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

Proceeding	91156321
Party	Plaintiff The Chamber of Commerce of the United States of America
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE CHAMBER OF COMMERCE OF  
THE UNITED STATES OF AMERICA

*Opposer,*

v.

UNITED STATES HISPANIC CHAMBER  
OF COMMERCE FOUNDATION,

*Applicant.*

Opposition No.: 91/156,321

Serial No.: 78/081,731

**OPPOSER'S REPLY IN SUPPORT OF ITS  
MOTION TO MODIFY BOARD'S SCHEDULING ORDER  
TO PERMIT OPPOSER TO OFFER REBUTTAL TESTIMONY**

Opposer, The Chamber of Commerce of the United States of America, respectfully submits this brief in support of its request to modify the scheduling order issued by the Board on August 15, 2008. As Opposer explained in its motion, under the terms of the current scheduling order, the Board appears not to have provided Opposer with an opportunity to present testimony in rebuttal to the new evidence that Applicant was permitted to introduce during its extended case-in-chief. *See generally* D.I. 116. As that result was likely unintended and probably resulted from the fact that the parties' co-pending motions to extend exhibited temporal dissonance, *see id.*, and considering further that Opposer's presumed right to rebut the new testimony Applicant would offer during its extended testimony period was never at issue, *see, e.g.*, D.I. 50, 51, 54, 57, Opposer thought it prudent to raise that error so as to ensure that the trial schedule was balanced

(and consistent both with Trademark Rule 2.121(b)(1) and traditional notions of due process) and to remove any uncertainty regarding the propriety of Opposer submitting rebuttal evidence.

Incredibly, though, Applicant is *opposing* Opposer's motion. Specifically, Applicant, evidently hoping to gain a tactical advantage by denying Opposer an opportunity to offer rebuttal evidence, first argues in essence that it is too late to correct a denial of due process, *see* D.I. 110, p. 1, even though the Board of course always retains the power to adjust the trial schedule at any time, especially if it is necessary to do so to correct an error. *See TBMP*, §518. Alternately, Applicant suggest somewhat cryptically that there is no reason to modify the scheduling order and provide Opposer an opportunity to offer rebuttal evidence because "Applicant believes that the Order is sufficiently clear and therefore should not be disturbed." *See* D.I. 110, pp. 1-2.

This last point is especially interesting, because in the co-pending cancellation (No. 92045876), Respondent (there, "Registrant") *admitted* that Opposer had the right under the August 15<sup>th</sup> scheduling order to present evidence in rebuttal to the new evidence (the "September 2008 testimony") Respondent offered during its extended opposition testimony period:

Petitioner ... is not prevented from rebutting Applicant's September 2008 testimony, which Registrant will move to use in [the cancellation]. Per the Board's August 15, 2008 Order in the opposition, Petitioner has a 10-day rebuttal period, which is set to close on November 26, 2008. If Petitioner presents any testimony to rebut Applicant's September 2008 testimony in the opposition, Registrant would stipulate to the use of such testimony in [the cancellation].

D.I. 106 (92045876), pp. 8-9 (emphasis added). In other words, when Applicant wrote in its opposition brief that "[it] believes that the Order is sufficient clear," *see* D.I. 110, pp. 1-2, it was coyly stating that it believes that the Order *already gives Opposer the right* to present "testimony to rebut Applicant's September 2008 testimony[.]" *See* D.I. 106 (92045876), pp. 8-9. This therefore begs the question of why Applicant is bothering to "oppose" the present motion?

While Applicant acknowledges that these proceedings have been hard fought and contentious, no purpose is served through the filing of “make work” oppositions. The parties evidently both agree that the Board’s August 15<sup>th</sup> *Order* either afforded Opposer an opportunity to respond to the September 2008 testimony (according to Applicant) or that it at least *should have* afforded Opposer such an opportunity (according to Opposer). Under either approach, however, the same result is achieved. Moreover, Opposer, in an effort to keep this case moving, has already put on the rebuttal evidence at issue within the current rebuttal period.

Thus, Opposer submits that the Board should either grant the instant motion to clarify the schedule (to the extent that the August 15<sup>th</sup> *Order* is unclear) or simply treat this motion as moot on the basis that the relief Opposer requested (namely, the opportunity to offer evidence in this case to rebut the September 2008 testimony submitted by Opposer) has been conceded by Applicant. *See* D.I. 106 (92045876), pp. 8-9; *see also* *TBMP*, §701 (a party may take testimony from outside its testimony period “by stipulation of the parties approved by the Board”).

Respectfully submitted,

Date: December 22, 2008

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**CERTIFICATE OF SERVICE**

I hereby certify that the required number of copies of the foregoing *Reply in Support of Motion to Modify Board's Scheduling Order to Permit Opposer to Offer Rebuttal Testimony* was served on the parties or counsel on the date and as indicated below:

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