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

Proceeding	91178539
Party	Defendant Omnisource DDS, LLC
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Attachments	AQUAJETT - Reply to Motion to Strike - FINAL.pdf ( 3 pages )(27889 bytes )

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

SmithKline Beecham Corporation  
Opposer,

v.

Omnisource DDS, LLC,  
Applicant.

Opposition No. 91178539

Application Serial No. 78893144

Mark:

**AQUAJETT**

**APPLICANT'S REPLY RE: MOTION TO STRIKE TESTIMONY**

Applicant hereby replies regarding its motion to strike the following Notices of Reliance of Opposer as follows:

**Article Samplings – Exhibit A to Opposer’s Second, Third, and Fourth Notices of Reliance**

Opposer has admitted that the “Exhibit A”s attached to Opposer’s Second, Third, and Fourth Notices of Reliance are merely “a sampling of actual articles.” See Docket No. 31 at p. 1. Opposer contends that the Exhibits in question should be admitted as testimony because Opposer submitted the search strategy, because some of the full articles were submitted in the “Exhibit B”s, and “if Applicant wanted to obtain full text copies of the articles mention on any of these lists” it could replicate the searches on its own. The fact that Applicant could possibly obtain the full articles on its own is not relevant to the proper procedure for introducing Opposer’s testimony.

Opposer has not disputed that the article sampling lists are not full printed publications, or that they do not meet the requirements of TBMP Sect. 704.08. As a result, the contested

“Exhibit A”s attached to Opposer’s Second, Third, and Fourth Notices of Reliance should not be permitted to serve as testimony for Opposer.

**Opposer’s Ninth Notice of Reliance**

Opposer’s Response does not address the validity of Opposer’s Ninth Notice of Reliance. See “Conclusion,” Docket Doc. No. 31 at p. 2 (“Opposer respectfully requests that the Board deny Applicant’s motion to strike Exhibit A to Opposer’s Second, Third, and Fourth Notices of Reliance.”). Opposer has apparently conceded that its Ninth Notice of Reliance is improper and violates the rules of the Board.

WHEREFORE, Applicant respectfully requests the Board grant Applicant’s Motion to Strike in its entirety.

Dated this 14th day of April, 2009.



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of APPLICANT'S REPLY RE: MOTION TO STRIKE TESTIMONY has been served on the following by delivering said copy on April 14, 2009, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Glenn A. Gundersen  
Dechert LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19103-2808

By:   
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Erik M. Pelton, Esq.