

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

Mailed: 7/16/2004

Opposition No. 91155165

Austin, Nichols & Co.

v.

Stichting Lodestar

Linda Skoro, Interlocutory Attorney

This case now comes up on opposer's motion, filed March 29, 2004, to compel further responses to opposer's Request for Production of Documents served April 7, 2003, and to reopen the discovery period. Applicant responded contending that all the documents in its possession, custody or control that are responsive have been produced and that opposer has failed to provide supporting arguments to justify a reopening of the discovery period. Opposer has filed a reply.

In support of its motion to compel, opposer states that although applicant states that all responsive documents have been produced, opposer does not believe that there are no more documents and the Board should require applicant to produce any outstanding documents or produce an affidavit

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stating the "diligent efforts were made by applicant to locate responsive documents, and no such documents could be located." Opposer further alleges that that there has been an exchange of correspondence; and that opposer believes it has not been provided with complete substantive responses in regard to virtually all requests for production.

Applicant has responded stating that it has updated its responses to several of the identified requests and stated that there are no additional documents responsive to Opposer's requests within applicant's possession, custody or control. To the extent that counsel for applicant has stated the same in its response to the motion to compel, that should serve as a sworn representation of the client's credibility and affixed his signature, which constitutes a certification under 37 CFR § 10.18. See also 37 CFR § 2.193.

In light of the responses and the supplemental information provided by applicant, the Board does not find applicant's responses to the identified discovery insufficient. The parties are reminded that they remain under a continuing obligation to supplement their discovery responses. Fed. R. Civ. P. 26(e)(2). See also, Johnston Pump/General Valve Inc. v. Chromalloy American Corp., 10 USPQ2d 1671 (TTAB 1989); and Medtronic, Inc. v. Pacesetter Systems, Inc., 222 USPQ 80 (TTAB 1984). Applicant is

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advised that to the extent responsive documents are not produced, they cannot be relied upon at trial.

Accordingly, opposer's motion to compel is denied. In that further discovery has not been compelled, and excusable neglect has not been established, the motion to reopen the discovery period is also denied.

The proceeding is hereby resumed and trial dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	9/4/2004
30-day testimony period for party in position of defendant to close:	11/3/2004
15-day rebuttal testimony period to close:	12/18/2004

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