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| 16 sept/Sep 2015 |
| *Votre référence Your File*  10758-15 KDM |
| *Notre référence Our File*  1539953 |
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| SIM & MCBURNEY  330 UNIVERSITY AVENUE  6TH FLOOR  TORONTO  ONTARIO M5G 1R7 | | |
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| RE: | Trade-mark: | KING |
|  | Applicant: | Tokai of Canada Ltd. |
|  | Opponent: | The Kingsford Product Company LLC |

Receipt is acknowledged of the applicant’s letter dated DD-MMMM-YYYYJune 19, 2015, requesting that an order be made that the cross-examination of Mr. John William Tucker proceed by way of video conference. Receipt is also acknowledged of the opponent’s letters of July 20, 2015 and August 21, 2015. I apologise for the delay in the office responding. This file has only recently been returned to me for attention.

The applicant has explained that the affiant suffers from kidney failure which presents an exceptional circumstance such that it would be unconscionable if Mr. Tucker was exposed to any risks of complications due to the stresses of long distance air travel. The applicant also submits a medical note stating that Mr. Tucker requires twice weekly hemodialysis treatments for kidney failure.

The opponent indicates it is not agreeable to such a request since Mr. Tucker gives substantive evidence and is a key witness. The opponent submits that cross-examinations and discoveries by video conference have been totally unsatisfactory and are extremely prejudicial to the party asking questions. Further, an issue arises in that if documentation is to be placed before a witness it has to be provided to the agent on the other side in advance. The opponent notes that it would consent to the filing of a substitute affidavit by another representative or that the opponent’s agent would be willing to travel for cross-examination providing reasonable expenses were paid for by the applicant.

Having reviewed the applicant’s and opponent’s submissions, I am satisfied that the applicant has set forth exceptional circumstances upon which I could conclude that it is in the interests of justice that the cross-examination of Mr. Tucker be conducted by video conference. The applicant’s request is therefore granted. My order is consistent with past rulings of the office wherein it has come to the office’s attention that an affiant has a medical issue making travel to Canada difficult. Further, there is no precedent for the Board ordering that the travel expenses of one party be paid by the other or that another affiant (who can travel) provide evidence.

In accordance with the opponent’s request, it is hereby ordered that the cross-examination of Mr. Tucker proceed by way of video conference, at the time and date to be mutually agreed upon by the parties, the whole pursuant to the cross-examination order dated March 19, 2015.

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The above ruling has no effect on any outstanding deadline.

Yours truly,

Original signed by   
CINDY R. FOLZ   
a signé l'original

Natalie de PaulsenNatalie de Paulsen,

MemberMember,

Trade-marks Opposition Board.

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| CC: | FINLAYSON & SINGLEHURST  225 Metcalfe Street  Suite 700  Ottawa  ONTARIO K2P 1P9 | RE: | tmrn-3538, (Tokai of Canada Ltd.) |