

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Mailed: December 18, 2008

Opposition No. **91178539**

SmithKline Beecham Corporation

v.

Omnisource DDS, LLC

Linda Skoro, Interlocutory Attorney

This case now comes up on opposer's motion, filed September 19, 2008, to compel further responses to opposer's second set of interrogatories, served February 11, 2008 and answer march 17, 2008. In particular opposer seeks further answers to interrogatories numbers 1, 2, 4, 5, 8-13, 15, 16 and 22-26.

Applicant has responded stating that opposer lacked good faith in filing this motion; that it was notified of opposer's alleged deficiencies six months are it provided its answers and opposer gave applicant twenty-four hours to provide the supplemental responses; that it attempted to produce additional information, but the motion was filed the next day.

After a review of the additional information sought, the Board finds that applicant's responses are sufficient. The first three identified interrogatories request

information that is equally available to both parties and to the extent that it seeks any analysis that would correctly fall within the attorney work product doctrine. The remaining identified interrogatories, as pointed out by applicant, were the subject of questioning during a discovery deposition and have been answered. Applicant has provided the citations to the deposition in its response to the motion.

The parties are reminded that they remain under a continuing obligation to supplement their discovery responses. Fed. R. Civ. P. 26(e)(2). *See also Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671 (TTAB 1989); and *Medtronic, Inc. v. Pacesetter Systems, Inc.*, 222 USPQ 80 (TTAB 1984). To the extent that responsive documents are not produced, they cannot be relied upon at trial.

Accordingly, opposer's motion to compel is denied. Proceedings are resumed and trial dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:

**CLOSED**

30-day testimony period for party in position of plaintiff to close:

**February 10, 2009**

30-day testimony period for party in position of defendant to close:

**April 11, 2009**

15-day rebuttal testimony period for  
plaintiff to close:

**May 26, 2009**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

[http://www.uspto.gov/web/offices/com/sol/notices/72fr42242\\_FinalRuleChart.pdf](http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf)

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31,

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2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stdagmnt.htm>