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

Proceeding	91206212
Party	Defendant entrotech, inc.
Correspondence Address	LISA M. GRIFFITH FISH & RICHARDSON P O BOX 1022 MINNEAPOLIS, MN 55440 1022 UNITED STATES tmdoctc@fr.com, hickey@fr.com, martens@fr.com, dylan-hyde@fr.com, morris@fr.com
Submission	Motion to Strike
Filer's Name	Erin M. Hickey
Filer's e-mail	tmdoctc@fr.com, hickey@fr.com, ly@fr.com, morris@fr.com
Signature	/Erin M. Hickey/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial Nos.:

85/499,349 for the mark **CHLORADERM**
85/499,345 for the mark **CHLORABSORB**
85/499,337 for the mark **CHLORABOND**
85/499,332 for the mark **CHLORADRAPE**

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CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Combined Opposition Proceeding No.: 91-206,212

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S MOTION TO STRIKE
OPPOSER'S NOTICE OF RELIANCE OFFERING IN EVIDENCE
CERTAIN PRINTED PUBLICATIONS & A STANDALONE BIBLIOGRAPHY
UNDER 37 C.F.R. § 2.122(e)**

Applicant Entrotech Life Sciences, Inc. ("Applicant") respectfully moves this Trademark Trial and Appeal Board (the "Board") to strike certain printed publications and a standalone bibliography submitted with Opposer's Notice of Reliance for violating the Trademark Rules of Practice, which guide the admissibility of evidence in the Board's proceedings.

LEGAL STANDARD

A party may move to strike an adversary's notice of reliance, in whole or in part, on the ground that the notice of reliance does not comply with the procedural requirements of the particular rule under which it was submitted. *See* T.B.M.P. § 532; *Boyd's Collection Ltd. v. Herrington & Co.*, 65 U.S.P.Q.2d 2014, 2019-20 (T.T.A.B. 2003); *M-Tek Inc. v. CVP Systems Inc.*, 17 U.S.P.Q.2d 1070, 1073 (T.T.A.B. 1990).

“Certain types of printed publications may be introduced into evidence in a Board or inter partes proceeding by notice of reliance[,]” such as books and periodicals. *See* 37 C.F.R. 2.122(e); T.B.M.P § 704.08(a). “The notice must specify the printed publication, including information sufficient to identify the source and the date of the publication, and the pages to be read; indicate generally the relevance of the material being offered; and be accompanied by the printed publication or a copy of the relevant portion thereof.” *Id.*

ARGUMENT

The Board should strike certain publications and a standalone bibliography submitted with Opposer's Notice of Reliance under 37 C.F.R. §2.122(e) because they do not comply with the Trademark Rules of Practice for the admissibility of such evidence.¹

A. The Notice of Reliance Fails to Provide the Source and Date for Certain Printed Publications.

Opposer has offered in evidence the following three articles, but failed to specify the source and date of each of these publications, as required under Rule 2.122(e) of the Trademark Rules of Practice:

2. Garcia, Robert, Gayle K. Mulberry, Ann R. Brady, John S. Hibbard.
Comparision of Chloraprep® and Betadine® as Preoperative Skin Preparation Antiseptics.

¹ Opposer's Notice of Reliance also fails to specify the pages of the printed publications that are to be read. *See* 37 C.F.R. § 2.122(e) (“The notice shall specify the printed publication . . . and the pages to be read[.]”).

7. Tepus, Dwayne, Sandra R. Cox, Susan Hazelett. *The Effectiveness of Chloraprep™ in the Reduction of Blood Culture Contamination Rates in the Emergency Department.*
9. Garcia R., Jendresky L., Landesman S., Maher A., Nicholas F. *Three Years Experience in Implementing Hicpac Recommendations for the Reduction of Central Venous Catheter-Related Bloodstream Infections.*²

Not only does Opposer's Notice of Reliance fail to provide the source and date of each publication, but the publications themselves also fail to provide this information. Therefore, Opposer's Notice of Reliance on these three publications does not comply with the Trademark Rules of Practice and should be stricken from the record as inadmissible.

B. The Notice of Reliance Also Fails to Provide Copies of 25 Publications Referenced in a Standalone Bibliography Submitted by Opposer under the Notice of Reliance.

Opposer also offers in evidence a standalone bibliography that lists 25 publications,³ none of which was submitted with Opposer's Notice of Reliance. To be sure, the bottom, right-hand corner of the bibliography references "APIC June 2006," which may be the source and date of the bibliography and/or the 25 publications (although even that information is unclear), but even more importantly, Opposer did not file copies of any of these 25 publications along with its Notice of Reliance (and none of the publications it did file under this Notice of Reliance is from "APIC June 2006" nor "APIC" alone, for that matter). Given that Rule 2.122(e) of the Trademark Rules of Practice requires an offering party to file copies of each printed publication it claims to offer in evidence, Opposer's standalone bibliography that fails to do just that should be stricken from the record, as should each of the 25 publications it lists. 37 C.F.R. § 2.122(e)

² The numbering of the above-referenced printed publications corresponds to how Opposer numbered them in its Notice of Reliance.

³ Opposer referenced the standalone bibliography as no. 8 in its Notice of Reliance under 37 C.F.R. §2.122(e).

("The notice must . . . be accompanied by the printed publication or a copy of the relevant portion thereof.").

By omitting this information, which is required by the Trademark Rules of Practice, Opposer effectively has precluded the Board and Applicant from confirming the source and date of the three printed publications referenced in Section A herein. In addition, by failing to provide the Board and Applicant with copies of the 25 printed publications listed in the standalone bibliography it offered in evidence, Opposer has burdened Applicant and the Board with having to locate these publications themselves, which is inefficient and a waste of their resources.

In light of the foregoing, Applicant respectfully requests that the Board strike these three publications and standalone bibliography (and the 25 publications it lists) from Opposer's Notice of Reliance for failing to comply with the Trademark Rules of Practice.

Respectfully submitted,

Date: May 1, 2015

/s/ Erin M. Hickey
Lisa M. Martens
Erin M. Hickey
FISH & RICHARDSON P.C.
P.O. Box 1022
Minneapolis, MN 55440-1022
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorneys for Applicant,
ENTROTECH LIFE SCIENCES, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document has this 1st day of May, 2015 been mailed by electronic mail, as agreed to by counsel for the parties, to Opposer's counsel of record:

Joseph R. Dreitler, Esq.
Mary R. True, Esq.
DREITLER TRUE, LLC
jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com

/s/ April R. Morris
April R. Morris