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

Proceeding	91198483
Party	Defendant David Mahony, Ph.D., ABPP
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Date	08/19/2012
Attachments	D'S REPLY TO MOTION TO STRIKE.pdf (3 pages)(89045 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE

TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of:

Application Serial no. 85095429

Published in the *Official Gazette*

August 19, 2012

PSYBAR LLC	)	
Opposer	)	Opposition No. 91198483
v.	)	
David Mahony, Ph.D., ABPP	)	

REPLY BRIEF IN RESPONSE TO OPPOSERS MOTION TO STRIKE APPLICANT'S REPLY MEMORANDUM

On August 10th, 2012, Opposer motioned that the Applicant's Reply Brief in Support of Applicant's Motion for Summary Judgment, filed on August 4th, 2012, and should be stricken. The Opposer gave several reasons including that the Applicant is "not all allowed to submit" the reply, the Applicant's reply was tardy and that the reply was over ten pages. As can be seen in the brief in question and the T.M.B.P's Manual of Procedure, none of these allegations are accurate.

Opposer's first claim that Applicant is simply "not allowed to submit a memorandum in reply to Opposer's Reply" is without any citation so the exact nature of this complaint is not known. The Applicant has followed T.M.B.P. procedures, § 502. Additionally, if the brief is "not allowed" it is incumbent on the Opposer to explain why they filed a similar brief on 7/8/2012.

The Opposer than goes on to state that the brief should be stricken because the Applicant "had until August 2nd, 2012" to file. The Opposer is giving the Applicant a 15 day response period when, pursuant to T.B.M.P. 502.02(b), a brief in response to a motion has *20 days* if service of the motion was made by first class mail. Since the Opposer previously requested that all motions be delivered by mail, and in fact, served their brief of 7/18/2012 by mail, the Applicant had 20 days, or until August 7th of 2012. Since the brief was filed on August 4th of 2012, it was well within the time limit.

Lastly, the Opposer claims that the Applicant's brief is longer than the 10 page maximum. As can clearly be seen in the brief, it does not exceed ten pages. In the version submitted to the board, the brief begins on page three and ends on page 13.

The Opposer then goes on to state the Applicant "has established a pattern of refusing to abide by the Rules…" As is characteristic with the Opposer, this claim is made with no supporting evidence. The fact that the Opposer is making such a statement is odd as the Opposer has engaged in a series of noncompliant and uncooperative behaviors. For example, the Opposer has changed the reason for their complaint three times without reason, the Opposer has refused to even discuss resolving the matter even when the Applicant offered to address all of their concerns, and Opposer has made requests for extensions of time that were graciously agreed to by the Applicant while refusing to grant the Applicant the same.

Given the fact the Applicant has complied with the T.B.M.P rules, Applicant's Reply Brief in Support of Applicant's Motion for Summary Judgment, filed on August 4th, 2012, should be allowed.

Respectfully submitted,

PsyBari

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