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

Proceeding	91187375
Party	Plaintiff Schering-Plough HealthCare Products, Inc.
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Attachments	Evidentiary and Briefing Procedural Stipulation_Final_04-15-10.PDF ( 5 pages ) (21613 bytes )

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

Schering-Plough Healthcare Products, Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No.: 91/187,375
	)	Appl. Serial No. 77/420,097
Western Holdings, LLC,	)	Mark: SOLARIN
	)	
Applicant.	)	
	)	

The Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**ACCELERATED CASE RESOLUTION**  
**EVIDENTIARY AND BRIEFING PROCEDURAL STIPULATION**

Procedural History

Opposer's Notice of Opposition was filed and served on November 6, 2008. The Board issued its Institution Notice and Trial Order on the same day. Applicant filed and served its Answer on December 10, 2008. The parties had their discovery and settlement conference and have exchanged Initial Mandatory Disclosures, Interrogatory Answers, Discovery Documents and Admissions Responses. The parties have elected to forego discovery depositions.

The parties submitted their Stipulated Protective Order on May 4, 2009. It was entered by the Board on May 6, 2009. The Board issued its Order on Opposer's motion to compel certain disclosures and discovery on September 23, 2009.

The parties' counsel had a telephone conference with the Interlocutory Attorney on February 4, 2010. During this telephone conference, the parties stated their intention to resolve

this proceeding through the Board's Accelerated Case Resolution ("ACR") process. The Board issued an Order memorializing the outcome of that telephone conference on February 9, 2010. Discovery closed on March 25, 2010.

### Stipulations

Opposer, Schering-Plough Healthcare Products, Inc., and Applicant, Western Holdings, LLC, through their undersigned counsel, herein stipulate to the following procedural matters for the purposes of submitting evidence and briefs in this Opposition proceeding:

1. In lieu of trial, the Board may resolve any issues of fact that are presented by the record when making a final determination on the merits.

2. The parties have elected not to submit trial deposition testimony. The parties also have elected to forego the presentation of expert testimony and the exchange of pretrial disclosures. A Stipulation of Facts shall be submitted to the Board by June 30, 2010 (as directed by the Board's Order of February 9, 2010).

3. To the extent the parties have not stipulated to certain facts, each party may offer into evidence its own additional facts and documentary evidence by way of Affidavit or Declaration.<sup>1</sup> The due dates for the submission of such Affidavits or Declarations are provided in the Board's Order of February 9, 2010. These Affidavits or Declarations, and any attached exhibits, may be offered into evidence without objection by the adverse party as to their form (*i.e.*, the fact that the party's evidence is submitted by Affidavit or Declaration). Each party reserves its objections as to hearsay, competency, accuracy, relevance, materiality and/or weight to be afforded.

4. Also to the extent the parties have not stipulated to certain facts, the parties'

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<sup>1</sup> Original signatures on Affidavits or Declarations are not required. Photocopied, faxed, digitized or digital signatures shall be sufficient.

interrogatory answers, formal responses to production requests, production documents, and responses to requests for admissions exchanged during discovery are admissible in evidence and may be offered into evidence by way of Notice of Reliance. Such Notice(s) of Reliance shall be submitted to the Board by the due dates for the submission of Affidavits or Declarations as provided in the Board's Order of February 9, 2010. Each party reserves its objections as to hearsay or the competency, accuracy, relevance, materiality and/or weight to be afforded any of these items.

5. The source and print date(s) for document(s) obtained from publicly available sources on the Internet shall be deemed the source and print date(s) displayed in the headers and footers of such document(s) upon printing, without further need for authentication from counsel as to the source and print date(s) of the document(s). If no such information exists on the face of the document(s), the source and print date(s) of the document(s) may be provided by counsel in an Affidavit or Declaration.

6. If any disputes arise as to the parties' Factual Stipulation, the exchange of evidentiary materials, or the parties' Affidavits, Declarations or Notices of Reliance, the parties shall notify the Interlocutory Attorney by telephone and shall jointly request an oral hearing on a motion analogous to a motion to compel.

7. If any disputes arise as to the schedule provided in the Board's Order of February 9, 2010, the parties shall notify the Interlocutory Attorney by telephone and shall jointly request an oral hearing on a motion analogous to a motion to extend or reopen the schedule.

8. The due dates for the submission of the parties' briefs on the case are provided in the Board's Order of February 9, 2010. Opposer's ACR Brief and Applicant's ACR Brief each shall be limited to fifty-five (55) pages; Opposer's ACR Reply Brief shall be limited to

twenty-five (25) pages. The parts of the ACR briefs that fall within the page length limits include the table of contents, index of cases, description of the record, statement of the issues, recitation of facts, argument and summary. See Trademark Rule 2.128(b) and TBMP § 801.03.

9. The parties' Factual Stipulation, Notices of Reliance, Affidavits, Declarations and any attached materials, and the parties' ACR briefs, shall be treated as the final record and briefs for this Opposition upon which the Board will make its final determination.

This Evidentiary and Briefing Procedural Stipulation is based on the present intent of the parties. In the event that circumstances surrounding this proceeding change, the parties reserve the right to request modification of the schedule provided in the Board's Order of February 9, 2010, and the conditions proposed above.

Respectfully submitted,

SCHERING-PLOUGH  
HEALTHCARE PRODUCTS, INC.

WESTERN HOLDINGS, LLC

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Attorneys for Opposer

Attorneys for Applicant

Date: April 15, 2010

Date: April 15, 2010

**CERTIFICATE OF SERVICE**

Pursuant to Trademark Rule 2.119(b)(6) and by agreement of the parties, I hereby certify that a true copy of the foregoing **ACCELERATED CASE RESOLUTION EVIDENTIARY AND BRIEFING PROCEDURAL STIPULATION** was served on Applicant, this 15<sup>th</sup> day of April, 2010, by sending same via e-mail to:

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*/s/ Jonathan Hudis*

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Jonathan Hudis