

TTAB

EXHIBIT

EXPRESS MAIL LABEL NO. ET346777925US

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

In the matter of Application Serial No. 75/845,350, INTELLIWEAR
Published in the *Official Gazette* on October 30, 2001



06-26-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

MARK D. TANNEN,)
)
Opposer,)
)
v.)
)
JAY MACK,)
)
Applicant.)

Opposition No. 91151109

02 JUL -5 AM 8:33

TRADEMARK TRIAL AND
APPEAL BOARD

**OPPOSER'S MOTION TO STRIKE APPLICANT'S REPLY BRIEF
IN SUPPORT OF HIS MOTION TO
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR
IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

Pursuant to TBMP §517, Opposer, Mark D. Tannen ("Opposer"), respectfully submits this motion to strike Applicant, Jay Mack's (hereinafter "Applicant") reply brief in support of his Motion to Dismiss For Lack of Subject Matter Jurisdiction, or in the Alternative for Summary Judgment.

The Trademark Rules of Practice provide that the Board may in its discretion consider a reply brief. See TBMP 502.03, 37.C.F.R. §2.127; SDT Inc. v. Patterson Dental Co., 30 U.S.P.Q.2d 1707 (TTAB 1994). Nonetheless, filing of such briefs is discouraged, as the Board generally finds reply briefs have little persuasive value; often they are mere reargument of the points made in the main brief. No Fear, Inc. v. Rule, 54 U.S.P.Q.2d 1551 (TTAB 2000) (refusing to consider reply brief) (quotation and citations omitted). Here, Applicant's reply merely reargues points already presented in its initial motion, or asserts new and improper technical arguments, neither of which will assist the Board in rendering its decision. Further, a reply brief shall not exceed ten (10) pages in length. See 37 C.F.R. §2.127 Here, the reply filed

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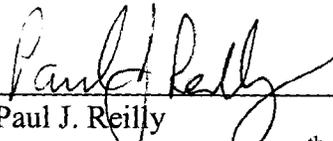
by the Applicant is sixteen (16) pages in length. In view of the foregoing, Applicant's reply brief should not be considered by the Board.

Alternatively, should the Board consider Applicant's reply, Opposer submits herewith as Exhibit A the "Supplemental Corrected Declaration of Mark D. Tannen In Support of Opposer's Memorandum In Opposition to Applicant's Motion for Summary Judgment" which addresses any purported defects in the declaration. However, Applicant's prior Declaration complies with 37 C.F.R. §2.20 and 28 U.S.C. §1746 in that it is in "substantially" the same form as that provided under 28 U.S.C. §1746 and should therefore be acceptable.

In view of the foregoing, Applicant respectfully requests that the Board strike Applicant reply brief.

Respectfully submitted,

BAKER BOTTS LLP

By: 
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Dated: June 25, 2002

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CERTIFICATE OF MAIL AND SERVICE

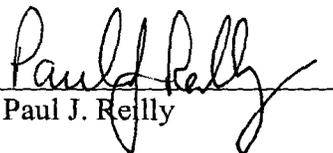
I hereby certify that the foregoing, OPPOSER'S MOTION TO STRIKE APPLICANT'S REPLY IN SUPPORT OF HIS MOTION FOR TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT was deposited with the United States Postal Service "Express Mail Post Office To Addressee Service" in an envelope with sufficient postage, addressed to:

Box TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

and a true and correct copy of the foregoing was served on Applicant's attorneys of record via the United States Postal Service as First Class Mail, in an envelope with sufficient postage, addressed to following:

Robert T. Daunt, Esq.
DAVIS & SCHROEDER
215 W. Franklin Street, 4th Floor
Post Office Box 3080
Monterey, California 93942

on June 25, 2002.

By: 
Paul J. Reilly