

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of

**CERTAIN COENZYME Q10 PRODUCTS
AND METHODS OF MAKING SAME**

Inv. No. 337-TA-790

**ORDER NO. 21: DENYING RESPONDENTS' MOTION TO SUPPLEMENT THEIR
NOTICES OF PRIOR ART**

(April 3, 2012)

On March 30, 2012, respondents Mitsubishi Gas Chemical Company, Inc., Mitsubishi Gas Chemical America, Inc., Zhejiang Medicine Co., Ltd., ZMC-USA L.L.C., Xiamen Kingdomway Group Company, Pacific Rainbow International Inc., Shenzhou Biology & Technology Co, Ltd., and Maypro Industries, LLC (collectively "Respondents") filed a motion to supplement their notices of prior art. (Motion Docket No. 790-022.) Respondents state that complainant Kaneka Corporation ("Kaneka") opposes the motion.

According to the Procedural Schedule, the deadline to file notices of prior art was December 19, 2011. Respondents seek to amend their notices of prior art to add the article "Coenzyme Q10 by Fermentation," by Kanazawa et al. ("Kanazawa"). Respondents assert that despite diligent prior art searching that began in July 2011, Kanazawa was not uncovered until February 2, 2012, when counsel for Shenzhou Biology & Technology Co, Ltd. reviewed the prosecution history of U.S. Patent No. 5,011,858. Respondents argue that there is good cause to allow them to rely on Kanazawa as prior art because the article was published in a relatively

obscure publication directed to medical personnel and other users of coenzyme Q10.

Respondents claim that Kaneka will not be prejudiced by Respondents' reliance on Kanazawa.

Ground Rule 5 governs the notice of prior art. It states that a party seeking to amend a notice of prior art after the deadline has passed may do so "upon a timely written motion showing good cause." At the preliminary hearing in this matter, I provided the parties with the following guidance regarding Ground Rule 5:

[Ground] Rule 5 talks about notices of prior art. There is a date in the procedural schedule for filing the notice of prior art. That's a not later than date, and if you are late doing it, and you haven't filed it timely, then proof of the matters related to that prior art that's not timely will not be allowed in evidence at the trial, unless you show good cause by a written motion, and the fact that your expert couldn't find the references is not adequate for good cause.


(Aug. 15, 2011 Hearing Tr. at 14:7-17.)

Respondents' argument for granting the motion is that even though they performed diligent prior art searches using commercial searching services in both the United States and Japan, they did not uncover Kanazawa, a publicly-available reference, until after the deadline for filing notices of prior art. This is exactly the situation that I warned the parties about at the preliminary conference. Consistent with my guidance to the parties at the preliminary conference, I find that Respondents have failed to demonstrate the good cause necessary to allow an amendment to their notices of prior art.

ORDER

Motion No. 790-022 is hereby DENIED.

SO ORDERED.



Robert K. Rogers, Jr.
Administrative Law Judge

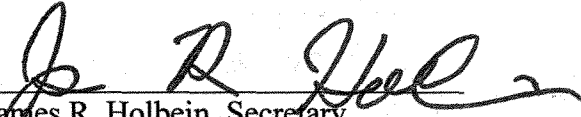
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PUBLIC CERTIFICATE OF SERVICE

I, James R. Holbein, hereby certify that the attached **ORDER** was served upon **Aarti Shah, Esq.**, the Commission Investigative Attorney, and the following parties via first class mail delivery on

April 3, 2012


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