

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: August 16, 2004

Opposition No. 91153525

Liebert Corporation

v.

Digitronics
Inventioneering, Corp.

Peter Cataldo, Interlocutory Attorney

This case now comes before the Board for consideration of applicant's motion (filed on April 16, 2004) to strike opposer's reply brief; and opposer's cross-motion (filed on April 20, 2004) for leave to file a substitute reply brief. The motions are fully briefed.¹ The Board has carefully considered the arguments of both parties with regard to the above motions. However, an exhaustive review of those arguments herein would only serve to delay the Board's disposition of this matter.

The length of briefs on the case of an inter partes proceeding before the Board is governed by Trademark Rule 2.128(b), 37 C.F.R. §2.128(b), which provides as follows:

¹ In addition, both parties submitted reply briefs in support of their motions which the Board has entertained. Consideration of reply briefs is discretionary on the part of the Board. See Trademark Rule 2.127(a).

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Briefs must be submitted in written form and must meet the requirements prescribed in §2.126. Each brief shall contain an alphabetical index of cited cases. Without prior leave of the Trademark Trial and Appeal Board, a main brief on the case shall not exceed fifty-five pages in length in its entirety, including the table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary; and a reply brief shall not exceed twenty-five pages in its entirety.

In this case, opposer's reply brief, including the table of contents and table of authorities, exceeds twenty-five pages. Contrary to the requirements of Trademark Rule 2.128(b), opposer did not seek leave of the Board prior to filing its overlength reply brief. See also TBMP §537 (2d ed. rev. 2004) and the authorities cited therein.

However, opposer states that the filing of its overlength reply brief was the result of a misunderstanding regarding the applicability of the page limit set forth in Trademark Rule 2.128(b) to the entirety of the brief and not merely to the body thereof. Opposer further states that its proffered substitute reply brief conforms to the twenty-five page limit, contains no edits or omissions in the body of the text, and is identical to the original except that it is printed in 11-point type and omits the table of contents. Opposer contends that, as a result of the foregoing, consideration of its substitute reply brief will not prejudice applicant.

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Applicant, on the other hand, asserts that opposer's cross-motion to file a substitute reply brief is untimely because it was filed after the due date for its original reply brief; that opposer cites to no procedural rule or case law to support its motion; and that, as a result, the Board should strike opposer's overlength reply brief and give no consideration to its proposed substitute reply brief.

It is well settled that one of the primary purposes of Rule 2.128(b) is to assist the Board in managing its caseload and to encourage litigants to present their arguments in a concise manner. See TBMP §537 (2d ed. rev. 2004) and the authorities cited therein. As a result, the Board generally looks with disfavor upon overlength briefs. See *Id.* In this case, however, opposer has submitted a substitute brief differing from the original only to the extent that it is printed in a reduced, but nonetheless acceptable, 11-point type and omits a table of contents that is not required by the Rules. See Trademark Rule 2.126(1). See also TBMP §801.03 (2d ed. rev. 2004) and the authorities cited therein. As a result, there appears to be no appreciable prejudice to either the Board or applicant resulting from accepting opposer's substitute reply brief. Moreover, consideration of opposer's substitute reply brief may assist the Board in coming to a determination on the

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merits of this proceeding. As such, the Board will exercise its discretion to consider opposer's substitute reply brief.

Accordingly, opposer's cross-motion to accept its substitute reply brief is granted. In consequence thereof, applicant's motion to strike opposer's original reply brief is moot.

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