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Filing date: **04/10/2015**

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

Proceeding	92054171
Party	Plaintiff Valeritas, Inc.
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Submission	Other Motions/Papers
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Date	04/10/2015
Attachments	Petitioner's Statement Regarding Continuing Viability of Motion to Compel.PDF(219099 bytes )

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

_____	)	
Valeritas, Inc.,	)	In the matter of U.S. Reg. No. 3,895,432
	)	
Petitioner,	)	For the Mark: VGO
	)	
v.	)	Filing Date: March 2, 2010
	)	
VGo Communications, Inc.	)	Registration Date: December 21, 2010
	)	
Respondent.	)	Cancellation No.: 92054171
_____	)	

**PETITIONER’S STATEMENT REGARDING CONTINUING VIABILITY OF  
MOTION TO COMPEL**

Petitioner, Valeritas, Inc., (“Valeritas”)’s Motion To Compel, To Test Sufficiency Of Responses To Requests For Admissions, And To Reopen Discovery (“Motion”), filed on November 7, 2014, remains viable in most respects, as set forth below. None of the discovery disputes have been resolved, except to the extent that Respondent, VGo Communications, Inc. (“VCI” or “Respondent”), produced some additional documents on November 24, 2014.

The following portions of the Motion remain viable:

1. Motion to Compel Discovery

- a. Interrogatories. As discussed in the Motion, Respondent’s responses to Interrogatories Nos. 15 and 16 are deficient.
- b. Requests for Production of Documents and Things. The portion of the Motion concerning Requests Nos. 20, 22, and 29 remain viable. Documents have been produced which are responsive to Requests Nos. 17, 18, 32, and 37.

2. Request to Test Sufficiency of Admissions. This portion of the Motion, concerning Requests for Admission Nos. 24 and 25, remains viable.
3. Request to Reopen Discovery. As discussed in the Motion, Petitioner needs further time to complete discovery. Petitioner served several Notices of Deposition for both Bern Terry and Ned Semonite, which were never scheduled due to scheduling conflicts. These depositions are still necessary: Bern Terry is Respondent's V.P. of Sales for Respondent, and Ned Semonite is V.P. of Marketing for Respondent who was identified as the person who selected VCI's mark. Further, it is critical to Petitioner's case to depose Mr. Semonite: documents produced by PositiveID Corporation relating to its collaboration with VCI included an email exchange between Positive ID and Respondent (Mr. Semonite) which revealed the relationship between the entities; deposing Mr. Semonite about the demonstration that VGo conducted with PositiveID showing how VGo's product may be used by diabetic patients and caregivers, and in other healthcare contexts, as well as how the company promotes the product generally, is central to Petitioner's case. Additionally, Petitioner is at a disadvantage due to the fact that Petitioner has been unable to obtain the requested discovery during the discovery period in order to review it and determine if more discovery is required.

Therefore, pursuant to Rule 2.120(d)(2) and Rule 2.120(h) of the Trademark Rules of Practice, and Rule 36(a)(6) and 37 of the Federal Rules of Civil Procedure, Petitioner, Valeritas, Inc., by and through its undersigned attorneys and pursuant to Rule TMEP §§ 403.04, hereby requests that the Board now consider its previously filed Motion To Compel, To Test Sufficiency

Of Responses To Requests For Admissions, And To Reopen Discovery, with regard to the still unresolved matters described above.

Date: April 10, 2015

VALERITAS, INC.

By its attorneys,

MORSE, BARNES-BROWN & PENDLETON,  
P.C.

By: /Thomas F. Dunn/

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**CERTIFICATE OF SERVICE**

I, Tracy Skahan, certify that a copy of the foregoing PETITIONER'S STATEMENT REGARDING CONTINUING VIABILITY OF MOTION TO COMPEL was served on:

Michael J. Bevilacqua, Esq.  
Barbara A. Barakat, Esq.  
Wilmer Cutler Pickering Hale & Dorr LLP  
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by placing same with the U.S. Postal Service, via First Class Mail, postage pre-paid, this 10<sup>th</sup> day of April, 2015.

/Tracy Skahan/

Tracy Skahan