

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

Mailed: October 5, 2009

Opposition No. 91178539

SmithKline Beecham Corporation

v.

Omnisource DDS, LLC

Linda Skoro, Interlocutory Attorney

This case now comes up on opposer's motion to strike applicant's supplemental notice of reliance. Applicant's supplemental notice was filed June 30, 2009 and the motion to strike was filed July 29, 2009.

Applicant's supplemental notice was timely filed in response to the Board's June 10, 2009 order striking portions of its original notice of reliance and allowing applicant thirty days within which to supplement the evidence sought to be relied upon with sufficient explanations as to the need for such reliance.

Opposer has objected to applicant's supplemental notice contending that applicant (1) failed to reproduce the relevant pages of the discovery deposition it seeks to rely upon; (2) its explanations as for its need to rely upon the submitted evidence is insufficient; and (3) that while applicant reproduced the relevant pages of the discovery

deposition with its response to opposer's motion to strike, that they are untimely as outside the thirty-day period the Board allowed applicant to supplement its evidence.

After a review of applicant's supplemental notice of reliance, the Board finds that its explanation of its need to rely on the identified evidence is sufficient for purposes of a notice of reliance. Further, as to providing a copy of the specific pages to be relied upon, while opposer is correct in saying the entire deposition had been stricken, applicant would have been allowed time to isolate the identified testimony to aid the Board in its consideration of the evidence, and having now provided it together with its response to the motion to strike, it is deemed timely.

The remainder of opposer's arguments regarding applicant's explanation of its need to rely upon the submitted evidence goes to the substance of the evidence and therefore any consideration of its relevance will be deferred until final hearing. Opposer should renew these objections in its brief on the case if it wishes to maintain them.

Accordingly, opposer's motion to strike applicant's supplemental notice of reliance is hereby denied. Proceedings are resumed and the dates are reset as indicated below.

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

CLOSED

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

CLOSED

15-day rebuttal testimony period for
plaintiff to close:

October 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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