicant's products in connection with Applicant's Mark are or have been used and/or sold.

32. All documents referring or relating to Applicant's Mark that have been filed with or received from any federal, state or local governmental office or regulatory agency, including without limitation all documents filed in connection with efforts to obtain approval to offer any services or sell any products under Applicant's Mark, or to obtain registration of Applicant's Mark.

33. All documents relied upon, either in whole or in part, as a basis for each opinion to be rendered by:

- (a) each expert witness that Applicant will or may call; and
- (b) each person from whom Applicant has obtained, or will obtain, statements or affidavits, or who is expected to give testimony in this case.

34. All documents constituting and/or comprising any opinion(s) and/or report(s) furnished by:

- (a) each expert witness that Applicant will or may call; and
- (b) each person from whom Applicant has obtained, or will obtain, statements or affidavits, or who is expected to give testimony in this case.

35. All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation

concerning, referring or relating to Opposer's Mark or any trademark comprised in whole or in part of the term "PERI" or "PERIST", and/or to the products sold and/or offered under Opposer's Mark.

36. All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Applicant's Mark or any trademark comprised in whole or in part of the term "PERI" or "PERIST", and/or to the products sold and/or offered (or intended to be sold and/or offered) under Applicant's Mark.

37. All documents referring or relating to any United States service mark and trademark registrations, or applications, issued to, or filed by, Applicant, for any mark incorporating "PERI" or "PERIST" alone or in combination with other letters, words, or symbols.

38. All documents which evidence, refer, or relate to the strength (as that term is used in determining likelihood of confusion) of Opposer's Mark.

39. All documents which evidence, support, refer, or relate to any license, assignment, agreement, understanding, or other grant or transfer of rights referring or relating to Applicant's Mark.

40. Each document reviewed, consulted, or on which Applicant relied, to draft its answers to Opposer's First Set of Interrogatories, served concurrently herewith.

41. Each document reviewed, consulted, or on which Applicant relied, to draft its answers to Opposer's First Set of Requests for Admissions, served concurrently herewith.

42. Each document which shows, evidences, or supports Applicant's responses to Opposer's First Requests for Admissions, served concurrently herewith.

43. Each document which shows, evidences, or supports Applicant's responses to Opposer's First Set of Interrogatories, served concurrently herewith.

44. Each document which shows, evidences, or supports that Applicant's Mark, as used (or to be used) in connection with Applicant's goods, is not likely to be confused with Opposer's Mark.

45. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to its sale or proposed sale of products bearing, and/or in connection with which Applicant uses, or intends to use, Applicant's Mark.

46. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to its offer or proposed offer of services under and/or in connection with Applicant's Mark.

47. If Applicant's response to any of the requests in Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, for each such request, all documents which evidence, show and/or support the denial of such Request for admission, and/or Applicant's basis for Applicant's response to the Request for admission.

48. A complete copy of each version of any web site linked to a domain name registered to Applicant, including but not limited to the HTML code for same, from the creation of the web site through the present.

49. For each mark identified in response to Interrogatory Number 15, all documents which demonstrate, refer or relate to:

- a) the dates of usage(s) of such mark,
- b) the goods/services sold in connection with the mark,
- c) the identity of the party so using the mark, and
- d) where (name and address) these goods/services can be found in the marketplace.

50. Produce a copy of the certificate of registration for each trademark or service mark registration identified in response to Interrogatory Number 12.

51. All documents relating to the price of each of the goods sold or to be sold under Applicant's Mark.

52. All documents relating to the price of the services offered or to be offered under Applicant's Mark.

53. All documents relating to any objection, lawsuit, opposition proceeding, cancellation proceeding or other proceeding involving or relating to Applicant's Mark.

54. With respect to each product and/or service with which Applicant's Mark has been used, documents sufficient to show whether or not Applicant's use of the mark in connection with such product/service has been continuous.

55. With respect to each product and/or service in connection with which Applicant's Mark has been used, all documents which evidence, refer, or relate to Applicant's first use in interstate commerce of Applicant's Mark in connection with each such product and/or service.

56. With respect to the earliest date on which Applicant will rely in this proceeding to establish Applicant's rights in Applicant's Mark, all documents which evidence, support, refer, or relate to such claim or rights in Applicant's Mark by Applicant as of that date.

57. All documents that reflect, relate to or refer to any confusion as to origin, endorsement, approval or sponsorship of goods or services sold, distributed or offered by Applicant under Applicant's Mark and/or by Opposer under Opposer's Mark.

58. For each year in which products have been sold under Applicant's Mark, documents sufficient to identify each state where such product was sold.

59. Documents sufficient to identify the retail locations through which products bearing Applicant's Mark are sold.

60. All materials which have been produced, drafted, or proposed for use as product packaging for Applicant's goods to be sold under Applicant's Mark, including mock-ups for same, whether or not such have ever been used, displayed, and/or disseminated.

61. Documents sufficient to identify each state where Applicant intends for its products to be sold under Applicant's Mark.

COLOPLAST A/S

By:



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Attorneys for Opposer

November 14, 2005  
Attorney Docket No. I-5240



CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of November, 2005, a true copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was served by first-class mail, postage prepaid, upon counsel for Applicant:

John S. Egbert  
Egbert Law Offices  
412 Main Street  
7th Floor  
Houston, Texas 77002

A handwritten signature in cursive script, reading "Cheryl S. Harris", is written over a horizontal line.

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

COLOPLAST A/S,

Opposer,

vs.

JIRO TAKASHIMA,

Applicant.

Opposition No. 165,588

**OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Fed. R. Civ. P. 33, and Rule 2.120 of the Trademark Rules of Practice, Opposer requests that Applicant answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories, in accordance with the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

**INTRODUCTION AND DEFINITIONS**

A. As used herein, the term "person(s)" includes not only natural persons, officers, managing agents, supervisory personnel, and employees, but also includes, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

B. "Opposer" shall mean the nominal Opposer, Coloplast A/S [hereinafter "Opposer"], and any predecessor(s) or successor(s) in interest, subsidiaries, divisions, franchisees and related companies, directors, officers and employees thereof.

C. "Applicant" shall mean the nominal Applicant, Jiro Takashima, as well as any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which Jiro

Takashima has an ownership interest and/or controls and which uses the opposed mark in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

D. As used herein, the term "Opposer's Mark" shall refer individually and/or collectively to the PERISTEEN mark/application pleaded in the Notice of Opposition, including, or in addition to, in any and all formats, used alone or in combination with any other word(s) or design(s), or symbol(s) as used by or on behalf of Opposer.

E. As used herein, the term "Applicant's Mark" refers to the mark of the opposed application and/or any other mark, name, or designation containing the term "PERISTAL", in any and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s).

F. As used herein, the term "document" is used in its broadest sense, to include, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy; including but not limited to, communications, including intra-company communications and correspondence; cablegrams, radio-grams and telegrams; facsimiles; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or

conferences; summaries and records of personal conversations or interviews; e-mails; reports; customer lists; books, manuals, publications and diaries; laboratory engineering reports; reports of test results; notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; customer surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; instruction manuals; user manuals; computer software; web pages; Internet data and downloads; computer diskettes; computer hard drive; compact discs; computer tapes; graphics, and other data fixed or recorded by electronic means; databases; audio tapes; audio cassettes; video tapes; video cassettes; video discs; films; operation manuals; pamphlets, catalogs and catalog sheets; advertisements, including storyboard and/or scripts for television commercials; circulars; trade letters; press publicity and trade and product releases; product descriptions; drafts of original or preliminary notes on, and marginal comments appearing on, any document; applications for approval by a governmental agency; other reports and records; and any other information-containing paper, writing or physical thing.

G. As used herein, "communication" is used in its broadest sense, to include, without limitation, the following:

- (1) any document, as defined hereinabove; and
- (2) any conversation, discussion, dialogue, conference, report, message, account, interview, exchange, and/or consultation, whether oral, written, or electronic.

H. "Identify" or "identification" with respect to a person, means provide the person's:

- (1) name;
- (2) last known residential address;
- (3) last known business address;

- (4) last known employer or business affiliation; and
- (5) occupation and business position held.

I. "Identify" or "identification" with respect to a company, partnership, firm, corporation or other non-juristic person, shall mean provide:

- (1) the name;
- (2) if incorporated, the place of incorporation;
- (3) if unincorporated, the name of the partners and/or principals; and
- (4) the address of such entity's principal place of business.

J. "Identify" or "identification" with respect to a document, shall mean provide:

- (1) the identity of the person or persons who prepared it, the sender, and all recipient(s), if any;
- (2) the title of the document;
- (3) a description of the general nature of its subject matter(s);
- (4) the date of preparation;
- (5) the date and manner of distribution and publication, if any;
- (6) the location of each copy, and the identity of the present custodian; and
- (7) the identity of the person or persons who can identify and/or authenticate it.

K. "Identify" or "identification" with respect to an act, occurrence, circumstance, or event (collectively "act"), shall mean providing:

- (1) a description of the act;
- (2) the date(s) the act occurred;
- (3) where the act occurred;

(4) the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);

(5) the identity of all persons who have any knowledge or information, about or regarding the act, including the identity of each witness to the act;

(6) when the act, or omission, first became known to Applicant; and

(7) the circumstances and manner in which knowledge of the act was first obtained by Applicant.

L. "Identify" or "identification" with respect to goods, products, or services shall mean:

(1) state the common descriptive name of said good, product or service;

(2) state the model number, identify the manufacturer and location of manufacture thereof;

(3) provide a detailed description of the purpose, function, and/or application of said good, product or service; and

(4) describe in detail the channels of trade in which such product or service is sold and/or rendered.

M. "Identify" or "identification" with respect to a search (including but not limited to trademark searches), survey, poll, or other investigation (collectively "search") shall mean:

(1) state the date and location of the search;

(2) identify and describe all documents examined or investigated in connection with the search;

(3) if applicable, state the size of the sample surveyed, how that sample was selected, and the questions asked;

(4) identify each person(s) who conducted the search;

(5) state all results and conclusions of the search, including, if applicable, each answer to each question posed;

(6) with respect to a search or similar investigation, identify each reference disclosed by providing the mark or name which is the subject of such reference, the owner of the mark or name, the registrant or applicant, the registration or serial number, and the goods and services listed in, or in connection with, such reference;

(7) identify each person who rendered any conclusions or opinion relating to such search;

(8) identify each person to whom the results, in whole or in part, of such search and/or any conclusion or opinion relating to such search, were communicated, and the date(s) of such communication;

(9) identify each person who has knowledge or information with respect to the search; and

(10) identify all documents which contain any results of, and/or refer or relate in any way to, such search.

N. "Advertising" and/or "promotional materials" shall mean, without limitation, advertisements, including advertising copy, advertising slicks, and line art; product packaging, labels, brochures, photographs, product sheets, point of sale displays, audio or video tapes; catalogues or other product guide books; signage, price lists, warranty information, Internet sites,

web sites and/or pages, and/or any other document or material used and/or distributed to promote and/or solicit business, shipments, sales, and/or orders of products or services of Applicant.

O. "Identify" or "identification" with respect to "channels of trade" with respect to a product or service shall mean, without limitation:

(1) describe the circumstances surrounding the sale, distribution and/or rendition of such product/service; and

(2) state whether sales are through any one, or more, of the following means:

- (a) retail,
- (b) wholesale,
- (c) direct mail,
- (d) electronic commerce,
- (e) visits by salespersons,
- (f) direct contact with customers,
- (g) provision of sample goods or services,
- (h) trade shows,
- (i) other means, and if so, describe the nature of the sale,
- (j) any combination of the above sub-sections (a) through (I) inclusive,

of this definition, and if so, identify the applicable channels.

P. As used herein, "media" or "medium" shall be construed to comprise newspapers, consumer magazines, trade publications, trade shows, catalogues, and any means of audio, video,



and/or electronic transmission, and “identify” or “identification” with respect to “media” or “medium” shall mean, without limitation:

(1) provide, for each print medium: the name of the publication or print media; the date; volume number; geographical area and size of circulation; and if directed to a particular trade, industry, or type of reader/customer, describe such trade/ industry/reader;

(2) provide, for each audio and video transmission (including radio and television): the station and/or network on which such transmission was broadcast; the geographical area of broadcast; and the date of each broadcast.

(3) provide, for each direct mailing or other direct distribution (including electronic mailings): the geographic area and dates of such distribution; the number of such mailings/direct distributions sent or disseminated; a general description of the persons to whom distributed; and if a mailing list was used, the source and identification of each such mailing list.

(4) identify, for each medium referring or relating in any way to Applicant’s products or services, the specifically referenced product(s) or service(s) and mark(s) therefor; and

(5) identify the persons employed or associated with Applicant who have most knowledge of same.

Q. “Identify” or “identification” with respect to any advertisement or promotional materials shall mean:

(1) identify the medium in which such advertisement/promotional material was published, broadcast or otherwise disseminated;

(2) identify each person who created, ordered, distributed and/or placed such advertisement;

(3) state where, when, and to whom said advertisement or promotional material, and/or copies of same, were distributed, and the number of copies distributed at each such place and time; and

(4) identify documents which would show when and where the advertisement was placed/broadcast/distributed and the costs thereof, including an identification of the advertisement itself.

R. "Identify" or "identification" with respect to any objection or complaint regarding the use of a name or mark, lawsuit, opposition, cancellation, or other *inter partes* proceeding, shall mean identify:

- (1) the person making the objection or complaint and/or on whose behalf the objection or complaint was made and/or who brought such lawsuit, opposition, cancellation or other *inter partes* proceeding;
- (2) the date when such objections, complaint, lawsuit, opposition, cancellation or other proceeding was made and/or instituted;
- (3) with respect to any lawsuit or proceeding, the parties thereto;
- (4) the civil action or docket number and/or other identifying indicator used by the tribunal before whom such was brought;
- (5) the court or other tribunal before whom the proceeding was brought;
- (6) the trademark(s) and/or service mark(s) at issue; and
- (7) the disposition and/or resolution of such objection, complaint or proceeding.

S. "Identify" or "identification" with respect to a retail outlet or store shall mean:

- (1) the retail outlet or store name;

- (2) the address of the retail outlet or store;
- (3) the owner(s) of the retail outlet or store;
- (4) the date on which the retail outlet or store was first opened to the public; and
- (5) to identify the products, services, and business offered or rendered by or from

such retail outlet or store.

T. "Identify" or "identification" with respect to an agreement, an assignment, license, understanding, or other contract or grant or transfer of rights, (collectively "agreement") shall mean:

- (1) identify the type of agreement — i.e. "assignment," "license," "consent to use," "distributorship agreement," etc.;
- (2) state the date and term of duration of the agreement, and whether such still is in effect;
- (3) identify the geographic scope of the agreement;
- (4) identify the parties to the agreement;
- (5) state whether the agreement is oral or in writing;
- (6) describe in detail any rights and/or property transferred by the agreement, including whether the goodwill in any business, in whole or in part, was transferred as part of, or in connection with, the agreement and, if so, describe in detail the nature and extent of any goodwill assigned, licensed, granted, or transferred;
- (7) if the agreement is a trademark or service mark license, identify the manner of control which is, or was, to be exercised with respect to the quality and character of the goods or services, on or in connection with which any affected mark was to be, or has been, used under such agreement;

(8) state whether the assignor, licensor, grantor, transferor still was doing business at the time of the assignment, license, understanding, grant, transfer;

(9) state whether the assignment/grant/transfer was one in bankruptcy;

(10) state whether the agreement was recorded in the Patent and Trademark Office or any other public record and, if so, state the date and place of such recordation(s);

(11) state in detail the conditions and terms of such agreement;

(12) identify all documents which evidence or refer or relate in any way to such agreement, including the agreement itself, if in writing;

(13) identify each person who drafted and/or participated in any way in the negotiations and/or drafting of the agreement, and/or who approved the same; and

(14) identify each person involved in or who has participated in the enforcement and/or execution of the agreement.

U. "Identify" or "identification" with respect to "expert witness," shall mean, without limitation:

(1) identify such person;

(2) describe the qualifications for such expert;

(3) identify all articles, books or other publications authored in whole or in part by such expert;

(4) identify all documents which such expert has reviewed and/or upon which such expert may rely in connection with his or her testimony; and

(5) provide all of the information set forth in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

V. "Identify" or "identification" with respect to a trademark or service mark registration or application shall mean:

(1) the identification of the agency or office where filed, when filed, and/or who issued such registration;

(2) the names of the applicant and registrant;

(3) the serial and registration number;

(4) the filing and issue date(s);

(5) the present status thereof;

(6) if registration was refused, the reason(s) for such refusal;

(7) identify all documents referring to such registration/application filed in connection with such registration or application including the registration/application itself.

(8) identify whether any assignment or other documents have been received, and if so, what and when in connection with such registration application.

W. "Identify" or "identification" with respect to an instance of confusion or mistake and/or an instance where a person thought, arrived or otherwise indicated a belief there may be an association between the parties herein and/or other products or businesses means state:

(1) the identity of the person(s) confused or mistaken;

(2) the details of such event, including the "mistake" made and the substance of the "confusion;"

(3) the date and place of such event and/or instance of mistake or confusion;

(4) a description of the details of the manner in which such confusion, mistake, belief, assumption or indication was communicated or came to the attention of Applicant;

(5) the details of the response or communication, if any, made by or on behalf of Applicant, directly or indirectly, to the person so confused or mistaken or who communicated such confusion or mistake to Applicant;

(6) the identity of each person having knowledge of such confusion or mistake;  
and

(7) the identity of all documents and communications which refer or relate in any way to such confusion or mistake.

X. As used herein, “and” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

Y. As used herein, “referring or relating to” means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

Z. If Applicant is aware that a document or a group of documents once existed, but has been destroyed, in addition to the identification of the document as described herein, Applicant also is requested to state when the document or group of documents was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

AA. With respect to each document withheld on the ground of a claim of attorney privilege, identify such document in accordance with these definitions and instructions, and state in detail the basis and nature of such claim of privilege.

BB. These interrogatories shall be deemed to be continuing, requiring Applicant to serve upon Opposer amended or supplemental answers promptly after Applicant has acquired additional knowledge or information relating in any way to such interrogatories.

CC. With respect to any interrogatory which is asserted to be overbroad, or unduly burdensome, state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence.

DD. Unless otherwise indicated, all discovery requests should be interpreted as referring to activities within the United States and/or interstate commerce and/or commerce which is regulatable by the Congress.

## INTERROGATORIES

1. State the earliest date on which Applicant will rely in this proceeding to establish any rights in Applicant's mark *vis-a-vis* Opposer, and state in detail the basis for Applicant's claim of rights in Applicant's mark as of that date, including:

(a) a description of the manner of use of Applicant's mark as of that date (i.e., imprinted on the goods, on labels or tags for the goods, on packaging for the goods, in store displays, etc.);

(b) the identity of each person involved in any way in such use, including, but not limited to the identity of each witness who can testify on personal knowledge as to such use;

(c) the identification of each product and/or service in connection with which the mark was used on that date; and

(d) the identification of each document which evidences or supports such claim of use as of that date.

2. Identify each product and/or service with which Applicant's mark has been used, or is intended to be used, and with respect to each such product and/or service identify:

(a) the period of time during which Applicant's mark has been used with said product and/or service (*i.e.*, the date of Applicant's first sale of the product bearing Applicant's mark to the date of Applicant's last sale);

(b) if the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;



(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Applicant's mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Applicant for such products and/or service; and

(e) each state in which such product and/or service has been sold under or in connection with Applicant's mark.

3. Identify each survey, search or other investigation conducted and/or obtained with respect to Opposer's Mark, Applicant's mark, the term "PERI" or "PERIST" as used as a trademark or part of a trademark, and/or the actual, potential, or intended market, and/or the actual, potential, or intended customers of, or consumers for, the goods to be offered for sale and/or sold under or in connection with any of Opposer's Mark and/or Applicant's mark.

4. (a) State the annual volume of advertising under and/or in connection with Applicant's mark in connection with the goods set forth in the opposed application for each year since such advertising commenced.

(b) Identify each medium in which Applicant's mark has been or is intended to be listed, advertised, promoted, offered for sale and/or sold, and/or in which the products sold under Applicant's mark have been listed, advertised, promoted, offered for sale and/or sold.

5. Identify each broker, sales representative, licensee, franchisee, dealer, distributor, wholesaler, each retail outlet, trade show, catalog, and Internet web site and/or other electronic means, to and/or through which Applicant's goods have been, or are intended to be, advertised, promoted, offered for sale, distributed and/or sold, under or in connection with Applicant's mark.

6. For each product and service in connection with which Applicant is using, or intends to use, Applicant's mark, identify, in detail, the channels of trade through which such products and/or services have been, or are intended to be, sold and/or rendered, including but not limited to a general description of the type of customers to whom Applicant does or intends to advertise, promote, and/or sell Applicant's products and/or services in connection with Applicant's mark.

7. Identify each agreement, assignment, license, contract, consent grant, or transfer of rights which concerns, refers or relates to Applicant's mark and/or any rights in connection with such mark.

8. Identify each person who participated in the selection, creation, and/or decision to adopt and/or to use Applicant's mark; and describe in detail the reasons for and/or relating to the selection and adoption of Applicant's mark.

9. (a) Identify all persons employed by Applicant, and/or persons affiliated with, or contracted by, Applicant, responsible for advertising Applicant's mark and/or the goods/services sold or are intended to be sold under Applicant's mark (including but not limited to the designer of any of Applicant's Internet website(s)); and

(b) Identify the person(s) responsible for, or if there is no such person, with the most knowledge of, the marketing of goods and/or services offered for sale under or in connection with Applicant's mark. (As used in this interrogatory, the term "marketing" includes but is not

limited to, the customers, channels of trade, and type(s) of outlets where such goods are or will be offered for sale and/or sold.)

10. (a) Identify the circumstances under which (including, but not limited to, the date) Applicant first became aware of Opposer's Mark, and/or Opposer; the actual or possible use in any manner by Opposer of Opposer's Mark; and/or any products that are, or are to be, sold or distributed, and/or services rendered, bearing any of Opposer's Mark.

11. (a) Prior to the institution of the instant proceeding, did Applicant ever consider Opposer and/or Opposer's Mark with respect to and/or in connection with Applicant's mark and/or the products sold or to be sold under Applicant's mark or otherwise in connection with Applicant's business?

(b) If the response to sub-paragraph (a) of this interrogatory is other than an unqualified negative, state the date of such consideration, the action considered, and identify each person involved in, and communication related to, such consideration.

12. Identify each and every trademark and service mark registration you believe relevant to this Opposition proceeding, including for each, the reason(s) why you believe such to be relevant.

13. (a) Is Applicant aware of any instance of confusion or mistake regarding it and Opposer, their respective goods, services, or businesses, and/or Applicant's mark and Opposer's Mark?

(b) Has Applicant received any communication addressed or directed to, or which mentions, refers or relates in any way to, Opposer, Opposer's Mark and/or Opposer's products/services?

(c) Is Applicant aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer, Applicant's mark and Opposer's Mark, and/or the respective products or services or businesses of Applicant and Opposer?

14. (a) If the answer to Interrogatory No. 13(a), above, is other than an unqualified negative, identify each instance of confusion or mistake.

(b) If the answer to Interrogatory No. 13(b), above, is other than an unqualified negative, identify each such communication to which that interrogatory refers.

(c) If the answer to Interrogatory No. 13(c), above, is other than an unqualified negative, identify each such instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer and/or their respective products, services or businesses.

15. Identify each and every actual, present use of a trademark consisting of or containing the term "PERI" or "PERIST" of which Applicant is aware and which Applicant contends is relevant to any of the claims and/or defenses in this proceeding, including for each such mark, the dates of usage(s) of such mark, the goods/services sold in connection with the mark, the identity of the party so using the mark, where (name and address) these goods/services can be found in the marketplace, the identity of each individual having knowledge of such use and whether that knowledge is personal knowledge or information and belief.

16. Identify each objection, complaint, lawsuit, opposition, cancellation and other *inter partes* proceeding involving and/or with respect to, and/or in which Applicant asserted any rights in, Applicant's Mark.

17. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Applicant's denials to the Notice of Opposition as stated in Applicant's Answer to Opposer's Notice of Opposition filed in this proceeding.

18. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Applicant's Affirmative Defense to the Notice of Opposition as stated in Applicant's Answer to Opposer's Notice of Opposition filed in this proceeding.

19. Identify each person who furnished any information on which any part of an answer to these interrogatories is based, indicating the parts based on information so furnished by such person, and whether such information is within the personal knowledge of such person, and if not within such personal knowledge, identify the source of the information so furnished.

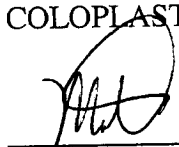
20. Identify each expert witness who has been consulted and/or who may be called by Applicant to testify in this proceeding.

21. Identify each person whom Applicant has consulted with respect to the Answer to Notice of Opposition herein and/or with respect to the possibility of testifying herein, and for each, summarize the information such person has regarding the Applicant's claims and/or this Opposition.

22. Identify, by request number, each request in Opposer's First Request for Production of Documents served in this opposition for which (a) Applicant has not or will not produce any documents; and/or (b) there are no responsive documents in Applicant's possession, custody or control.

COLOPLAST A/S

By:



Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
(202) 638-6666

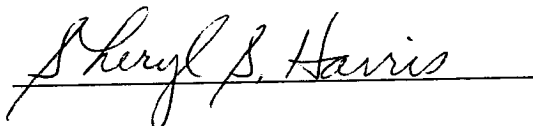
Dated: November 14, 2005  
Attorney Docket No.: I-5240

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of November, 2005, a true copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES was served by first-class mail, postage prepaid, upon counsel for Applicant:

John S. Egbert  
Egbert Law Offices  
412 Main Street, 7th Floor  
Houston, Texas 77002



# EXHIBIT C

COLOPLAST A/S,	:	
	:	
OPPOSER,	:	
	:	
vs.	:	OPPOSITION NO. 165,588
	:	
JIRO TAKASHIMA,	:	
	:	
APPLICANT.	:	

**OPPOSER'S MOTION TO COMPEL AND TO TEST THE  
SUFFICIENCY OF APPLICANT'S ANSWERS TO REQUESTS FOR ADMISSION,  
TO SUSPEND THE PROCEEDINGS AND TO RESET THE TRIAL DATES BY  
EXTENDING THE DISCOVERY PERIOD FOR OPPOSER ALONE**

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

In the Matter of Application Serial No. 78/409,841  
Published in the *Official Gazette* on February 22, 2005

COLOPLAST A/S,

Opposer,

v.

JIRO TAKASHIMA,

Applicant.

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Opposition No. 91165588

**APPLICANT'S RESPONSE TO OPPOSER'S  
FIRST SET OF REQUESTS FOR ADMISSIONS**

Applicant, JIRO TAKASHIMA, by its attorneys, hereby responds and objects to COLOPLAST A/S (hereinafter referred to as "Opposer") First Set of Requests for Admissions herein as follows:

**GENERAL OBJECTIONS**

1. Applicant objects to Opposer's requests to the extent that they seek information subject to the attorney-client privilege and/or attorney work product doctrine. No information subject to such privilege will be provided in response to any request.
2. Applicant objects to the definitions and instructions contained in Opposer's requests to the extent that they purport to require Applicant to do more than is required by the Federal Rules of Civil Procedure and/or the Trademark Rules of Practice.
3. Applicant objects to Opposer's requests to the extent that they seek information that contains confidential and proprietary information of the Applicant and/or third parties that are in Applicant's possession. Applicant will respond to the requests only pursuant to a stipulated



protective order or a protective order being entered in these proceedings.

4. Applicant objects to Opposer's requests as overly broad and unduly burdensome, and as seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

### RESPONSES AND OBJECTIONS

REQUEST NO. 1: Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer's Mark.

RESPONSE: Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

REQUEST NO. 2: Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer's pleaded application.

RESPONSE: Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

REQUEST NO. 3: Prior to Applicant's selection of Applicant's Mark, Applicant had actual knowledge of Opposer.

RESPONSE: Admitted.

REQUEST NO. 4: Prior to Applicant's Selection of Applicant's Mark, Applicant visited Opposer's website.

RESPONSE: Admitted.

REQUEST NO. 5: Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer's Mark.

RESPONSE: Applicant objects to this request on the grounds that the allegation calls for

a legal conclusion on the part of the Applicant.

**REQUEST NO. 6:** Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer's pleaded application.

**RESPONSE:** Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

**REQUEST NO. 7:** Prior to the filing of the opposed application, Applicant had actual knowledge of Opposer.

**RESPONSE:** Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

**REQUEST NO. 8:** Prior to the filing of the opposed application, Applicant visited Opposer's website.

**RESPONSE:** Admitted.

**REQUEST NO. 9:** Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer's Mark.

**RESPONSE:** Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

**REQUEST NO. 10:** Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer's pleaded application.

**RESPONSE:** Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

**REQUEST NO. 11:** Prior to using Applicant's Mark, Applicant had actual knowledge of Opposer.

RESPONSE: Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

REQUEST NO. 12: Prior to using Applicant's Mark, Applicant visited Opposer's website.

RESPONSE: Admitted.

REQUEST NO. 13: Opposer is an international medical device company.

RESPONSE: Applicant is without knowledge of the truth of Request No. 13 and therefore Applicant denies this request.

REQUEST NO. 14: Opposer sells ostomy products.

RESPONSE: Applicant is without knowledge of the truth of Request No. 14 and therefore Applicant denies this request.

REQUEST NO. 15: Opposer sells incontinence products.

RESPONSE: Admitted.

REQUEST NO. 16: Opposer promotes ostomy products at its Internet website.

RESPONSE: Admitted.

REQUEST NO. 17: Opposer promotes incontinence products at its Internet website.

RESPONSE: Admitted.

REQUEST NO. 18: Opposer is well-known in the United States.

RESPONSE: Denied.

REQUEST NO. 19: Opposer is well-known in the United States ostomy care market.

RESPONSE: Denied.

REQUEST NO. 20: Opposer is well-known in the United States incontinence care

market.

**RESPONSE:** Denied.

**REQUEST NO. 21:** Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with hemorrhoid treatment devices (other than marks involved in this proceeding).

**RESPONSE:** Admitted.

**REQUEST NO. 22:** Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with surgical or medical instruments and apparatus for incontinence (other than marks involved in this proceeding).

**RESPONSE:** Admitted.

**REQUEST NO. 23:** Applicant has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with ostomy products (other than marks involved in this proceeding).

**RESPONSE:** Admitted.

**REQUEST NO. 24:** Applicant does not possess any documents which support Applicant's Affirmative Defense, as pleaded in Applicant's Answer to Notice of Opposition.

**RESPONSE:** Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

**REQUEST NO. 25:** Applicant is not aware of any evidence which supports Applicant's Affirmative Defense, as pleaded in Applicant's Answer to Notice of Opposition.

RESPONSE: Admitted.

REQUEST NO. 26: Applicant has not produced any documents in response to Opposer's document requests which support Applicant's Affirmative Defense in Applicant's Answer to Notice of Opposition.

RESPONSE: Admitted.

REQUEST NO. 27: All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are genuine pursuant to the Federal Rules of Evidence.

RESPONSE: Admitted.

REQUEST NO. 28: All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are part of the business records of Applicant kept in the normal course of Applicant's business.

RESPONSE: Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

REQUEST NO. 29: All documents produced by Applicant in response to Opposer's First Request for Production in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Applicant on the grounds of relevance.

RESPONSE: Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

REQUEST NO. 30: Goods of the same type as those listed in the opposed application are marketed at retail.

**RESPONSE:** Applicant is without knowledge of the truth of Request No. 30 and therefore Applicant denies this request.

**REQUEST NO. 31:** Goods of the same type as those listed in the opposed application are sold at retail.

**RESPONSE:** Applicant is without knowledge of the truth of Request No. 30 and therefore Applicant denies this request.

**REQUEST NO. 32:** The goods listed in the opposed application are marketed at retail.

**RESPONSE:** Applicant is without knowledge of the truth of Request No. 30 and therefore Applicant denies this request.

**REQUEST NO. 33:** The goods listed in the opposed application are intended to be marketed at retail.

**RESPONSE:** Applicant is without knowledge of the truth of Request No. 33 and therefore Applicant denies this request.

**REQUEST NO. 34:** The goods listed in the opposed application are marketed at retail under Applicant's Mark.

**RESPONSE:** Denied.

**REQUEST NO. 35:** The goods listed in the opposed application are intended to be marketed at retail.

**RESPONSE:** Admitted.

**REQUEST NO. 36:** The goods listed in the opposed application are similar to the goods listed in the pleaded application.

**RESPONSE:** Denied.

REQUEST NO. 37: Applicant sell its PERISTAL products on the Internet.  
RESPONSE: Admitted.

REQUEST NO. 38: Applicant sell its PERISTAL products to hospitals.  
RESPONSE: Denied.

REQUEST NO. 39: Applicant sell its PERISTAL products to medical device retailers.  
RESPONSE: Denied.

REQUEST NO. 40: Applicant sell its PERISTAL products to pharmacists.  
RESPONSE: Denied.

REQUEST NO. 41: Applicant markets its PERISTAL products on the Internet.  
RESPONSE: Admitted.

REQUEST NO. 42: Applicant markets its PERISTAL products to hospitals.  
RESPONSE: Denied.

REQUEST NO. 43: Applicant markets its PERISTAL products to nurses.  
RESPONSE: Denied.

REQUEST NO. 44: Applicant markets its PERISTAL products to medical device  
retailers.  
RESPONSE: Denied.

REQUEST NO. 45: Applicant markets its PERISTAL products to pharmacists.  
RESPONSE: Denied.

REQUEST NO. 46: Applicant intends to sell its PERISTAL products on the Internet.  
RESPONSE: Admitted.

REQUEST NO. 47: Applicant intends to sell its PERISTAL products to hospitals.

RESPONSE: Denied.

REQUEST NO. 48: Applicant intends to sell its PERISTAL products to medical device retailers.

RESPONSE: Denied.

REQUEST NO. 49: Applicant intends to sell its PERISTAL products to pharmacists.

RESPONSE: Denied.

REQUEST NO. 50: Applicant intends to market its PERISTAL products on the Internet.

RESPONSE: Admitted.

REQUEST NO. 51: Applicant intends to market its PERISTAL products to hospitals.

RESPONSE: Denied.

REQUEST NO. 52: Applicant intends to market its PERISTAL products to nurses.

RESPONSE: Denied.

REQUEST NO. 53: Applicant intends to market its PERISTAL products to medical device retailers.

RESPONSE: Denied.

REQUEST NO. 54: Applicant intends to market its PERISTAL products to pharmacists.

RESPONSE: Denied.

REQUEST NO. 55: Applicant intends for its PERISTAL products to be sold on the Internet.



RESPONSE: Admitted.

REQUEST NO. 56: Applicant intends for its PERISTAL products to be sold in hospitals.

RESPONSE: Denied.

REQUEST NO. 57: Applicant intends for its PERISTAL products to be sold to medical device retailers.

RESPONSE: Denied.

REQUEST NO. 58: Applicant intends for its PERISTAL products to be sold to pharmacists.

RESPONSE: Denied.

REQUEST NO. 59: Applicant intends for its PERISTAL products to be marketed to hospitals.

RESPONSE: Denied.

REQUEST NO. 60: Applicant intends for its PERISTAL products to be marketed to nurses.

RESPONSE: Denied.

REQUEST NO. 61: Applicant intends for its PERISTAL products to be marketed to medical device retailers.

RESPONSE: Denied.

REQUEST NO. 62: Applicant intends for its PERISTAL products to be marketed to pharmacists.

RESPONSE: Denied.

REQUEST NO. 63: The mark of the opposed application is similar to Opposer's Mark.

RESPONSE: Denied.

REQUEST NO. 64: Attached hereto as Exhibit A is a printout from the Wikipedia website, located at <http://en.wikipedia.org/wiki/Peristalsis>.

RESPONSE: Applicant is without knowledge of the truth of Request No. 64 and therefore Applicant denies this request.

REQUEST NO. 65: The document labeled as Exhibit A contains a definition of the term "peristalsis", namely: "the process of involuntary wave-like successive muscular contractions by which food is moved through the digestive tract."

RESPONSE: Admitted.

REQUEST NO. 66: The term "peristalsis" is defined as the process of involuntary wave-like successive muscular contractions by which food is moved through the digestive tract.

RESPONSE: Denied.

REQUEST NO. 67: The document labeled as Exhibit A contains the following: "the process of peristalsis is used by peristaltic pumps."

RESPONSE: Admitted.

REQUEST NO. 68: The process of peristalsis is used by peristaltic pumps.

RESPONSE: Admitted.

REQUEST NO. 69: Attached hereto as Exhibit B is a printout from the Wikipedia website, located at [http://en.wikipedia.org/wiki/Peristaltic\\_pump](http://en.wikipedia.org/wiki/Peristaltic_pump).

RESPONSE: Applicant is without knowledge of the truth of Request No. 69 and

therefore Applicant denies this request.

**REQUEST NO. 70:** The document labeled as Exhibit B contains a definition of “peristaltic pump.”

**RESPONSE:** Admitted.

**REQUEST NO. 71:** The document labeled as Exhibit B states, in part: peristalsis “is used in many biological systems such as the gastrointestinal tract.”

**RESPONSE:** Admitted.

**REQUEST NO. 72:** Peristalsis is used in many biological systems such as the gastrointestinal tract.

**RESPONSE:** Admitted.

**REQUEST NO. 73:** The goods listed in the opposed application are directed to “hemorrhoid treatment devices.”

**RESPONSE:** Denied.

**REQUEST NO. 74:** Attached hereto as Exhibit C is a printout from the Wikipedia website, located at <http://en.wikipedia.org/wiki/Hemorrhoid>.

**RESPONSE:** Applicant is without knowledge of the truth of Request No. 74 and therefore Applicant denies this request.

**REQUEST NO. 75:** The document labeled as Exhibit C contains the following: “hemorrhoids (also known as haemorrhoids or piles) are varicosities or swelling and inflammation of veins in the rectum and anus.”

**RESPONSE:** Admitted.

**REQUEST NO. 76:** Hemorrhoids are varicosities or swelling and inflammation of

veins in the rectum and anus.

**RESPONSE:** Applicant objects to this request on the grounds that the allegation calls for a legal conclusion on the part of the Applicant.

**REQUEST NO. 77:** Attached hereto as Exhibit D is a printout from the Wikipedia website, located at <http://en.wikipedia.org/wiki/Rectum>.

**RESPONSE:** Applicant is without knowledge of the truth of Request No. 77 and therefore Applicant denies this request.

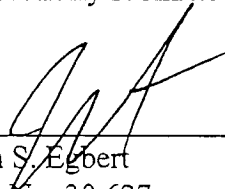
**REQUEST NO. 78:** The document labeled as Exhibit D contains the following: the rectum "is the final straight portion of the large intestine I some mammals, and the gut in others, terminating in the anus."

**RESPONSE:** Admitted.

**REQUEST NO. 79:** The rectum is the final straight portion of the large intestine in some mammals, and the gut in others, terminating in the anus.

**RESPONSE:** Admitted.

Respectfully submitted,

  
\_\_\_\_\_  
John S. Egbert  
Reg. No. 30,627  
Attorney for Applicant

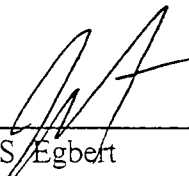
EGBERT LAW OFFICES  
412 Main St., 7th Floor  
Houston, Texas 77002  
Tel: (713) 224-8080  
Fax: (713)223-4873

Our File: 840,030

CERTIFICATE OF MAILING

I hereby certify that this Applicant's Response to Opposer's First Set of Requests For Admissions is being sent by first class mail on this 12<sup>th</sup> day of December, 2005, to the attorney of record for Opposer at the following address:

Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 638-6666

  
\_\_\_\_\_  
John S. Egbert  
Attorney for Applicant

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

In the Matter of Application Serial No. 78/409,841  
Published in the *Official Gazette* on February 22, 2005

COLOPLAST A/S,

Opposer,

v.

JIRO TAKASHIMA,

Applicant.

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Opposition No. 91165588

**APPLICANT'S RESPONSE TO OPPOSER'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Applicant, JIRO TAKASHIMA, (hereinafter referred to as "Applicant") by its attorneys, hereby submits the following objections and responses to COLOPLAST A/S (hereinafter referred to as "Opposer") First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

1. Applicant objects to Opposer's Interrogatories to the extent they seek information subject to the attorney/client privilege, or within the attorney's work product immunity, or other grounds of immunity from discovery.

2. Applicant objects to Opposer's Interrogatories to the extent they seek information that is unreasonably cumulative, duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive.

3. Applicant objects to Opposer's Interrogatories to the extent that the burden or expense of the Interrogatory outweighs its likely probative value.

4. Applicant's responses are based upon information and writings presently available to and located by Applicant and its attorneys. Applicant has not completed its investigation of the facts relating to this Opposition, its discovery in this action, nor its preparation for trial. All the information supplied is based only on such information and documents which are presently and specifically known to Applicant. Therefore, Applicant's written responses are without prejudice to its rights to supplement or amend its written responses and to present evidence discovered hereafter at any hearing or trial.

5. Applicant objects to Opposer's Interrogatories instructions and definitions to the extent they seek to impose burdens contrary to or in addition to those provided in the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Accordingly, Applicant will produce documents identified in its responses in accordance with the applicable rules.

### INTERROGATORIES

INTERROGATORY NO. 1: State the earliest date on which Applicant will rely in this proceeding to establish any rights in Applicant's Mark vis-a-vis Opposer, and state in detail the basis for Applicant's Claim of rights in Applicant's mark as of that date, including:

(a) a description of the manner of use of Applicant's mark as of that date (i.e., imprinted on the goods, on labels or tags for goods, on packaging for the goods, in store displays, etc.);

(b) the identity of each person involved in any way in such use, including, but not limited to the identity of each witness who can testify on personal knowledge as to such use;

(c) the identification of each product and/or service in connection with which the mark was used on that date; and

(d) the identification of each document which evidences or supports such claim of use as of that date.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 2:** Identify each product and/or service with which Applicant's Mark has been used, or is intended to be used, and with respect to each such product and/or service identify:

(a) the period of time during which Applicant's Mark has been used with said product and/or service (i.e., the date of Applicant's first sale of the product bearing Applicant's Mark to the date of Applicant's last sale);

(b) If the use was by a person other than Applicant, identify that person, and state in detail the basis upon which Applicant claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Applicant's Mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Applicant for such products and/or service; and

(e) Each state in which such product and/or service has been sold under or in connection with Applicant's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not



presently in use in the United States.

**INTERROGATORY NO. 3:** Identify each survey, search or other investigation conducted and/or obtained with respect to Opposer's Mark, Applicant's Mark, the term "PERI" or "PERIST" as used as a trademark or part of a trademark, and/or the actual, potential, or intended market, and/or the actual, potential, or intended customers of, or consumers for, the goods to be offered for sale and/or sold under or in connection with any of Opposer's Mark and/ or Applicant's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 4:** (a) State the annual volume of advertising under and/or in connection with Applicant's Mark in connection with the goods set forth in the opposed application for each year since such advertising commenced.

(b) Identify each medium in which Applicant's Mark has been or is intended to be listed, advertised, promoted, offered for sale and/or sold, and/or in which the products sold under Applicant's Mark have been listed, advertised, promoted, offered for sale and/or sold.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 5:** Identify each broker, sales representative, licensee, franchisee, dealer, distributor, wholesaler, each retail outlet, trade show, catalog, and Internet web site and/or other electronic means, to and/or through which Applicant's goods have been, or are intended to be,

advertised, promoted, offered for sale, distributed and/or sold, under on in connection with Applicant's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 6:** For each product and service in connection with which Applicant is using, or intends to use, Applicant's Mark, identify, in detail, the channels of trade through which such products and/or services have been, or are intended to be, sold and/or rendered, including but not limited to a general description of the type of customers to whom Applicant does or intends to advertise, promote, and/or sell Applicant's products and/or services in connection with Applicant's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 7:** Identify each agreement, assignment, license, contract, consent grant, or transfer of rights which concerns, refers or relates to Applicant's Mark and/or any rights in connection with such mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 8:** Identify each person who participated in the selection, creation, and/or decision to adopt and/or to use Applicant's Mark; and describe in detail the reasons for and/or

relating to the selection and adoption of Applicant's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 9:** (a) Identify all persons employed by Applicant, and/or persons affiliated with, or contracted by, Applicant, responsible for advertising Applicant's Mark and/or the goods/services sold or are intended to be sold under Applicant's Mark (including but not limited to the designer of any of Applicant's Internet website(s)); and

(b) Identify the person(s) responsible for, or if there is no such person, with the most knowledge of, the marketing of goods and/or services offered for sale under or in connection with Applicant's Mark. (As used in this interrogatory, the term "marketing" includes but is not limited to, the customers, channels of trade, and type(s) of outlets where such goods are or will be offered for sale and/or sold.)

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 10:** (a) Identify the circumstances under which (including, but not limited to, the date) Applicant first became aware of Opposer's Mark, and/or Opposer; the actual or possible use in any manner by Opposer of Opposer's Mark; and/or any products that are, or are to be, sold or distributed, and/or services rendered bearing any of Opposer's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that it first learned of

Opposer's use or Opposer's marks through the present opposition proceeding.

**INTERROGATORY NO. 11:** (a) Prior to the institution of the instant proceeding, did Applicant ever consider Opposer and/or Opposer's Mark with respect to and/or in connection with Applicant's Mark and/or the products sold or to be sold under Applicant's Mark or otherwise in connection with Applicant's business?

(b) If the response to sub-paragraph (a) of this interrogatory is other than an unqualified negative, state the date of such consideration, the action considered, and identify each person involved in, and communication related to, such consideration.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that Applicant never considered Opposer and/or Opposer's Mark with respect to and/or in connection with Applicant's Mark and/or the products sold or to be sold under Applicant's Mark or otherwise in connection with Applicant's business.

**INTERROGATORY NO. 12:** Identify each and every trademark and service mark registration you believe relevant to this Opposition proceeding, including for each, the reason(s) why you believe such to be relevant.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States.

**INTERROGATORY NO. 13:** (a) Is Applicant aware of any instance of confusion or mistake regarding it an Opposer, their respective goods, services, or businesses, and/or Applicant's Mark and Opposer's Mark?

(b) Has Applicant received any communication addressed or directed to, or which mentions, refers or relates in any way to, Opposer, Opposer's Mark and/or Opposer's products/services?

(c) Is Applicant aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer, Applicant's Mark and Opposer's Mark, and/or the respective products or services or businesses of Applicant and Opposer?

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waiving any of these objections or any others, Applicant responds (a) Applicant is not aware of any instance of confusion or mistake regarding it an Opposer, their respective goods, services, or businesses, and/or Applicant's Mark and Opposer's Mark; (b) Applicant has not received any communication addressed or directed to, or which mentions, refers or relates in any way to, Opposer, Opposer's Mark and/or Opposer's products/services; and (c) Applicant is not aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Applicant and Opposer, Applicant's Mark and Opposer's Mark, and/or the respective products or services or businesses of Applicant and Opposer.

**INTERROGATORY NO. 14:** (a) If the answer to Interrogatory No. 13(a), above, is other than an unqualified negative, identify each instance of confusion or mistake.

(b) If the answer to Interrogatory No. 13(b), above, is other than an unqualified negative, identify each such communication to which that interrogatory refers.

(c) If the answer to Interrogatory No. 13(c), above, is other than an unqualified negative, identify each such instance where any person thought, assumed or

otherwise indicated a belief that there is or may be an association between Applicant and Opposer and/or their respective products, services or businesses.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above.

Without waving any of these objections or any others, no response is necessary to (a), (b) or (c).

**INTERROGATORY NO. 15:** Identify each and every actual, present use of a trademark consisting of or containing the term "PERJ" or "PERIST" of which Applicant is aware and which Applicant contends is relevant to any of the claims and/or defenses in this proceeding, including for each such mark, the dates of usage(s) of such mark, the goods/services sold in connection with the mark, the identity of the party so using the mark, where (name and address) these goods/services can be found in the marketplace, the identity of each individual having knowledge of such use and whether that knowledge is personal knowledge or information and belief.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to production of confidential or proprietary information without the entry of a Stipulated Protective Order or Protective Order in these proceedings. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this interrogatory upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**INTERROGATORY NO. 16:** Identify each objection, complaint, lawsuit, opposition, cancellation and other inter partes proceeding involving and/or with respect to, and/or in which Applicant asserted any rights in, Applicant's Mark.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above.

Without waving any of these objections or any others, Applicant responds that the trademark is not presently in use in the United States and there are no other objections, complaints, lawsuits, oppositions, cancellations or any other inter partes proceeding involving and/or with respect to, and/or in which Applicant asserted any rights in, Applicant's Mark.

**INTERROGATORY NO. 17:** State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Applicant's denials to the Notice of Opposition as stated in Applicant's Answer to Opposer's Notice of Opposition filed in this proceeding.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to production of confidential or proprietary information without the entry of a Stipulated Protective Order or Protective Order in these proceedings. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this interrogatory upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**INTERROGATORY NO. 18:** State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Applicant's Affirmative Defense to the Notice of Opposition as stated in Applicant's Answer to Opposer's Notice of Opposition filed in this proceeding.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to production

of confidential or proprietary information without the entry of a Stipulated Protective Order or Protective Order in these proceedings. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this interrogatory upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**INTERROGATORY NO. 19:** Identify each person who furnished any information on which any part of an answer to these interrogatories is based, indicating the parts based on information so furnished by such person, and whether such information is within the personal knowledge of such person, and if not within such personal knowledge, identify the source of the information so furnished.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. Without waving any of these objections or any others, Applicant responds that Jiro Takashima and Attorneys Jeremy Craft and John Egbert were the persons responsible for preparing responses to the above identified Interrogatories.

**INTERROGATORY NO. 20:** Identify each expert witness who has been consulted and/or who may be called by Applicant to testify in this proceeding.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to production of confidential or proprietary information without the entry of a Stipulated Protective Order or Protective Order in these proceedings. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this interrogatory upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.



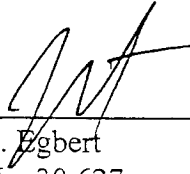
**INTERROGATORY NO. 21:** Identify each person whom Applicant has consulted with respect to the Answer to the Notice of Opposition herein and/or with respect to the possibility of testifying herein, and for each, summarize the information such person has regarding the Applicant's claims and/or this Opposition.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to production of confidential or proprietary information without the entry of a Stipulated Protective Order or Protective Order in these proceedings. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this interrogatory upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**INTERROGATORY NO. 22:** Identify, by request number, each request in Opposer's First Request for Production of Documents served in this opposition for which (a) Applicant has not or will not produce any documents; and/or (b) there are no responsive documents in Applicant's possession, custody or control.

**RESPONSE:** Applicant incorporates by this reference the general objections set forth above. In addition, Applicant objects to this interrogatory to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant further objects to production of confidential or proprietary information without the entry of a Stipulated Protective Order or Protective Order in these proceedings. Applicant will supplement this interrogatory with relevant, non-privileged information responsive to this interrogatory upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

Respectfully submitted,



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John S. Egbert  
Reg. No. 30,627  
Attorney for Applicant

Date

12-12-05

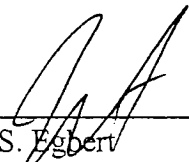
EGBERT LAW OFFICES  
412 Main St., 7th Floor  
Houston, Texas 77002  
Tel: (713)224-8080  
Fax: (713)223-4873

Our File: 840,030

CERTIFICATE OF MAILING

I hereby certify that this Applicant's Response to Opposer's First Set of Interrogatories was mailed by first class mail on this 12<sup>th</sup> day of December, 2005, to the attorney of record for Opposer at the following address:

Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 638-6666

  
\_\_\_\_\_  
John S. Egbert  
Attorney for Applicant

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

In the Matter of Application Serial No. 78/409,841  
Published in the *Official Gazette* on February 22, 2005

COLOPLAST A/S,

Opposer,

v.

JIRO TAKASHIMA,

Applicant.

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§

Opposition No. 91165588

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR  
PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant, JIRO TAKASHIMA, by its attorneys, hereby responds and objects to COLOPLAST A/S (hereinafter referred to as "Opposer") First Set of Request for Production of Documents herein as follows:

**GENERAL OBJECTION**

1. Applicant objects to Opposer's requests to the extent they seek information subject to the attorney/client privilege, or within the attorney's work product immunity, or other grounds of immunity from discovery.
2. Applicant objects to Opposer's requests to the extent they seek information not relevant to any issue in this case, nor reasonably calculated to lead to the discovery of admissible evidence.
3. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value.

4. Applicant objects to Opposer's requests to the extent they seek information that is unreasonably cumulative, duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive.

5. Applicant's responses are based upon information and writings presently available to and located by Applicant and its attorneys. Applicant has not completed its investigation of the facts relating to this Opposition, its discovery in this action, nor its preparation for trial. All the information supplied is based only on such information and documents which are presently and specifically known to Applicant. Therefore, Applicant's written responses are without prejudice to its rights to supplement or amend its written responses and to present evidence discovered hereafter at any hearing or trial.

6. No Protective Order has been entered in these proceedings. Applicant objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings.

#### **GENERAL RESPONSE**

Any response to the effect that Applicant has produced or will produce documents responsive to the request does not mean or imply that ANY such document exist or that Applicant has any such documents in its possession, custody, or control. Applicant will produce relevant, non-privileged documents responsive to the requests upon a mutually agreed upon date at Egbert Law Offices, 412 Main Street, 7th Floor, Houston, Texas 77002.

## RESPONSES AND OBJECTIONS

**DOCUMENT REQUEST NO. 1:**           The documents to be identified in Opposer's First Set of Interrogatories, served on Applicant concurrently herewith.

**RESPONSE:**           Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 2:**           The documents referenced or identified by Applicant in response to Opposer's First Set of Interrogatories.

**RESPONSE:**           There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 3:**           All documents that constitute, comment on, refer to, relate to, reflect, describe, and/or disclose, any consideration, proposal or decision to adopt and/or use Applicant's Mark.

**RESPONSE:**           Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a

Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 4:** All documents which do, or may, support any claims or defenses of Applicant herein, and/or which Applicant believes would be admissible evidence on its behalf at the trial of this proceeding.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 5:** All documents which list, show, explain or describe each of the products sold and/or services offered by Applicant under Applicant's Mark and/or planned to be offered and/or sold under Applicant's Mark, including without limitation, each catalogue, brochure, or other printed materials or video/audio tapes.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative

value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 6:** A sample (or if due to the physical size of same, in lieu thereof a photograph sufficiently legible to show the product and any writing marks thereon) of each product sold and/or intended to be sold under Applicant's Mark, and each display, tag, label, warranty, insert, and any other material included and/or intended to be included with such product when offered for sale, sold, and/or shipped in interstate commerce.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 7:** A sample of each sign, brochure, handbill, stationery, advertisement, business card, identification card, display, pre-printed contract or form, decal, badge, label, and other advertising, promotional, and/or printed materials on which Applicant's Mark has been displayed or appeared.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 8:** All materials which have been produced, drafted, or proposed for use, including mock-ups for same, which display, refer or relate, in any way, to Applicant's Mark, whether or not such have ever been used, displayed, and/or disseminated.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 9:** A sample of each advertisement (including but not limited to audio and video tapes and CD's, Internet web site(s) and other material intended for viewing and/or listening by computer or other machine), bearing, mentioning, or displaying



Applicant's Mark and/or the products sold and/or offered for sale under Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 10:** A specimen of each label, tag, nameplate, packaging and other material (including but not limited to, packaging, warranty cards, instruction sheets, promotional items, etc.) bearing, displaying and/or containing Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 11:** A sample of each and every document and thing bearing Applicant's Mark, or to which Applicant's Mark is affixed, whether or not such material ever has been used, distributed, disseminated, or displayed.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 12:** Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Applicant's services or goods are advertised, promoted, sold, offered for sale, and/or distributed under Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 13:** Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Applicant intends to have its services or goods advertised, promoted, sold, offered for sale, and/or distributed under Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 14:** All mailing lists and other lists of actual or potential

customers, clients, sales representatives, brokers, dealers, and/or distributors of Applicant with respect to the products sold and/or to be sold in connection with Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this Request.

**DOCUMENT REQUEST NO. 15:** All documents which evidence, refer, or relate to Applicant's knowledge of Opposer's Mark, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents relating to Opposer's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 16:** All documents which evidence, support, refer, or relate to Applicant's knowledge of Opposer, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents referring to or relating to Opposer.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 17:** All documents which evidence, support, or show the denials in Applicant's Answer to the Notice of Opposition.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 18:**

All documents which were reviewed, consulted and/or relied upon by Applicant in making the denials in Applicant's Answer to the Notice of Opposition.

**RESPONSE:**

Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 19:**

All documents which evidence, support or show Applicant's Affirmative Defense as pleaded in Applicant's Answer to the Notice of Opposition.

**RESPONSE:**

Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 20:**

All documents which were reviewed, consulted and/or relied upon by Applicant in pleading Applicant's Affirmative Defense in Applicant's Answer to the

Notice of Opposition.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 21:** All documents which refer or relate to Opposer.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 22:** All documents which refer or relate to Opposer's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 23:** All documents which refer or relate to Opposer's products.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 24:** All documents which refer or relate to the application pleaded by Opposer in the Notice of Opposition.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative

value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 25:** All documents which refer or relate to the circumstances under which Applicant first became aware of the actual or possible use of Opposer's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 26:** All documents which evidence, relate or refer to the time Applicant first learned of Opposer.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 27:** All documents which evidence, relate or refer to the time Applicant first learned of Opposer's website.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the

attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 28:** Documents sufficient to show annual sales in numbers of units and gross revenues, for products sold under Applicant's Mark, from the date of alleged first use of Applicant's Mark to the present.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 29:** Documents sufficient to show Applicant's annual sales in numbers of units and in gross revenues, for services (if any) offered under Applicant's Mark, from the date of alleged first use of Applicant's Mark to the present

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 30:** Documents sufficient to show or evidence Applicant's

advertising expenditures in connection with Applicant's Mark and/or the products sold and/or services offered under Applicant's Mark, for each year from the date of alleged first use of Applicant's Mark through the present.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 31:** All documents relating and/or referring to the channels of trade through which services offered under, or products bearing, Applicant's Mark have been sold or are intended to be sold, including but not limited to documents describing the types of customers to whom Applicant does, or intends to, advertise, promote, and/or sell Applicant's products, and/or the retail and wholesale outlets in which Applicant's products in connection with Applicant's Mark are or have been used and/or sold.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 32:** All documents referring or relating to Applicant's Mark that have been filed with or received from any federal, state or local governmental office or regulatory agency, including with out limitation all documents filed in connection with efforts to obtain approval to offer any services or sell any products under Applicant's Mark, or to obtain registration of Applicant's Mark.

**RESPONSE** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will

supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 33:** All documents relied upon, either in whole or in part, as a basis for each opinion to be rendered by:

- (a) each expert witness that Applicant will or may call; and
- (b) each person from whom Applicant has obtained, or will obtain statements or affidavits, or who is expected to give testimony in this case.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 34:** All documents constituting and/or comprising any opinion(s) and/or report(s) furnished by:

- (a) each expert witness that Applicant will or may call; and
- (b) each person from whom Applicant has obtained, or will obtain, statements or affidavits, or who is expected to give testimony in this case.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the



attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 35:** All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Opposer's Mark or any trademark comprised in whole or in part of the term "PERI" or "PERIST", and/or to the products sold and/or offered under Opposer's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 36:** All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Applicant's Mark or any trademark comprised in whole or in part of the term "PERI" or "PERIST", and/or to the products sold and/or offered (or intended to be sold and/or offered) under Applicant's Mark.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective

Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 37:** All documents referring or relating to any United States service mark and trademark registrations, or applicants, issued to, or filed by, Applicant, for any mark incorporating "PERI" or "PERIST" along or in combination with other letters, words, or symbols.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 38:** All documents which evidence, refer, or relate to the strength (as the term is used in determining likelihood of confusion) of Opposer's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 39:** All documents which evidence, support, refer, or relate to any license, assignment, agreement, understanding, or other grant or transfer of rights referring or relating to Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 40:** Each document reviewed, consulted, or on which Applicant relied to draft its answers to Opposer's First Set of Requests for Admissions, served concurrently herewith.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for

“all documents” to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 41:** Each document reviewed, consulted, or on which Applicant relied, to draft its answers to Opposer’s First Requests for Admissions, served concurrently herewith.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 42:** Each document which shows, evidences, or supports Applicant’s responses to Opposer’s First Requests for Admissions, served concurrently herewith.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant

further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 43:** Each document which shows, evidences, or supports Applicant's responses to Opposer's First Set of Interrogatories, served concurrently herewith.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 44:** Each document which shows, evidences, or supports Applicant's Mark, as used (or to be used) in connection with Applicant's goods, is not likely to be confused with Opposer's Mark.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective

Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 45:** All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to its sale or proposed sale of products bearing, and/or in connection with which Applicant uses, or intends to use, Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 46:** All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Applicant relating to its offer or proposed offer of services under and/or in connection with Applicant's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 47:** If Applicant's response to any of the requests in Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, for each such request, all documents which evidence, show and/or support the denial of such Request for Admission, and/or Applicant's basis for Applicant's response to the Request for Admission.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a

Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 48:** A complete copy of each version of any web site linked to a domain name registered to Applicant, including but not limited to the HTML code for same, from the creation of the web site through the present.

**RESPONSE:** Applicant incorporates the general objections referenced above. Without waiving these objections or any others, any non-privileged documents responsive to this request will be produced.

**DOCUMENT REQUEST NO. 49:** For each mark identified in response to Interrogatory Number 15, all documents which demonstrate, refer or relate to:

- a) the dates of usage(s) of such mark,
- b) the goods/services sold in connection with the mark,
- c) the identity of the party so using the mark, and
- d) where (name and address) these goods/services can be found in the marketplace.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will

supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 50:** Produce a copy of the certificate of registration for each trademark or service mark registration identified in response to Interrogatory Number 12.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 51:** All documents relating to the price of each of the goods sold or to be sold under Applicant's Mark.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 52: All documents relating to the price of the services offered or to be offered under Applicant's Mark.

RESPONSE: There are no discoverable documents responsive to this request.

DOCUMENT REQUEST NO. 53: All documents relating to any objection, lawsuit, opposition proceeding, cancellation proceeding or other proceeding involving or relating to Applicant's Mark.

RESPONSE: There are no discoverable documents responsive to this request.

DOCUMENT REQUEST NO. 54: With respect to each product and/or service with which Applicant's Mark has been used, documents sufficient to show whether or not Applicant's use of the mark in connection with such product/service has been continuous.

RESPONSE: Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

DOCUMENT REQUEST NO. 55: With respect to each product and/or service in connection with the Applicant's Mark has been used, all documents which evidence, refer, or relate to Applicant's first use in interstate commerce of Applicant's Mark in connection with each such product and/or service.



**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 56:** With respect to the earliest date on which Applicant will rely in this proceeding to establish Applicant's rights in Applicant's Mark, all documents which evidence, support, refer, or relate to such claim or rights in Applicant's Mark by Applicant as of that date.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 57:** All documents that reflect, relate to or refer to any

confusion as to origin, endorsement, approval or sponsorship of goods or services sold, distributed or offered by Applicant under Applicant's Mark and/or by Opposer under Opposer's Mark.

**RESPONSE:** There are no discoverable documents responsive to this request.

**DOCUMENT REQUEST NO. 58:** For each year in which products have been sold under Applicant's Mark, documents sufficient to identify each state where such product was sold.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 59:** Documents sufficient to identify the retail locations through which products bearing Applicant's Mark are sold.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated

Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 60:** All materials which have been produced, drafted, or proposed for use as product packaging for Applicant's goods to be sold under Applicant's Mark, including mock-ups for same, whether or not such have ever been used, displayed, and/or disseminated.

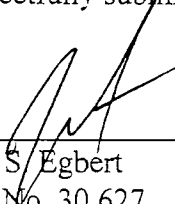
**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all materials" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

**DOCUMENT REQUEST NO. 61:** Documents sufficient to identify each state where Applicant intends for its products to be sold under Applicant's Mark.

**RESPONSE:** Applicant incorporates the general objections referenced above. In addition, Applicant objects to this request to the extent that it seeks information protected by the attorney/client privilege and/or work product doctrine. Applicant objects to Opposer's requests for "all documents" to the extent that the burden or expense of production outweighs its likely probative value. Applicant further objects to producing confidential and proprietary documents without a Stipulated Protective Order or a Protective Order being entered in these proceedings. Applicant will

supplement this request with relevant, non-privileged documents responsive to this request upon entry of a Stipulated Protective Order or a Protective Order in these proceedings.

Respectfully submitted,



---

John S. Egbert  
Reg. No. 30,627  
Attorney for Applicant

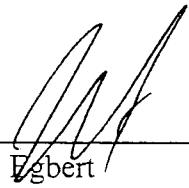
EGBERT LAW OFFICES  
412 Main St., 7<sup>th</sup> Floor  
Houston, Texas 77002  
Tel: (713)224-8080  
Fax: (713)223-4873

Our File: 840,030

CERTIFICATE OF MAILING

I hereby certify that this Applicant's Response to Opposer's First Set of Requests For Production of Documents is being sent by first class mail on this 12<sup>th</sup> day of December, 2005, to the attorney of record for Opposer at the following address:

Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 638-6666

  
\_\_\_\_\_  
John S. Egbert  
Attorney for Applicant

# EXHIBIT D

COLOPLAST A/S,	:	
	:	
OPPOSER,	:	
	:	
vs.	:	OPPOSITION NO. 165,588
	:	
JIRO TAKASHIMA,	:	
	:	
APPLICANT.	:	

**OPPOSER'S MOTION TO COMPEL AND TO TEST THE SUFFICIENCY OF APPLICANT'S ANSWERS TO REQUESTS FOR ADMISSION, TO SUSPEND THE PROCEEDINGS AND TO RESET THE TRIAL DATES BY EXTENDING THE DISCOVERY PERIOD FOR OPPOSER ALONE**



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December 23, 2005

John S. Egbert, Esquire  
Harrison & Egbert  
412 Main St., 7<sup>th</sup> Floor  
Houston, TX 77002

Via Facsimile  
(713) 223-4873  
Six (6) pages  
Confirmation copy by mail

Re: Coloplast A/S v. Jiro Takashima  
Mark: **PERISTAL**  
Opposition No. 91/165,588  
Our Ref.: 11072/I-5240

Dear Mr. Egbert:

We are quite dismayed by the numerous deficiencies found in Applicant's discovery responses, served on December 12, 2005. We look forward to receipt of your client's *immediate* supplementation and/or amendment of its discovery responses along with its document production and a privilege log (if applicable).

#### Privilege Log

Applicant has interposed privilege objections, but provided no privilege log – which is contrary to the governing rules and the instructions in Coloplast's discovery. We demand that Applicant provide a detailed privilege log.

#### Protective Order

Applicant has refused to provide certain information and *any* documents on the basis that such are confidential. Notwithstanding these objections (discussed below), Applicant failed to propose a protective order. While not its burden, Coloplast proposes that the parties adhere to the Board's standard protective order.<sup>1</sup> If this is acceptable to Applicant, please have Applicant execute and return it to us for counter-signature and filing with the Board.

---

<sup>1</sup> The Board's order can be found at:  
[www.uspto.gov/web/offices/dcom/ttab/tbmp/stdagmnt.htm](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stdagmnt.htm).

John S. Egbert, Esquire

December 23, 2005

Page 2

We now turn to Applicant's responses to specific discovery requests. The comments below are to be read in conjunction with appropriate discovery request and response. Moreover, the characterization of the discovery requests in this letter is not intended to, and does not, restrict the scope of the discovery requests.

L  
Interrogatories

Applicant's answers to Coloplast's interrogatories appear to have been verified by counsel. Please advise whether you will be testifying as a fact witness in this proceeding. If not, please have Applicant verify the interrogatory answers.

To nearly half of Coloplast's interrogatories, the entirety of Applicant's answer was the boilerplate response: the "trademark is not presently<sup>2</sup> in use in the United States." *See e.g.*, answer nos 1- 9, 12. However, this is wholly unresponsive since the interrogatories seek, *inter alia*, information concerning Applicant's intent to use the mark. *For example*, disclosure of the following information is not dependent on Applicant's actual use of the mark: the selection, creation and/or decision to adopt the mark (No. 8); the identification of each product with which Applicant's mark is intended to be used (No. 2); the identification of surveys, searches or other investigations (No. 3); the earliest date Applicant will rely in this proceeding to establish any rights in Applicant's mark vis-a-vis Coloplast's mark and the basis for such claim of right (No. 1); intended channels of trade (No. 5 & 6); each medium<sup>3</sup> in which Applicant's Mark has been or is intended to be advertised or promoted (No. 4(b)) assignments, licenses, consents or other agreements (No. 7); relevant registrations and/or marks (Nos. 12 and 15); and proposed marketing (No. 9). Applicant can answer these interrogatories even if the mark is not presently in use in the United States. Please amend the answers.

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<sup>2</sup>To the extent that Applicant has used the opposed mark in the United States in the past, but just not "presently," such information should have been disclosed in response to the discovery. Moreover, since Applicant's PERISTAL products are sold on the Internet, any purchases made by US customer would constitute "use" under the Lanham Act.

<sup>3</sup> This should include the Internet websites in which its product is marketed and sold. *See* Applicant's responses to request for admission nos. 37 and 40.



John S. Egbert, Esquire  
December 23, 2005  
Page 3

We have the following comments regarding Applicant's answers to Opposer's interrogatories:

10. Applicant only answered as to "Opposer's use or Opposer's marks;" ignoring the queries as to Opposer and the products bearing Opposer's marks. Moreover, the limited information provided is insufficient since Applicant has failed to adequately identify the "circumstances" (in light of Definition K). Please supplement this interrogatory.
- 12/15. As noted above, Applicant's (non)use of the opposed mark is wholly irrelevant to these interrogatories. If Applicant chooses not to answer these interrogatories, Coloplast will seek to strike any testimony or evidence that would have been responsive thereto.
- 17/18. These interrogatories sought information (facts and documents) concerning Applicant's Answer. Applicant objected to providing any information because some of it may be confidential. This is improper. Applicant should disclose the non-confidential information now, and the confidential information (if there is any) after the protective order has been negotiated.
19. Applicant has failed to indicate who provided what information and whether the information was based on personal knowledge.
20. The identification of an expert is not objectionable as confidential information. Please provide the requested information or Coloplast will seek to strike any reliance by Applicant on expert testimony.
21. Please specify the bases for Applicant's objections.
22. Again, please specify the bases for Applicant's objections. For example, the requested information (identification of discovery requests for which Applicant has not produced documents) does not implicate any privilege and is not confidential.

John S. Egbert, Esquire  
December 23, 2005  
Page 4

Requests for Admission

Applicant refused to answer numerous requests on the basis that "the allegation calls for a legal conclusion on the part of the Applicant." *See e.g.* response to nos. 1, 2, 5-7, 9-11, 24, 28, 29, and 76. Please specify the basis for Applicant's objection. As you know, a request for discovery is not necessarily objectionable merely because it requires a party to give an opinion or contention that relates to fact or the application of law to fact.

Applicant denied numerous requests by stating that it "is without knowledge of the truth of" the request. *See e.g.* response to nos. 30, 31, 32, 33, 64, 69, 74, and 77. However, Applicant failed to state that he has made reasonable inquiry and that the information known or readily obtainable is insufficient to enable him to admit or deny the request. *See* Fed. R. Civ. P. 36(a); TBMP 407.03(b). Moreover, some of the requests would seem readily answerable by Applicant, including whether the type of goods listed in the opposed application is marketed or sold at retail. The above-referenced requests should be answered.

Please specify the basis for the denial of Request Nos. 66 and 73.

Document Requests

Applicant's repetitive responses to the document requests are so inadequate that Coloplast's ability to properly evaluate the responses is quite limited. Thus, this Motion is, of necessity, preliminary in nature and Coloplast reserves the right to further address Applicant's responses to document requests and/or document production, after such production is made.

In essence, Applicant only offered one of two "canned" responses to Coloplast's discovery requests: 1) he possesses no discoverable documents, or 2) he interposes a series of identical boiler plate objections with no promise to produce.

A. No Discoverable Documents

Applicant answered that there are no discoverable documents responsive to nearly half of Coloplast's document requests. *See* responses to Request Nos. 2, 6-16, 21-23, 25, 29-31, 35, 37-39, 45-46, 52-53, and 57. It is not clear how Applicant came to this conclusion, but we are concerned that in responding to these requests, Applicant has mirrored its improper approach to answering the interrogatories – not providing any answer because the mark is not "presently" in use. Of course, a review of the discovery demonstrates that the requests are *not* limited to marks that have been used in commerce. Moreover, based on the scant information Applicant has provided in response to Opposer's discovery requests, Applicant's claim to not have any documents responsive to any of these requests would seem improbable.

John S. Egbert, Esquire  
December 23, 2005  
Page 5

For example, while Applicant claims that it possesses no documents responsive to Request No. 9 (seeking sample advertisements, including Internet websites printouts) or Nos. 12/13 (websites where Applicant's products are or are intended to be sold), Applicant admits to selling and marketing its products on the Internet. *See* admission response nos. 37 (Applicant sells its PERISTAL products on the Internet); and 41 (Applicant markets its PERISTAL products on the Internet). Similarly, it would seem that Applicant would have documents responsive to document request no. 31 (channels of trade actually used or intended to be used). Please amend the response and, *at a minimum*, provide printouts of the relevant websites.

Moreover, while Applicant admits to knowing of Opposer and visiting Opposer's website before selecting the opposed mark (*see* responses to admission request nos. 3-4), Applicant claims that there are no documents responsive to document request nos. 15-16, 21-23, and 25.

Additionally, Request No. 6 seeks samples of products sold *or intended to be sold* under Applicant's Mark. Similarly, Request Nos. 7 & 8 seek promotional and related materials – "whether or not such have ever been used, displayed or disseminated". Document request nos. 45 and 46 address marketing plans for the sale or *proposed* sale of Applicant's products. Nonetheless, Applicant claimed to possess no responsive documents. Accordingly, we ask that you review these responses with Applicant and confirm or amend the responses.

#### B. Boiler Plate Objections

In response to the remainder of Opposer's document requests, Applicant interposed a series of identical boilerplate objections. This is improper as it does not put Coloplast on notice as to what, if any, responses have been narrowed as a result of Applicant's reliance on said objections.<sup>4</sup> Additionally, Applicant failed to indicate whether any responsive documents exist or will be produced, contrary to Opposer's interrogatories, discovery instructions and the governing rules.

Applicant interposed (or contingently interposed) privilege objections for each such request, including, *for example*, requests seeking documents: sufficient to show annual sales (nos. 28 and 29); sufficient to show continuous use of the mark (no. 54); sufficient to identify retail locations (no. 59) and states (no. 61) where Applicant's products are sold; and product packaging (no. 60). Clearly, Applicant's indiscriminate use of the asserted privilege is inappropriate, and the responses should be amended. Additionally, we repeat our demand that Applicant produce a privilege log.

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<sup>4</sup> Similarly improper is Applicant's interposition of numerous objections to Coloplast's discovery requests under the heading "General Objection."

John S. Egbert, Esquire  
December 23, 2005  
Page 6

Moreover, Applicant interposes numerous confidentiality objections and conditions any document production upon the entry of a Protective Order. However, many of the requests could not implicate any confidential documents. In any event, there is no warrant for Applicant to withhold non-confidential documents pending the entry of a Protective Order directed to confidential information.

Coloplast is hopeful that these discovery deficiencies can be quickly and amicably resolved. However, if that is not to be the case, then Coloplast will have to consider pursuing alternate means for obtaining responses to its discovery requests consistent with the governing rules, including a discovery Motion. Accordingly, please confirm that Applicant will serve its supplemented and/or amended discovery responses along with its document production, and a privilege log (if applicable).

Finally, we seek Applicant's consent to an extension of the discovery and trial schedule to give the parties time to address these discovery issues.

Sincerely,



Matthew J. Cuccias

TRANSMITTED/STORED : DEC. 23. 2005 4:57PM	ADDRESS	RESULT	PAGE
FILE MODE OPTION	17132234873	OK	6/6
440 MEMORY TX			

REASON FOR ERROR  
 E-1) HANG UP OR LINE FAIL  
 E-3) NO ANSWER  
 E-2) BUSY  
 E-4) NO FACSIMILE CONNECTION



Law Offices  
**Jacobson Holman**  
 Professional Limited Liability Company  
 400 Seventh Street, N.W.  
 Washington, D.C. 20004-2218

(202) 638-6666  
 (202) 392-5350/31/52 (fax)  
 www.jhplc.com  
 Firm e-mail: jp@jhplc.com

December 23, 2005

John S. Egbert, Esquire  
 Harrison & Egbert  
 412 Main St., 7<sup>th</sup> Floor  
 Houston, TX 77002

Via Facsimile  
 (713) 223-4873  
 Six (6) pages  
 Confirmation copy by mail

Re: Coloplast A/S v. Jiro Takashima  
 Mark: **PERISTAL**  
 Opposition No. 91/165,588  
 Our Ref.: 11072/I-5240

Dear Mr. Egbert:

We are quite dismayed by the numerous deficiencies found in Applicant's discovery responses, served on December 12, 2005. We look forward to receipt of your client's *immediate* supplementation and/or amendment of its discovery responses along with its document production and a privilege log (if applicable).

Privilege Log

Applicant has interposed privilege objections, but provided no privilege log – which is contrary to the governing rules and the instructions in Coloplast's discovery. We demand that Applicant provide a detailed privilege log.

Protective Order

Applicant has refused to provide certain information and any documents on the basis that such are confidential. Notwithstanding these objections (discussed below), Applicant failed to propose a protective order. While not its burden, Coloplast proposes that the parties adhere to the Board's standard protective order.<sup>1</sup> If this is acceptable to Applicant, please have Applicant execute and return it to us for counter-signature and filing with the Board.

<sup>1</sup> The Board's order can be found at:  
[www.uspto.gov/web/offices/dcom/ttab/tbnp/stndagmnt.htm](http://www.uspto.gov/web/offices/dcom/ttab/tbnp/stndagmnt.htm).

# EXHIBIT E

COLOPLAST A/S,

OPPOSER,

vs.

JIRO TAKASHIMA,

APPLICANT.

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OPPOSITION NO. 165,588

**OPPOSER'S MOTION TO COMPEL AND TO TEST THE SUFFICIENCY OF APPLICANT'S ANSWERS TO REQUESTS FOR ADMISSION, TO SUSPEND THE PROCEEDINGS AND TO RESET THE TRIAL DATES BY EXTENDING THE DISCOVERY PERIOD FOR OPPOSER ALONE**



Law Offices  
**Jacobson Holman**  
Professional Limited Liability Company  
400 Seventh Street, N.W.  
Washington, D.C. 20004-2218

(202) 638-6666  
(202) 393-5350/51/52 (fax)  
www.jhip.com  
Firm e-mail: ip@jhip.com

December 30, 2005

John S. Egbert, Esquire  
Harrison & Egbert  
412 Main St., 7<sup>th</sup> Floor  
Houston, TX 77002

Via Facsimile  
(713) 223-4873  
One (1) page  
Confirmation copy by mail

Re: Coloplast A/S v. Jiro Takashima  
Mark: **PERISTAL**  
Opposition No. 91/165,588  
Our Ref.: 11072/I-5240

Dear Mr. Egbert:

We await your response to our December 23, 2005 letter.

Sincerely,

Matthew J. Cuccias

\* \* \* COMMUNICATION RESULT REPORT ( DEC. 30. 2005 11:31AM ) \* \* \*

FAX HEADER: JACOBSON HOLMAN PLLC

TRANSMITTED/STORED : DEC. 30. 2005 11:30AM  
FILE MODE OPTION

ADDRESS

RESULT

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282 MEMORY TX

17132234873

OK

1/1

REASON FOR ERROR OR LINE FAIL  
E-1) HANG UP  
E-3) NO ANSWER

E-2) BUSY  
E-4) NO FACSIMILE CONNECTION



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December 30, 2005

John S. Egbert, Esquire  
Harrison & Egbert  
412 Main St., 7<sup>th</sup> Floor  
Houston, TX 77002

Via Facsimile  
(713) 223-4873  
One (1) page  
Confirmation copy by mail

Re: Coloplast A/S v. Jiro Takashima  
Mark: PERISTAL  
Opposition No. 91/165,588  
Our Ref.: 11072/T-5240

Dear Mr. Egbert:

We await your response to our December 23, 2005 letter.

Sincerely,

Matthew J. Cuccias



# EXHIBIT F

COLOPLAST A/S,	:	
	:	
OPPOSER,	:	
	:	
vs.	:	OPPOSITION NO. 165,588
	:	
JIRO TAKASHIMA,	:	
	:	
APPLICANT.	:	

**OPPOSER'S MOTION TO COMPEL AND TO TEST THE  
SUFFICIENCY OF APPLICANT'S ANSWERS TO REQUESTS FOR ADMISSION,  
TO SUSPEND THE PROCEEDINGS AND TO RESET THE TRIAL DATES BY  
EXTENDING THE DISCOVERY PERIOD FOR OPPOSER ALONE**

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

In the Matter of Application Serial No. 78/409,841  
Published in the *Official Gazette* on February 22, 2005

COLOPLAST A/S,

Opposer,

v.

JIRO TAKASHIMA,

Applicant.

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§

Opposition No. 91165588

APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Applicant, JIRO TAKASHIMA (hereinafter referred to as "Applicant"), by its attorneys, hereby requests that COLOPLAST A/S (hereinafter referred to as "Opposer") produce for inspection and copying the documents listed below at the place where such documents usually are kept, or at such other time and place as agreed on by the parties.

INSTRUCTIONS AND DEFINITIONS

A. The Instructions and Definitions set forth in Applicant's First Set of Interrogatories, served concurrently herewith, are incorporated herein by reference and made a part hereof, as if fully stated herein.

B. Opposer shall designate in its responses with respect to each document requested, whether any documents responsive to the request exist; whether such documents will be produced by Opposer, when and where the documents will be produced, and where such documents are usually kept.

## RESPONSES AND OBJECTIONS

1. The documents to be identified in Opposer's First Set of Interrogatories, served on Opposer concurrently herewith.

2. The documents referenced or identified by Opposer in response to Applicant's First Set of Interrogatories.

3. All documents that constitute, comment on, refer to, relate to, reflect, describe, and/or disclose, any consideration, proposal or decision to adopt and/or use Opposer's Mark.

4. All documents which do, or may, support any claims or defenses of Opposer herein, and/or which Opposer believes would be admissible evidence on its behalf at the trial of this proceeding.

5. All documents which list, show, explain or describe each of the products sold and/or services offered by Opposer under Opposer's Mark and/or planned to be offered and/or sold under Opposer's Mark, including without limitation, each catalogue, brochure, or other printed materials or video/audio tapes.

6. A sample (or if due to the physical size of same, in lieu thereof a photograph sufficiently legible to show the product and any writing marks thereon) of each product sold and/or intended to be sold under Opposer's Mark, and each display, tag, label, warranty, insert, and any other material included and/or intended to be included with such product when offered for sale, sold, and/or shipped in interstate commerce.

7. A sample of each sign, brochure, handbill, stationery, advertisement, business card, identification card, display, pre-printed contract or form, decal, badge, label, and other advertising, promotional, and/or printed materials on which Opposer's Mark has been displayed or appeared.

8. All materials which have been produced, drafted, or proposed for use, including mock-ups for same, which display, refer or relate, in any way, to Opposer's Mark, whether or not such have ever been used, displayed, and/or disseminated.

9. A sample of each advertisement (including but not limited to audio and video tapes and CD's, Internet web site(s) and other material intended for viewing and/or listening by computer or other machine), bearing, mentioning, or displaying Opposer's Mark and/or the products sold and/or offered for sale under Opposer's Mark.

10. A specimen of each label, tag, nameplate, packaging and other material (including but not limited to, packaging, warranty cards, instruction sheets, promotional items, etc.) bearing, displaying and/or containing Opposer's Mark.

11. A sample of each and every document and thing bearing Opposer's Mark, or to which Opposer's Mark is affixed, whether or not such material ever has been used, distributed, disseminated, or displayed.

12. Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Opposer's services or goods are advertised, promoted, sold, offered for sale, and/or distributed under Opposer's Mark.

13. Documents sufficient to show and/or identify each catalog, sales outlet, Internet web site or other electronic means, retail outlet, and wholesale outlet in which Opposer intends to have its services or goods advertised, promoted, sold, offered for sale, and/or distributed under Opposer's Mark.

14. All mailing lists and other lists of actual or potential customers, clients, sales representatives, brokers, dealers, and/or distributors of Opposer with respect to the products sold and/or to be sold in connection with Opposer's Mark.

15. All documents which evidence, refer, or relate to Opposer's knowledge of Applicant's Mark, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents relating to Opposer's Mark.

16. All documents which evidence, support, refer, or relate to Opposer's knowledge of Applicant, and/or to the circumstances under which such knowledge was obtained, including but not limited to all documents referring to or relating to Applicant.

17. All documents which evidence, support, or show the denials in Opposer's Answer to the Notice of Opposition.

18. All documents which were reviewed, consulted and/or relied upon by Opposer in making the denials in Opposer's Answer to the Notice of Opposition.

19. All documents which evidence, support or show Opposer's Affirmative Defense as pleaded in Opposer's Answer to the Notice of Opposition.

20. All documents which were reviewed, consulted and/or relied upon by Opposer in pleading Opposer's Affirmative Defense in Opposer's Answer to the Notice of Opposition.

21. All documents which refer or relate to Opposer.

22. All documents which refer or relate to Opposer's Mark.

23. All documents which refer or relate to Opposer's products.

24. All documents which refer or relate to the application pleaded by Opposer in the Notice of Opposition.

25. All documents which refer or relate to the circumstances under which Opposer first became aware of the actual or possible use of Applicant's Mark.

26. All documents which evidence, relate or refer to the time Opposer first learned of Applicant.

27. All documents which evidence, relate or refer to the time Opposer first learned of Applicant's website.

28. Documents sufficient to show annual sales in numbers of units and gross revenues, for products sold under Opposer's Mark, from the date of alleged first use of Opposer's Mark to the present.

29. Documents sufficient to show Opposer's annual sales in numbers of units and in gross revenues, for services (if any) offered under Opposer's Mark, from the date of alleged first use of Opposer's Mark to the present

30. Documents sufficient to show or evidence Opposer's advertising expenditures in connection with Opposer's Mark and/or the products sold and/or services offered under Opposer's Mark, for each year from the date of alleged first use of Opposer's Mark through the present.

31. All documents relating and/or referring to the channels of trade through which services offered under, or products bearing, Opposer's Mark have been sold or are intended to be sold, including but not limited to documents describing the types of customers to whom Opposer does, or intends to, advertise, promote, and/or sell Opposer's products, and/or the retail and wholesale outlets in which Opposer's products in connection with Opposer's Mark are or have been used and/or sold.

32. All documents referring or relating to Opposer's Mark that have been filed with or received from any federal, state or local governmental office or regulatory agency, including without limitation all documents filed in connection with efforts to obtain approval to offer any services or sell any products under Opposer's Mark, or to obtain registration of Opposer's Mark.

33. All documents relied upon, either in whole or in part, as a basis for each opinion to be rendered by:

- (a) each expert witness that Opposer will or may call; and
- (b) each person from whom Opposer has obtained, or will obtain statements or affidavits, or who is expected to give testimony in this case.

34. All documents constituting and/or comprising any opinion(s) and/or report(s) furnished by:

- (a) each expert witness that Opposer will or may call; and
- (b) each person from whom Opposer has obtained, or will obtain, statements or affidavits, or who is expected to give testimony in this case.

35. All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Opposer's Mark or any trademark comprised in whole or in part of the term "PERI" or "PERIST", and/or to the products sold and/or offered under Opposer's Mark.

36. All documents which constitute, evidence, support, refer, or relate to any search (including but not limited to any trademark search reports), survey, poll, and/or investigation concerning, referring or relating to Opposer's Mark or any trademark comprised in whole or in part

of the term "PERI" or "PERIST", and/or to the products sold and/or offered (or intended to be sold and/or offered) under Opposer's Mark.

37. All documents referring or relating to any United States service mark and trademark registrations, or Opposers, issued to, or filed by, Opposer, for any mark incorporating "PERI" or "PERIST" along or in combination with other letters, words, or symbols.

38. All documents which evidence, refer, or relate to the strength (as the term is used in determining likelihood of confusion) of Opposer's Mark.

39. All documents which evidence, support, refer, or relate to any license, assignment, agreement, understanding, or other grant or transfer of rights referring or relating to Opposer's Mark.

40. Each document reviewed, consulted, or on which Opposer relied to draft its answers to Opposer's First Set of Requests for Admissions, served concurrently herewith.

41. Each document reviewed, consulted, or on which Opposer relied, to draft its answers to Opposer's First Requests for Admissions, served concurrently herewith.

42. Each document which shows, evidences, or supports Opposer's responses to Opposer's First Requests for Admissions, served concurrently herewith.

43. Each document which shows, evidences, or supports Opposer's responses to Opposer's First Set of Interrogatories, served concurrently herewith.

44. Each document which shows, evidences, or supports Opposer's Mark, as used (or to be used) in connection with Opposer's goods, is not likely to be confused with Opposer's Mark.

45. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Opposer relating to its sale or proposed sale of products bearing, and/or in connection with which Opposer uses, or intends to use, Opposer's Mark.



46. All marketing plans, marketing projections or other marketing, market share, or sales approach documents prepared by or for Opposer relating to its offer or proposed offer of services under and/or in connection with Opposer's Mark.

47. If Opposer's response to any of the requests in Opposer's First Request for Admissions, served concurrently herewith, is anything other than an unqualified admission, for each such request, all documents which evidence, show and/or support the denial of such Request for Admission, and/or Opposer's basis for Opposer's response to the Request for Admission.

48. A complete copy of each version of any web site linked to a domain name registered to Opposer, including but not limited to the HTML code for same, from the creation of the web site through the present.

49. For each mark identified in response to Interrogatory Number 15, all documents which demonstrate, refer or relate to:

- a) the dates of usage(s) of such mark,
- b) the goods/services sold in connection with the mark,
- c) the identity of the party so using the mark, and
- d) where (name and address) these goods/services can be found in the marketplace.

50. Produce a copy of the certificate of registration for each trademark or service mark registration identified in response to Interrogatory Number 12.

51. All documents relating to the price of each of the goods sold or to be sold under Opposer's Mark.

52. All documents relating to the price of the services offered or to be offered under Opposer's Mark.

53. All documents relating to any objection, lawsuit, opposition proceeding, cancellation proceeding or other proceeding involving or relating to Opposer's Mark.

54. With respect to each product and/or service with which Opposer's Mark has been used, documents sufficient to show whether or not Opposer's use of the mark in connection with such product/service has been continuous.

55. With respect to each product and/or service in connection with the Opposer's Mark has been used, all documents which evidence, refer, or relate to Opposer's first use in interstate commerce of Opposer's Mark in connection with each such product and/or service.

56. With respect to the earliest date on which Opposer will rely in this proceeding to establish Opposer's rights in Opposer's Mark, all documents which evidence, support, refer, or relate to such claim or rights in Opposer's Mark by Opposer as of that date.

57. All documents that reflect, relate to or refer to any confusion as to origin, endorsement, approval or sponsorship of goods or services sold, distributed or offered by Opposer under Opposer's Mark and/or by Opposer under Opposer's Mark.

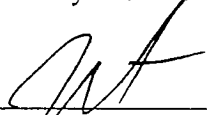
58. For each year in which products have been sold under Opposer's Mark, documents sufficient to identify each state where such product was sold.

59. Documents sufficient to identify the retail locations through which products bearing Opposer's Mark are sold.

60. All materials which have been produced, drafted, or proposed for use as product packaging for Opposer's goods to be sold under Opposer's Mark, including mock-ups for same, whether or not such have ever been used, displayed, and/or disseminated.

61. Documents sufficient to identify each state where Opposer intends for its products to be sold under Opposer's Mark.

Respectfully submitted,

  
\_\_\_\_\_  
John S. Egbert  
Reg. No. 30,627  
Attorney for Applicant


EGBERT LAW OFFICES  
412 Main St., 7<sup>th</sup> Floor  
Houston, Texas 77002  
Tel: (713)224-8080  
Fax: (713)223-4873

Our File: 840,030

### CERTIFICATE OF MAILING

I hereby certify that this Applicant's First Request for Production of Documents was sent by first class mail on this 3<sup>rd</sup> day of January, 2006, to the attorney of record for Opposer at the following address:

Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 638-6666

  
\_\_\_\_\_  
John S. Egbert  
Attorney for Applicant

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

In the Matter of Application Serial No. 78/409,841  
Published in the *Official Gazette* on February 22, 2005

COLOPLAST A/S,

Opposer,

v.

JIRO TAKASHIMA,

Applicant.

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Opposition No. 91165588

APPLICANT'S REQUESTS FOR ADMISSION TO OPPOSER

Applicant, JIRO TAKASHIMA, through counsel, hereby requests Opposer, COLOPLAST A/S (hereinafter referred to as "Opposer"), within thirty (30) days after service of these requests, to make the following admissions, pursuant to Rule 36, Fed.R.Civ.P. and 37 C.F.R. § 2.120(h), and subject to all pertinent objections to admissibility which may be interposed at trial:

INSTRUCTIONS

A. The Instructions and Definitions set forth in Applicant's First Set of Interrogatories, served concurrently herewith, are incorporated by reference and made a part hereof, as if fully stated herein.

B. These Requests are continuing and to the extent that the answers may be enlarged, diminished or otherwise modified by information acquired by Opposer subsequent to the service of answers hereto, Opposer is requested promptly thereafter to serve supplemental answers reflecting such changes, where required by the Federal Rules of Civil Procedure.

C In answering these Requests, Opposer is required to admit or deny each request based on information as is available to Opposer and its agents, including information in the possession of Opposer's attorneys, investigators and representatives.

D. For each of these Requests to which Opposer responds by asserting that it lacks sufficient information and/or knowledge, state in detail the information required to answer said admission, and the steps taken by Opposer to investigate and/or obtain information in order to answer said admission request.

### REQUESTS

1. Prior to Opposer's selection of Opposer's Mark, Opposer had actual knowledge of Applicant's Mark.

2. Prior to Opposer's selection of Opposer's Mark, Opposer had actual knowledge of Applicant's pleaded application.

3. Prior to Opposer's selection of Opposer's Mark, Opposer had actual knowledge of Applicant.

4. Prior to Opposer's Selection of Opposer's Mark, Opposer visited Applicant's website.

5. Prior to the filing of the opposed application, Opposer had actual knowledge of Applicant's Mark.

6. Prior to the filing of the opposed application, Opposer had actual knowledge of Applicant's pleaded application.

7. Prior to the filing of the opposed application, Opposer had actual knowledge of Applicant.

8. Prior to the filing of the opposed application, Opposer visited Applicant's website.
9. Prior to using Opposer's Mark, Opposer had actual knowledge of Applicant's Mark.
10. Prior to using Opposer's Mark, Opposer had actual knowledge of Applicant's pleaded application.
11. Prior to using Opposer's Mark, Opposer had actual knowledge of Applicant.
12. Prior to using Opposer's Mark, Opposer visited Applicant's website.
13. Opposer is an international medical device company.
14. Opposer sells ostomy products.
15. Opposer sells incontinence products.
16. Opposer promotes ostomy products at its Internet website.
17. Opposer promotes incontinence products at its Internet website.
18. Opposer is well-known in the United States.
19. Opposer is well-known in the United States ostomy care market.
20. Opposer is well-known in the United States incontinence care market.
21. Opposer has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with hemorrhoid treatment devices (other than marks involved in this proceeding).
22. Opposer has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with surgical or medical instruments and apparatus for incontinence (other than marks involved in this proceeding).

23. Opposer has no personal knowledge of the present, actual use of any trademark comprised in whole or in part of the term "PERI" in connection with ostomy products (other than marks involved in this proceeding).

24. Opposer does not possess any documents which support Opposer's Notice of Opposition.

25. Opposer is not aware of any evidence which supports Opposer's Notice of Opposition.

26. Opposer has not produced any documents in response to Applicant's document requests which support Opposer's Notice of Opposition.

27. All documents produced by Opposer in response to Applicant's First Request for Production in this proceeding are genuine pursuant to the Federal Rules of Evidence.

28. All documents produced by Opposer in response to Applicant's First Request for Production in this proceeding are part of the business records of Opposer kept in the normal course of Opposer's business.

29. All documents produced by Opposer in response to Applicant's First Request for Production in this proceeding are admissible as evidence in this proceeding under the Federal Rules of Evidence, subject to any objections of Opposer on the grounds of relevance.

30. Goods of the same type as those listed in the opposed application are marketed at retail.

31. Goods of the same type as those listed in the opposed application are sold at retail.

32. The goods listed in the opposed application are marketed at retail.

33. The goods listed in the opposed application are intended to be marketed at retail.

34. The goods listed in the opposed application are marketed at retail under Opposer's Mark.

35. The goods listed in the opposed application are intended to be marketed at retail.

36. The goods listed in the opposed application are similar to the goods listed in the pleaded application.

37. Opposer sells its PERISTEEN products on the Internet.

38. Opposer sells its PERISTEEN products to hospitals.

39. Opposer sells its PERISTEEN products to medical device retailers.

40. Opposer sells its PERISTEEN products to pharmacists.

41. Opposer markets its PERISTEEN products on the Internet.

42. Opposer markets its PERISTEEN products to hospitals.

43. Opposer markets its PERISTEEN products to nurses.

44. Opposer markets its PERISTEEN products to medical device retailers.

45. Opposer markets its PERISTEEN products to pharmacists.

46. Opposer intends to sell its PERISTEEN products on the Internet.

47. Opposer intends to sell its PERISTEEN products to hospitals.

48. Opposer intends to sell its PERISTEEN products to medical device retailers.

49. Opposer intends to sell its PERISTEEN products to pharmacists.

50. Opposer intends to market its PERISTEEN products on the Internet.

51. Opposer intends to market its PERISTEEN products to hospitals.

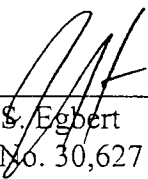
52. Opposer intends to market its PERISTEEN products to nurses.

53. Opposer intends to market its PERISTEEN products to medical device retailers.



54. Opposer intends to market its PERISTEEN products to pharmacists.
55. Opposer intends for its PERISTEEN products to be sold on the Internet.
56. Opposer intends for its PERISTEEN products to be sold in hospitals.
57. Opposer intends for its PERISTEEN products to be sold to medical device  
retailers.
58. Opposer intends for its PERISTEEN products to be sold to pharmacists.
59. Opposer intends for its PERISTEEN products to be marketed to hospitals.
60. Opposer intends for its PERISTEEN products to be marketed to nurses.
61. Opposer intends for its PERISTEEN products to be marketed to medical device  
retailers.
62. Opposer intends for its PERISTEEN products to be marketed to pharmacists.
63. The mark of the opposed application is not similar to Opposer's Mark.

Respectfully submitted,

  
\_\_\_\_\_  
John S. Egbert  
Reg. No. 30,627  
Attorney for Applicant

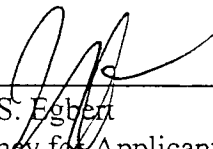
EGBERT LAW OFFICES  
412 Main St., 7th Floor  
Houston, Texas 77002  
Tel: (713) 224-8080  
Fax: (713)223-4873

Our File: 840,030

CERTIFICATE OF MAILING

I hereby certify that Applicant's First Set of Requests For Admissions is being sent by first class mail on this 3<sup>rd</sup> day of January, 2006, to the attorney of record for Opposer at the following address:

Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
Tel: (202) 638-6666

  
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John S. Egbert  
Attorney for Applicant

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

In the Matter of Application Serial No. 78/409,841  
Published in the *Official Gazette* on February 22, 2005

COLOPLAST A/S,

Opposer,

v.

JIRO TAKASHIMA,

Applicant.

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Opposition No. 165,588

APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 33 and Rule 2.120 of the Trademark Rules of Practice, Applicant, JIRO TAKASHIMA, (hereinafter referred to as "Applicant") by its attorneys, hereby requests that COLOPLAST A/S (hereinafter referred to as "Opposer") answer, in writing and under oath, the interrogatories propounded below. Such responses must be made within thirty (30) days of service of these interrogatories.

INSTRUCTIONS AND DEFINITIONS

A. As used herein, the term "person(s)" includes not only natural persons, officers, managing agents, supervisory personnel, and employees, but also includes, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

B. "Opposer" shall mean the nominal Opposer, Coloplast A/S [hereinafter "Opposer"], and as well as any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which Coloplast A/S has an ownership interest and/or controls and which

uses the opposed mark in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

C. "Applicant" shall mean the nominal Applicant, Jiro Takashima, as well as any predecessor(s) or successor(s) in interest, and any partnership and/or corporation in which Jiro Takashima has an ownership interest and/or controls and which uses the opposed mark in any way, as well as all divisions, licensees, parent, subsidiary, affiliated or related companies thereof, and the partners, principals, directors, officers, agents and employees thereof. When an answer is supplied with respect to any predecessor or successor in interest, division, licensee, parent, subsidiary, affiliated or related company, this fact should be stated and such predecessor in interest, division, licensee, parent, subsidiary, affiliated or related company should be fully identified by name and principal place of business.

D. As used herein, the term "Opposer's Mark" shall refer individually and/or collectively to the PERISTEEN mark/application pleaded in the Notice of Opposition, including, or in addition to, in any and all formats, used alone or in combination with any other word(s) or design(s), or symbol(s) as used by or on behalf of Opposer.

E. As used herein, the term "Applicant's Mark" refers to the mark of the opposed application and/or any other mark, name, or designation containing the term "PERISTAL", in any

and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s).

F. As used herein, the term "document" is used in its broadest sense, to include, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy; including but not limited to, communications, including intra-company communications and correspondence; cablegrams, radio-grams and telegrams; facsimiles; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; e-mails; reports; customer lists; books, manuals, publications and diaries; laboratory engineering reports; reports of test results; notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; customer surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; instruction manuals; user manuals; computer software; web pages; Internet data and downloads; computer diskettes; computer hard drive; compact discs; computer tapes; graphics, and other data fixed or recorded by electronic means; databases; audio tapes; audio cassettes; video tapes; video cassettes; video discs; films; operation manuals; pamphlets, catalogs and catalog sheets; advertisement for television commercials; circulars; trade letters; press publicity and trade and product releases; product descriptions; drafts of original or preliminary notes on, and marginal comments appearing on, any document; applications for approval by a governmental agency; other reports and records; and any other information-containing paper, writing or physical thing.

G. As used herein, "communication" is used in its broadest sense, to include, without limitation, the following:

- (1) any document, as defined hereinabove; and
- (2) any conversation, discussion, dialogue, conference, report, message, account, interview, exchange, and/or consultation, whether oral, written, or electronic.

H. "Identify" or "identification" with respect to a person, means provide the person's:

- (1) name;
- (2) last known residential address;
- (3) last known business address;
- (4) last known employer of business affiliation, and occupation and position held.

I. "Identify" or "identification" with respect to a company, partnership, firm, corporation or other non-juristic person, shall mean provide:

- (1) the name;
- (2) if incorporated, the place of incorporation;
- (3) if unincorporated, the name of the partners and/or principals; and
- (4) the address of such entity's principal place of business.

J. "Identify" or "identification" with respect to a document, shall mean provide:

- (1) recipient(s), if any;
- (2) the identity of the person or persons who prepared it, the sender, and all the title of the document;
- (3) a description of the general nature of its subject matter(s);

- (4) the date of preparation;
- (5) the date and manner of distribution and publication, if any;
- (6) the location of each copy, and the identity of the present custodian; and
- (7) the identity of the person or persons who can identify and/or authenticate it.

K. "Identify" or "identification" with respect to an act, occurrence, circumstance, or event (collectively "act"), shall mean providing:

- (1) a description of the act;
- (2) the date(s) the act occurred;
- (3) where the act occurred;
- (4) the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act);
- (5) the identity of all persons who have any knowledge or information, about or regarding the act, including the identity of each witness to the act;
- (6) when the act, or omission, first became known to Applicant; and
- (7) the circumstances and manner in which knowledge of the act was first obtained by Applicant.

L. "Identify" or "identification" with respect to goods, products, or services shall mean:

- (1) state the common descriptive name of said good, product or service;
- (2) state the model number, identify the manufacturer and location of manufacture thereof;
- (3) provide a detailed description of the purpose, function, and/or application of said good, product or service; and

(4) describe in detail the channels of trade in which such product or service is sold and/or rendered.

M. "Identify" or "identification" with respect to a search (including but not limited to trademark searches), survey, poll, or other investigation (collectively "search") shall mean:

- (1) state the date and location of the search;
- (2) identify and describe all documents examined or investigated in connection with the search;
- (3) if applicable, state the size of the sample surveyed, how that sample was selected, and the questions asked;
- (4) identify each person(s) who conducted the search;
- (5) state all results and conclusions of the search, including, if applicable, each answer to each question posed;
- (6) with respect to a search or similar investigation, identify each reference disclosed by providing the mark or name which is the subject of such reference, the owner of the mark or name, the registrant or applicant, the registration or serial number, and the goods and services listed in, or in connection with, such reference;
- (7) identify each person who rendered any conclusions or opinion relating to such search;
- (8) identify each person to whom the results, in whole or in part, of such search and/or any conclusion or opinion relating to such search, were communicated, and the date(s) of such communication;



(9) identify each person who has knowledge or information with respect to the search; and

(10) identify all documents which contain any results of, and/or refer or relate in any way to, such search.

N. "Advertising" and/or "promotional materials" shall mean, without limitation, advertisements, including advertising copy, advertising slicks, and line art; product packaging, labels, brochures, photographs, product sheets, point of sale displays, audio or video tapes; catalogues or other product guide books; signage, price lists, warranty information, Internet sites, web sites and/or pages, and/or any other document or material used and/or distributed to promote and/or solicit business, shipments, sales, and/or orders of products or services of Applicant.

O. "Identify" or "identification" with respect to "channels of trade" with respect to a product or service shall mean, without limitation:

(1) describe the circumstances surrounding the sale, distribution and/or rendition of such product/service; and

(2) state whether sales are through anyone, or more, of the following means:

- (a) retail,
- (b) wholesale,
- (c) direct mail,
- (d) electronic commerce,
- (e) visits by salespersons,
- (f) direct contact with customers,
- (g) provision of sample goods or services,

- (h) trade shows,
- (i) other means, and if so, describe the nature of the sale,
- (j) any combination of the above sub-sections (a) through (j) inclusive,

of this definition, and if so, identify the applicable channels.

P. As used herein, "media" or "medium" shall be construed to comprise newspapers, consumer magazines, trade publications, trade shows, catalogues, and any means of audio, video, and/or electronic transmission, and "identify" or "identification" with respect to "media" or "medium" shall mean, without limitation:

(1) provide, for each print medium: the name of the publication or print media; the date; volume number; geographical area and size of circulation; and if directed to a particular trade, industry, or type of reader/customer, describe such trade/ industry/reader;

(2) provide, for each audio and video transmission (including radio and television): the station and/or network on which such transmission was broadcast; the geographical area of broadcast; and the date of each broadcast.

(3) provide, for each direct mailing or other direct distribution (including electronic mailings): the geographic area and dates of such distribution; the number of such mailings/direct distributions sent or disseminated; a general description of the persons to whom distributed; and if a mailing list was used, the source and identification of each such mailing list.

(4) identify, for each medium referring or relating in any way to Opposer's products or services, the specifically referenced product(s) or service(s) and mark(s) therefor; and

(5) identify the persons employed or associated with Opposer who have most knowledge of same.

Q. "Identify" or "identification" with respect to any advertisement or promotional materials shall mean:

(1) identify the medium in which such advertisement/promotional material was published, broadcast or otherwise disseminated;

(2) identify each person who created, ordered, distributed and/or placed such advertisement;

(3) state where, when, and to whom said advertisement or promotional material, and/or copies of same, were distributed, and the number of copies distributed at each such place and time; and

(4) identify documents which would show when and where the advertisement was placed/broadcast/distributed and the costs thereof, including an identification of the advertisement itself.

R. "Identify" or "identification" with respect to any objection or complaint regarding the use of a name or mark, lawsuit, opposition, cancellation, or other *inter partes* proceeding, shall mean identify:

(1) the person making the objection or complaint and/or on whose behalf the objection or complaint was made and/or who brought such lawsuit, opposition, cancellation or other *inter partes* proceeding;

(2) the date when such objections, complaint, lawsuit, opposition, cancellation or other proceeding was made and/or instituted;

(3) with respect to any lawsuit or proceeding, the parties thereto;

(4) the civil action or docket number and/or other identifying indicator used by the tribunal before whom such was brought;

(5) the court or other tribunal before whom the proceeding was brought;

(6) the trademark(s) and/or service mark(s) at issue; and

(7) the disposition and/or resolution of such objection, complaint or proceeding.

S. "Identify" or "identification" with respect to a retail outlet or store shall mean:

(1) the retail outlet or store name;

(2) the address of the retail outlet or store;

(3) the owner(s) of the retail outlet or store;

(4) the date on which the retail outlet or store was first opened to the public; and

(5) to identify the products, services, and business offered or rendered by or from

such retail outlet or store.

T. "Identify" or "identification" with respect to an agreement, an assignment, license, understanding, or other contract or grant or transfer of rights, (collectively "agreement") shall mean:

(1) identify the type of agreement - i.e. "assignment," "license," "consent to use," "distributorship agreement," etc.;

(2) identify the geographic scope of the agreement;

(3) identify the parties to the agreement;

(4) state whether the agreement is oral or in writing;

(5) describe in detail any rights and/or property transferred by the agreement,

including whether the goodwill in any business, in whole or in part, was transferred as part of, or in

connection with, the agreement and, if so, describe in detail the nature and extent of any goodwill assigned, licensed, granted, or transferred;

(6) if the agreement is a trademark or service mark license, identify the manner of control which is, or was, to be exercised with respect to the quality and character of the goods or services, on or in connection with which any affected mark was to be, or has been, used under such agreement;

(7) state whether the assignor, licensor, grantor, transferor still was doing business at the time of the assignment, license, understanding, grant, transfer;

(8) state whether the assignment/grant/transfer was one in bankruptcy;

(9) state whether the agreement was recorded in the Patent and Trademark Office or any other public record and, if so, state the date and place of such recordation(s);

(10) state in detail the conditions and terms of such agreement;

(11) identify all documents which evidence or refer or relate in any way to such agreement, including the agreement itself, if in writing;

(12) identify each person who drafted and/or participated in any way in the negotiations and/or drafting of the agreement, and/or who approved the same; and

(13) identify each person involved in or who has participated in the enforcement and/or execution of the agreement.

U. "Identify" or "identification" with respect to "expert witness," shall mean, without limitation:

(1) identify such person;

(2) describe the qualifications for such expert;

(3) identify all articles, books or other publications authored in whole or in part identify all documents which such expert has reviewed and/or upon which such expert may rely in connection with his or her testimony; and

(4) provide all of the information set forth in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure.

V. "Identify" or "identification" with respect to a trademark or service mark registration or application shall mean:

(1) the identification of the agency or office where filed, when filed, and/or who issued such registration;

(2) the names of the applicant and registrant;

(3) the serial and registration number;

(4) the filing and issue date(s);

(5) the present status thereof;

(6) if registration was refused, the reason(s) for such refusal;

(7) identify all documents referring to such registration/application filed in connection with such registration or application including the registration/application itself; and

(8) identify whether any assignment or other documents have been received, and if so, what and when in connection with such registration application.

W. "Identify" or "identification" with respect to an instance of confusion or mistake and/or an instance where a person thought, arrived or otherwise indicated a belief there may be an association between the parties herein and/or other products or businesses means state:

(1) the "confusion;"

- (2) the identity of the person(s) confused or mistaken;
  - (3) the details of such event, including the "mistake" made and the substance of the date and place of such event and/or instance of mistake or confusion;
  - (4) a description of the details of the manner in which such confusion, mistake, belief, assumption or indication was communicated or came to the attention of Opposer;
  - (5) the details of the response communication, if any, made by or on behalf of Opposer, directly or indirectly, to the person so confused or mistaken or who communicated such confusion or mistake to Opposer;
  - (6) the identity of each person having knowledge of such confusion or mistake;
- and
- (7) the identity of all documents and communications which refer or relate in any way to such confusion or mistake.

X. As used herein, "and" or "or" shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

Y. As used herein, "referring or relating to" means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

Z. If Opposer is aware that a document or a group of documents once existed, but has been destroyed, in addition to the identification of the document as described herein, Opposer also is requested to state when the document or group of documents was destroyed, who destroyed it, why it was destroyed, and the circumstances under which it was destroyed.

AA. With respect to each document withheld on the ground of a claim of attorney

privilege, identify such document in accordance with these definitions and instructions, and state in detail the basis and nature of such claim of privilege.

BB. These interrogatories shall be deemed to be continuing, requiring Opposer to serve upon Applicant amended or supplemental answers promptly after Opposer has acquired additional knowledge or information relating in any way to such interrogatories.

CC. With respect to any interrogatory which is asserted to be overbroad, or unduly burdensome, state all information requested which can be provided without undue burden, and/or which is relevant or might lead to the discovery of admissible evidence.

DD. Unless otherwise indicated, all discovery requests should be interpreted as referring to activities within the United States and/or interstate commerce and/or commerce which is regulatable by the Congress.

### INTERROGATORIES

1. State the earliest date on which Opposer will rely in this proceeding to establish any rights in Opposer's Mark vis-a-vis Opposer, and state in detail the basis for Opposer's Claim of rights in Opposer's mark as of that date, including:

(a) a description of the manner of use of Opposer's mark as of that date (i.e., imprinted on the goods, on labels or tags for goods, on packaging for the goods, in store displays, etc.);

(b) the identity of each person involved in any way in such use, including, but not limited to the identity of each witness who can testify on personal knowledge as to such use;

(c) the identification of each product and/or service in connection with which the mark was used on that date; and



(d) the identification of each document which evidences or supports such claim of use as of that date.

2. Identify each product and/or service with which Opposer's Mark has been used, or is intended to be used, and with respect to each such product and/or service identify:

(a) the period of time during which Opposer's Mark has been used with said product and/or service (i.e., the date of Opposer's first sale of the product bearing Opposer's Mark to the date of Opposer's last sale);

(b) If the use was by a person other than Opposer, identify that person, and state in detail the basis upon which Opposer claims such use inures, or will inure, to its benefit;

(c) the sales, on an annual basis, in terms of dollar volume and units, of such product and/or service from the date of first use of Opposer's Mark in connection with such product and/or service, through the present;

(d) each price charged and/or to be charged by and/or paid to Opposer for such products and/or service; and

(e) each state in which such product and/or service has been sold under or in connection with Opposer's Mark.

3. Identify each survey, search or other investigation conducted and/or obtained with respect to Opposer's Mark, Applicant's Mark, the term "PERI" or "PERIST" as used as a trademark or part of a trademark, and/or the actual, potential, or intended market, and/or the actual, potential, or intended customers of, or consumers for, the goods to be offered for sale and/or sold under or in connection with any of Opposer's Mark and/or Applicant's Mark.

4. (a) State the annual volume of advertising under and/or in connection with Opposer's Mark in connection with the goods set forth in the opposed application for each year since such advertising commenced.

(b) Identify each medium in which Opposer's Mark has been or is intended to be listed, advertised, promoted, offered for sale and/or sold, and/or in which the products sold under Opposer's Mark have been listed, advertised, promoted, offered for sale and/or sold.

5. Identify each broker, sales representative, licensee, franchisee, dealer, distributor, wholesaler, each retail outlet, trade show, catalog, and Internet web site and/or other electronic means, to and/or through which Opposer's goods have been, or are intended to be, advertised, promoted, offered for sale, distributed and/or sold, under or in connection with Opposer's Mark.

6. For each product and service in connection with which Opposer is using, or intends to use, Opposer's Mark, identify, in detail, the channels of trade through which such products and/or services have been, or are intended to be, sold and/or rendered, including but not limited to a general description of the type of customers to whom Opposer does or intends to advertise, promote, and/or sell Opposer's products and/or services in connection with Opposer's Mark.

7. Identify each agreement, assignment, license, contract, consent grant, or transfer of rights which concerns, refers or relates to Opposer's Mark and/or any rights in connection with such mark.

8. Identify each person who participated in the selection, creation, and/or decision to adopt and/or to use Opposer's Mark; and describe in detail the reasons for and/or relating to the selection and adoption of Opposer's Mark.

9. (a) Identify all persons employed by Opposer, and/or persons affiliated with, or contracted by, Opposer, responsible for advertising Opposer's Mark and/or the goods/services sold or are intended to be sold under Opposer's Mark (including but not limited to the designer of any of Opposer's Internet website(s)); and

(b) Identify the person(s) responsible for, or if there is no such person, the person with the most knowledge of, the marketing of goods and/or services offered for sale under or in connection with Opposer's Mark. (As used in this interrogatory, the term "marketing" includes but is not limited to, the customers, channels of trade, and type(s) of outlets where such goods are or will be offered for sale and/or sold.)

10. Identify the circumstances under which (including, but not limited to, the date) Opposer first became aware of Applicant's Mark, and/or Applicant; the actual or possible use in any manner by Applicant of Applicant's Mark; and/or any products that are, or are to be, sold or distributed, and/or services rendered bearing any of Applicant's Mark.

11. (a) Prior to the institution of the instant proceeding, did Opposer ever consider Applicant and/or Applicant's Mark with respect to and/or in connection with Opposer's Mark and/or the products sold or to be sold under Opposer's Mark or otherwise in connection with Opposer's business?

(b) If the response to sub-paragraph (a) of this interrogatory is other than an unqualified negative, state the date of such consideration, the action considered, and identify each person involved in, and communication related to, such consideration.

12. Identify each and every trademark and service mark registration you believe relevant to this Opposition proceeding, including for each, the reason(s) why you believe such to be relevant.

13. (a) Is Opposer aware of any instance of confusion or mistake regarding it an Opposer, their respective goods, services, or businesses, and/or Opposer's Mark and Opposer's Mark?

(b) Has Opposer received any communication addressed or directed to, or which mentions, refers or relates in any way to, Applicant, Applicant's Mark and/or Applicant's products/services?

(c) Is Opposer aware of any instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Opposer and Applicant, Opposer's Mark and Applicant's Mark, and/or the respective products or services or businesses of Opposer and Applicant?

14. (a) If the answer to Interrogatory No. 13(a), above, is other than an unqualified negative, identify each instance of confusion or mistake.

(b) If the answer to Interrogatory No. 13(b), above, is other than an unqualified negative, identify each such communication to which that interrogatory refers.

(c) If the answer to Interrogatory No. 13(c), above, is other than an unqualified negative, identify each such instance where any person thought, assumed or otherwise indicated a belief that there is or may be an association between Opposer and Applicant and/or their respective products, services or businesses.

15. Identify each and every actual, present use of a trademark consisting of or containing the term "PERI" or "PERIST" of which Opposer is aware and which Opposer contends is relevant

to any of the claims and/or defenses in this proceeding, including for each such mark, the dates of usage(s) of such mark, the goods/services sold in connection with the mark, the identity of the party so using the mark, where (name and address) these goods/services can be found in the marketplace, the identity of each individual having knowledge of such use and whether that knowledge is personal knowledge or information and belief.

16. Identify each objection, complaint, lawsuit, opposition, cancellation and other *inter partes* proceeding involving and/or with respect to, and/or in which Opposer asserted any rights in, Opposer's Mark.

17. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Opposer's Notice of Opposition as stated in Opposer's Notice of Opposition filed in this proceeding.

18. State in detail each fact and all information (including, but not limited to, each witness with personal knowledge of same) and identify all documents which evidence(s) or support(s) Opposer's Notice of Opposition filed in this proceeding.

19. Identify each person who furnished any information on which any part of an answer to these interrogatories is based, indicating the parts based on information so furnished by such person, and whether such information is within the personal knowledge of such person, and if not within such personal knowledge, identify the source of the information so furnished.

20. Identify each expert witness who has been consulted and/or who may be called by Opposer to testify in this proceeding.

21. Identify each person whom Opposer has consulted with respect to the Notice of Opposition herein and/or with respect to the possibility of testifying herein, and for each, summarize the information such person has regarding the Opposer's claims and/or this Opposition.

22. Identify, by request number, each request in Applicant's First Request for Production of Documents served in this opposition for which (a) Opposer has not or will not produce any documents; and/or (b) there are no responsive documents in Opposer's possession, custody or control.

Respectfully submitted,



\_\_\_\_\_  
John S. Egbert  
Reg. No. 30,627  
Attorney for Opposer

\_\_\_\_\_  
Date

1-3-06


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Our File: 840,030

CERTIFICATE OF MAILING

I hereby certify that this Applicant's First Set of Interrogatories was mailed by first class mail on this 3<sup>rd</sup> day of January, 2006, to the attorney of record for Opposer at the following address:

Simor L. Moskowitz  
Matthew J. Cuccias  
JACOBSON HOLMAN, PLLC  
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Washington, D.C. 20004  
Tel: (202) 638-6666

  
\_\_\_\_\_  
John S. Eggert  
Attorney for Applicant