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

Proceeding	91180212
Party	Plaintiff Schering Corporation
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SCHERING CORPORATION,)	
)	
Opposer,)	
)	
v.)	Opposition No.: 91/180,212
)	Appln. Serial No. 77/070,074
IDEA AG,)	Mark: DIRACTIN
)	
Applicant.)	
)	

**OPPOSER’S MOTION TO COMPEL APPLICANT TO FULLY RESPOND TO
OPPOSER’S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS PURSUANT TO
TRADEMARK RULE 2.120(e)**

**MOTION TO TEST THE SUFFICIENCY OF APPLICANT’S RESPONSES TO
OPPOSER’S FIRST REQUESTS FOR ADMISSIONS PURSUANT TO TRADEMARK
RULE 2.120(h)**

Opposer, Schering Corporation, hereby moves the Trademark Trial and Appeal Board (“Board”) under Trademark Rule 2.120(e) and Rule 37(a), Federal Rules of Civil Procedure, to order that Applicant, Idea AG, completely and fully respond to certain of Schering’s First Set of Interrogatories, and completely and fully respond to Schering’s First Request for Production of Documents and Things. Schering moves the Board under Trademark Rule 2.120(h) and Rule

36(a)(6), Federal Rules of Civil Procedure, to order that Idea admit or deny Schering's First Requests for Admissions.¹

Opposer attaches, as Exhibits 1, 2 and 3, respectively, copies of Opposer's First Set of Interrogatories (Nos. 1-22), Opposer's First Request for Production of Documents and Things (Nos. 1-37), and Opposer's First Requests for Admissions (Nos. 1-23), all served on May 12, 2008 by first class mail, making Applicant's responses due June 16, 2008.

In a spirit of cooperation and good faith, and particularly as Applicant appointed new counsel on June 9, 2008, Schering agreed to an extension of the due date for Applicant's Responses to August 18, 2008. On that date, Applicant served its Response to Opposer's First Set of Interrogatories, its Response to Opposer's First Request for Production of Documents and Things, and its Response to Opposer's First Requests for Admission. Copies of Applicant's Responses are attached as Exhibits 4, 5 and 6, respectively.

In mid-June 2008, Opposer's counsel invited Applicant's new counsel to propose a Protective Order if Applicant did not want to use the Board's Standard Protective Order ("SPO"). Exhibit 7. Two months later, Applicant's counsel provided Opposer's counsel with a draft Protective Order on August 8, 2008 (Exhibit 8), and with a red-line version showing the changes from the Board's SPO on August 12, 2008 (Exhibit 9). Through email and telephone communications both parties' counsel attempted to work out a mutually agreeable Protective Order. However, Opposer's counsel, on September 9, 2008, again advised Applicant's counsel that a Protective Order which did not include jurisdiction and venue in New Jersey was not acceptable to Opposer; and again advised Applicant's counsel that the Board SPO was in place

¹ Opposer requests that the opposition be suspended in accordance with Trademark Rules 2.120(e)(2) and 2.120(h)(2) pending the Board's decision on this Motion. In addition, Opposer filed a Motion to Reschedule Trial Dates on September 26, 2008.

automatically. Exhibit 10. When Applicant's counsel expressed surprise at Opposer's continued position regarding jurisdiction and venue, Opposer's counsel stated for the final time (on September 16, 2008) that the Board SPO is in place, and Opposer expected Applicant's discovery responses in accordance therewith. Exhibit 11. Opposer has heard nothing further from Applicant regarding the SPO.

In a September 12, 2008 letter to Applicant's counsel, Opposer's counsel identified general as well as specific deficiencies in Applicant's Responses to Opposer's written discovery requests. Exhibit 12. On September 22, 2008 (Monday-late evening) Applicant's counsel acknowledged the letter and suggested a telephone discussion for Friday, September 26, 2008. Exhibit 13. On Thursday, September 25, 2008, Opposer agreed to the Friday telephone conference. Exhibit 14. Only after our Thursday email did Applicant's counsel advise he would be available on Friday, the day he suggested. Exhibit 15.

Schering has made a good faith effort as required by Trademark Rules 2.120(e)(1) and 2.120(h)(1) to obtain full and complete responses to its First Set of Interrogatories, its First Request for Production of Documents and Things, and its First Requests for Admissions. TBMP §§523.02 and 524.02 (Second Edition rev. 2004). Despite Opposer's counsel's communications with Applicant's counsel regarding a Stipulated Protective Order, and Opposer's September 12, 2008 letter specifying Applicant's discovery response deficiencies, and Opposer's willingness to further discuss the discovery responses issues, full and complete discovery responses have not been provided. Applicant's counsel does not even agree to discuss the matter until the week of September 29, 2007, with Opposer's trial period to open on October 1, 2008. There is no indication that Applicant will provide full and complete responses even after further discussion. At this time the parties are at an impasse. Further, pursuant to Trademark Rules 2.120(e)(1) and

2.120(h)(1), Opposer must file the Motion to Compel and To Test the Sufficiency of Applicant's Responses to Opposer's Requests for Admissions prior to the opening of the Plaintiff's testimony period. In this case, with Opposer's testimony period currently scheduled to open October 1, 2008, therefore, Opposer is required by the rules to file this Motion prior thereto.

In the event any of the disputed matters are resolved between the parties, Opposer will notify the Board thereof. Trademark Rules 2.120(e)(1) and 2.120(h)(1)

A reading of Applicant's Responses to Opposer's First Set of Interrogatories, and Opposer's First Request for Production of Documents and Things, clearly indicate that Applicant objects based on awaiting entry of a protective order, when Applicant is well aware it must provide answers in accordance with the Board's Standard Protective Order. Each objection by Applicant on the basis that there is not a Protective Order in place should be overruled by the Board. Trademark Rule 2.116(g).

Applicant's assertion that it need not answer any discovery requests regarding use because Applicant's filed an intent-to-use application and has not yet filed a Statement of Use, is not well taken. A party may apply under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), even if there it has already used the mark. If there has been use, Applicant is required to provide discovery thereon. If use commences after the date Opposer served the discovery requests, Applicant has an ongoing duty to supplement answers to Opposer's discovery requests pursuant to Fed.R.Civ.P. 26(e). Schering requests that the Board overrule these objections and require Applicant to respond to all discovery requests relating to Applicant's use of the mark DIRACTIN in the United States.

Applicant objected to discovery requests on the basis that they seek privileged information. However, Applicant has not provided a privilege log in accordance with

Fed.R.Civ.P. 26(b)(5). Opposer requests that the Board order Applicant to provide a privilege log for all documents, materials and information on which Applicant claims privilege.

Applicant's objections to several discovery requests as "compound"/"subparts" with a citation to the TBMP Section relating to counting interrogatories for purposes of the 75 interrogatory limit set forth in Trademark Rule 2.120(d)(1) is not well taken and should be overruled.

Opposer sets forth below its specific interrogatories and document requests in issue.

APPLICANT'S RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 4

Identify all documents referring or relating to such first conception and adoption of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 4

Applicant objects to this interrogatory on grounds that it may seek information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that Interrogatory No. 3, to which this interrogatory refers, is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the interrogatory appears to seek information protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the interrogatory is compound (containing at least two sub-parts). See TBMP 5 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant is unaware of the existence of such non-privileged documents.

The objection regarding relevance is ludicrous.

If there is no information or documents regarding first conception and adoption of Applicant's mark DIRACTIN, Applicant should be required to state. If there are confidential documents, Applicant should be required to identify same in accordance with the Board's SPO. If there are privileged documents, Applicant should be required to provide an appropriate privilege log.

INTERROGATORY NO. 8

For each product identified in Application Serial No. 77/070,074, state the date of first use of Applicant's Mark in commerce in or with the United States.

RESPONSE TO INTERROGATORY NO. 8

Applicant objects to this interrogatory on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is unduly burdensome and oppressive. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use.

The interrogatory is clear and it is relevant to the issues in this opposition. Applicant may base its application on Section 1(b) of the Trademark Act, but Applicant is obligated to respond to discovery request relating to use. If there has been no use of the mark DIRACTIN in the United States by Applicant, then Applicant should be required to so state, with a reminder of Applicant's obligation to supplement all discovery responses if the answer changes.

INTERROGATORY NO. 9

State with regard to Applicant's use of its DIRACTIN Mark on or in connection with each product on which the mark has been used in the United States, the date of commencement of use, the commencement date of each period of nonuse; the reason for each such period of nonuse; and the date when use was resumed.

RESPONSE TO INTERROGATORY NO. 9

Applicant objects to this interrogatory on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects on grounds that the interrogatory is unduly burdensome and oppressive. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). See TBMP 5 405.03(d). Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use.

The interrogatory is clear and it is relevant to the issues in this opposition. Applicant may base its application on Section 1(b) of the Trademark Act, but Applicant is obligated to respond to discovery request relating to use. If there has been no use of the mark DIRACTIN in the United States by Applicant, then Applicant should be required to so state, with a reminder of Applicant's obligation to supplement all discovery responses if the answer changes.

INTERROGATORY NO. 10

Identify the person(s) most knowledgeable about Applicant's sales, marketing, advertising, and promotion of its products under Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 10

Applicant objects to this interrogatory on grounds that it is harassing in that it is duplicative of other interrogatories propounded by Opposer, including but not limited to Interrogatory No. 7. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that this interrogatory appears to seek

confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). See TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: No "sales, marketing, advertising or promotion" under Applicant's mark have occurred in the United States.

Applicant's answer is non-responsive. The interrogatory seeks the identity of the person(s) most knowledgeable about Applicants sales, marketing advertising and promotion of its products under the mark DIRACTIN in the U.S. If there is no person knowledgeable regarding these matters, Applicant should be required to so state.

INTERROGATORY NO. 12

Identify each printed and electronic publication in which the products intended to be sold under Applicant's Mark are described or referred to.

RESPONSE TO INTERROGATORY NO. 12

Applicant objects to this interrogatory on grounds that it is overbroad, unduly burdensome, oppressive, and harassing. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is harassing in that it is duplicative of other interrogatories propounded by Opposer, including but not limited to Interrogatory No. 11. Applicant further objects that the interrogatory seeks information that is not in the possession, custody or control of Applicant, and is equally available to Opposer.

This interrogatory is clear and relevant to the issues in this opposition. Applicant is incorrect that this information is equally available to the Opposer. Applicant should be required to answer the interrogatory on the basis of printed/electronic publications, of which Applicant is aware, in which Applicant's mark is described or referred to.

INTERROGATORY NO. 13

Identify all agreements including, but not limited to, licenses, permissions or consents entered into by Applicant and any other entities relating to use of the Applicant's Mark in the United States and identify all documents relating or referring to each such agreement.

RESPONSE TO INTERROGATORY NO. 13

Applicant objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this interrogatory on grounds that it is unduly burdensome and oppressive. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). See TBMP § 405.03(d).

The interrogatory is clear. Agreements relating to the use of Applicant's Mark in the U.S. are relevant. If the information is confidential, such information is to be produced under the Board SPO.

INTERROGATORY NO. 14

Identify by cities and dates every trade show, trade fair, trade convention and other promotional trade events where Applicant's products have been promoted or are planned to be promoted in connection with Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 14

Applicant objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this interrogatory on grounds that it is unduly burdensome and oppressive. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). See TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: It is expected that Applicant's product to be associated with the mark will be promoted, in the future, in various meetings, seminars and other public forums, to be located at various locations in the United States.

This interrogatory is clear and relevant. Applicant's answer is evasive and non-responsive. If the information responsive to this interrogatory is confidential, it is to be produced under the Board SPO.

INTERROGATORY NO. 19

Describe Applicant's business relationship with McNeil Specialty Pharmaceuticals / McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson, insofar as the relationship refers, relates or pertains, directly or indirectly, to Applicant's Mark DIRACTIN.

RESPONSE TO INTERROGATORY NO. 19

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is harassing in that it is duplicative of other interrogatories propounded by Opposer. Applicant further objects that the interrogatory is unduly burdensome and oppressive.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant's mark has no relationship, business or otherwise, with "McNeil Specialty Pharmaceuticals/McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson."

This interrogatory is clear and relevant to Applicant's rights in the mark DIRACTIN. The interrogatory is not duplicative.

Applicant's response regarding "Applicant's mark" is non-responsive to the interrogatory which seeks information regarding "Applicant's business relationship" with another entity.

Applicant should be required to answer the interrogatory. If the information is confidential, it is to be provided under the Board SPO. If it is privileged, Applicant must provide a privilege log.

INTERROGATORY NO. 20

Describe Applicant's business relationship with TDT, subsidiary of Celtic Pharmaceutical Holdings LP, insofar as the relationship refers, relates or pertains, directly or indirectly, to Applicant's Mark DIRACTIN.

RESPONSE TO INTERROGATORY NO. 20

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is harassing in that it is duplicative of other interrogatories propounded by Opposer. Applicant further objects that the interrogatory is unduly burdensome and oppressive.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant's mark has no relationship, business or otherwise, with "TDT, subsidiary of Celtic Pharmaceutical Holdings LP."

This interrogatory is clear and relevant to Applicant's rights in the mark DIRACTIN. The interrogatory is not duplicative.

Applicant's response regarding "Applicant's mark" is non-responsive to the interrogatory which seeks information regarding "Applicant's business relationship" with another entity.

Applicant should be required to answer the interrogatory. If the information is confidential, it is to be provided under the Board SPO. If it is privileged, Applicant must provide a privilege log.

INTERROGATORY NO. 22

Identify each and every person known by Applicant to have supplied information for, or participated in responding to, these interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Requests for Admissions.

RESPONSE TO INTERROGATORY NO. 22

Applicant objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or the attorney work-product doctrine.

Applicant further objects that the interrogatory is compound (containing at least three sub-parts). See TBMP § 405.03(d).

*Subject to these objections, and without waiving them, Applicant responds as follows:
Prof. Gregor Cevc.*

This interrogatory does not seek privileged information. If Prof. Cevc is the only person to have supplied information for, or participated in responding to these interrogatories, Applicant should be required to state. Otherwise, Applicant should be required to fully answer this interrogatory.

APPLICANT'S RESPONSES TO DOCUMENT REQUESTS

REQUEST NO. 1

Specimens of advertisements (appearing in printed, electronic, or broadcast media) for Applicant's goods sold by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 1

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the United States Patent and Trademark Office ("USPTO") in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark, nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant.

A privilege log is required under Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 2

Specimens of labels for Applicant's goods sold by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 2

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant.

A privilege log is required under Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 3

Specimens of packages for Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 3

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant shall produce all non-privileged responsive "specimens of packages" in Applicant's possession, custody and control as soon as the parties enter into a suitable stipulated protective order.

Applicant's response is evasive, incomplete, and non-responsive. Applicant should be required to produce the packages for its goods bearing the DIRACTIN Mark, and if confidential, Applicant may do so in accordance with the Board SPO. If there are privileged documents and things, Applicant should provide a privilege log.

REQUEST NO. 4

Specimens of printed items (such as, but not limited to brochures, technical bulletins and manuals, promotional literature) to promote the sale and use of Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 4

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request is harassing in that it is duplicative of other requests propounded by Opposer, including but not limited to Request for Production of Documents (Set One) No. 1.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and/or control exist, since no sales or offers for sale of any product under Applicant's mark have been made in the United States.

This document request is clear. Applicant's basis for its U.S. application is an allegation of Applicant's *bona fide* intention to use the mark in commerce. Printed items to promote the sale and use of the mark DIRACTIN in the U.S. are relevant and must be provided. If confidential, they are to be produced under the Board SPO.

REQUEST NO. 5

Specimens of electronic publications (such as, but not limited to brochures, technical bulletins and manuals, promotional literature) to promote the sale and use of Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 5

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request is harassing in that it is duplicative of other requests propounded by Opposer, including but not limited to Request for Production of Documents No. 1.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and/or control exist, since no sales or offers for sale of any product under Applicant's mark have been made in the United States.

This document request is clear. Applicant's basis for its U.S. application is an allegation of Applicant's *bona fide* intention to use the mark in commerce. Electronic publications to promote the sale and use of the mark DIRACTIN in the U.S. are relevant and must be provided. If confidential, they are to be produced under the Board SPO.

REQUEST NO. 6

All documents which evidence, refer, or relate to the creation, selection, and adoption of Applicant's Mark by Applicant or any related company or predecessor, individuals or companies.

RESPONSE TO REQUEST NO. 6

Applicant objects to this request on grounds that it is vague, uncertain, overbroad and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive,

and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

This document requests is clear and relevant. Documents relating to Applicant's creation, selection and adoption of the mark DIRACTIN in the U.S. must be provided. If confidential, they are to be produced under the Board SPO.

REQUEST NO. 7

All documents which evidence, refer, or relate to consent, authorization or permission given to Applicant by any person to use Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 7

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

This document request is clear and relevant. Applicant should be required to produce documents which evidence any consent, authorization or permission given to Applicant to use DIRACTIN in the U.S. If confidential, the Board SPO governs, and, if privileged, a privilege log should be provided.

REQUEST NO. 8

All documents evidencing, relating, or referring to Applicant's first use of its mark DIRACTIN in commerce in or with the United States in connection with each of the goods set forth in Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 8

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to

the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

This document request is clear. Documents regarding Applicant's first use of its mark is discoverable. If Applicant has not commenced use in the U.S. and there are no responsive documents, Applicant must so state clearly and unequivocally. If there are confidential documents, they must be produced under the Board's SPO. If privileged documents exist, a privilege log must be produced.

REQUEST NO. 9

All documents evidencing, relating, or referring to Applicant's continuous use of its mark DIRACTIN in commerce in or with the United States in connection with each of the goods set forth in Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 9

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

This document request is clear. Documents regarding Applicant's continuous use of its mark is discoverable. If Applicant has not continuously used the marks in the U.S. and there are no responsive documents, Applicant must so state clearly and unequivocally. If there are confidential documents, they must be produced under the Board's SPO. If privileged documents exist, a privilege log must be produced.

REQUEST NO. 10

All documents evidencing, relating or referring to Applicant's products set forth in Application Serial No. 77/070,074 sold under its mark DIRACTIN in commerce in or with the United States.

RESPONSE TO REQUEST NO. 10

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant

further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 11

Documents evidencing the dollar volume of Applicant's annual sales in the United States for each product sold under Applicant's Mark for each year since Applicant's first use of Applicant's Mark in commerce.

RESPONSE TO REQUEST NO. 11

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 12

Documents evidencing the number of units for each of Applicant's products sold in the United States under Applicant's Mark for each year since Applicant's first use of Applicant's Mark in commerce.

RESPONSE TO REQUEST NO. 12

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 13

All documents evidencing the dollar volume expended by Applicant for advertising and promotional materials under Applicant's Mark in the United States for each year since Applicant's first use of Applicant's Mark in commerce.

RESPONSE TO REQUEST NO. 13

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 14

All documents sufficient to identify each media (including print, electronic, broadcast, Internet) in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote the sale and use of goods under Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 14

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 15

All documents including reports and opinions referring or relating to trademark searches or any other type of search conducted by Applicant in connection with its adoption, use or application for registration of Applicant's Mark.

RESPONSE TO REQUEST NO. 15

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Applicant's objections are not well taken. Trademark searches are discoverable as explained in TBMP § 414(6) (Second Edition rev. 2004). Privileged documents must be set forth in a privilege log.

REQUEST NO. 16

All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, or competitors, either written or oral, relating to Opposer or Opposer's TINACTIN Marks.

RESPONSE TO REQUEST NO. 16

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 17

All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, competitors or other third parties, either written or oral, known to Applicant relating to the quality of goods sold under Applicant's Mark.

RESPONSE TO REQUEST NO. 17

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 18

All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, competitors or other third parties, either written or oral, known to Applicant relating to Applicant's Mark.

RESPONSE TO REQUEST NO. 18

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that documents responsive to this request may be in the exclusive possession, custody and control of third parties and/or are already in the possession custody and control of Opposer.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 19

All documents known to Applicant which evidence, refer or relate to instances of actual consumer confusion involving Applicant's Mark and Opposer's Marks.

RESPONSE TO REQUEST NO. 19

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 20

All documents relating or referring to the channels of distribution through which Applicant's goods are sold in the United States under Applicant's Mark.

RESPONSE TO REQUEST NO. 20

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 21

All documents relating or referring to the categories of consumers with whom Applicant does business or to whom Applicant offers its goods under Applicant's Mark.

RESPONSE TO REQUEST NO. 21

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

Applicant's objections are not well taken. If there are privileged responsive documents, Applicant's privilege log must be produced in accordance with Fed.R.Civ.P. 26(b)(5).

REQUEST NO. 22

All documents which evidence, refer, or relate to any U.S. importers or U.S. distributors of Applicant's goods sold under Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 22

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Applicant's objections to this document request are not well taken. The document request is clear and relevant to Applicant's application to register DIRACTIN in the United States. Applicant should be required to produce documents relating to its U.S. importers/U.S. distributors of the goods sold under its DIRACTIN mark.

REQUEST NO. 23

All studies, surveys, market research tests, focus group inquiries, or memoranda including, but not limited to, demographic or consumer profile studies, relating to the purchasers or potential purchasers of Applicant's products sold, offered for sale, advertised or promoted under Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 23

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant shall produce all non-privileged responsive documents in Applicant's possession, custody and control as soon as the parties enter into a suitable stipulated protective order.

Under Trademark Rule 2.116(g), Applicant should be required to produce all confidential documents responsive hereto. Under Fed.R.Civ.P. 26(b)(5) Applicant should be required to produce a privilege log for privileged documents.

REQUEST NO. 24

All licenses granted by Applicant to any person to use Applicant's Mark in connection with any product, including all amendments or modifications to any such licenses, and all documents relating or referring to any such licenses or amendments or modifications thereof.

RESPONSE TO REQUEST NO. 24

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Licenses granted by Applicant regarding the DIRACTIN mark are relevant to the opposition. This document request is clear. Applicant should be ordered to produce the requested documents, if necessary under the Board SPO.

REQUEST NO. 25

All documents referring or relating to Applicant's purchase of North American rights in compounds which directly or indirectly involve Applicant's DIRACTIN products from McNeil Specialty Pharmaceuticals, subsidiary of Johnson & Johnson.

RESPONSE TO REQUEST NO. 25

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

This document request is clear and relevant. It is specifically limited to documents which involve Applicant's mark DIRACTIN. If confidential, the documents are to be produced under the Board SPO.

REQUEST NO. 26

All documents referring or relating to Applicant's purchase of North American rights in compounds which directly or indirectly involve Applicant's DIRACTIN products from McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson.

RESPONSE TO REQUEST NO. 26

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive,

and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

This document request is clear and relevant. It is specifically limited to documents which involve Applicant's mark DIRACTIN. If confidential, the documents are to be produced under the Board SPO.

REQUEST NO. 27

All documents evidencing, relating, or referring to Applicant's bona fide intention to use the mark DIRACTIN in commerce.

RESPONSE TO REQUEST NO. 27

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Applicant's assertion that documents evidencing Applicant's *bona fide* intent to use the mark DIRACTIN is irrelevant is absurd. The document request is clear and is not burdensome. If responsive documents are confidential, they must be produced under the Board SPO.

REQUEST NO. 28

All documents relating or referring to market plans, marketing projections, or other marketing or market share documents concerning Applicant's goods sold in association with Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 28

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant shall produce all non-privileged responsive "specimens of packages" in Applicant's possession, custody and control.

Applicant's response that it will provide "specimens of packages" is non-responsive to the request asked. The document request is clear and is not burdensome. If responsive documents are confidential they must be produced under the Board SPO.

REQUEST NO. 29

All documents referring or relating to Applicant's business relationship with TDT, a subsidiary of Celtic Pharmaceutical Holdings LP.

RESPONSE TO REQUEST NO. 29

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Based on information in Applicant's website (and attached as part of Opposer's First Request for Admissions to Applicant), this document request is clear and relevant. Applicant should be required to answer, allowing for production of confidential documents under the Board SPO and providing privileged documents through listing in a privilege log.

REQUEST NO. 30

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by McNeil Specialty Pharmaceuticals.

RESPONSE TO REQUEST NO. 30

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Ownership of the DIRACTIN mark is relevant. The document request is clear. Applicant should be required to answer, allowing for production of confidential documents under the Board SPO, and providing privileged documents through listing in a privilege log.

REQUEST NO. 31

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by McNeil Consumer and Specialty Pharmaceuticals.

RESPONSE TO REQUEST NO. 31

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Ownership of the DIRACTIN mark is relevant. The document request is clear. Applicant should be required to answer, allowing for production of confidential documents under the Board SPO and providing privileged documents through listing in a privilege log.

REQUEST NO. 32

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by Johnson & Johnson.

RESPONSE TO REQUEST NO. 32

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Ownership of the DIRACTIN mark is relevant. The document request is clear. Applicant should be required to answer, allowing for production of confidential documents under the Board SPO, and providing privileged documents through listing in a privilege log.

REQUEST NO. 33

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by TDT.

RESPONSE TO REQUEST NO. 33

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to

lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Ownership of the DIRACTIN mark is relevant. The document request is clear. Applicant should be required to answer, allowing for production of confidential documents under the Board SPO, and providing privileged documents through listing in a privilege log.

REQUEST NO. 34

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by Celtic Pharmaceutical Holdings LP.

RESPONSE TO REQUEST NO. 34

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Ownership of the DIRACTIN mark is relevant. The document request is clear. Applicant should be required to answer, allowing for production of confidential documents under the Board SPO, and providing privileged documents through listing in a privilege log.

REQUEST NO. 35

All documents identified in Applicant's Responses to Opposer's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 35

Applicant hereby incorporates by this reference all objections made in response to Opposer's Special Interrogatories, Set One.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

If there are privileged documents, a privilege log under Fed.R.Civ.P. 26(b)(5) is required.

REQUEST NO. 36

For every request for Admission which is not admitted without qualification, all documents which support or relate to the denial or qualification of the admission.

RESPONSE TO REQUEST NO. 36

Applicant incorporates here by reference all objections stated in response to any Request in Opposer's Request for Admissions. Applicant further objects to this request on grounds that it

is unduly burdensome, oppressive, and harassing. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark, nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that documents responsive to this request may be in the exclusive possession, custody and control of third parties and/or are already in the possession custody and control of Opposer. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

This document request is clear and is not burdensome. Applicant should be required to fully respond in view of its evasive answers to Opposer's First Requests for Admissions.

REQUEST NO. 37

All documents, not otherwise requested herein, referred to by Applicant in responding to Opposer's First Set of Interrogatories and Opposer's First Requests for Admissions.

RESPONSE TO REQUEST NO. 37

Applicant incorporates here by reference all objections stated in response to any Request in Opposer's Request for Admissions. Applicant further objects to this request on grounds that it is unduly burdensome, oppressive, and harassing. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark, nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that documents responsive to this request may be in the exclusive possession, custody and control of third parties and/or are already in the possession custody and control of Opposer. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

This document request is clear and is not burdensome. Applicant should be required to fully respond in view of its evasive answers to Opposer's First Requests for Admissions.

Based on the foregoing, Schering respectfully requests that the Board order Applicant be compelled to fully and completely respond to the Opposer's Interrogatory Nos. 4, 10, 12-14, 19, 20 and 22, and to Opposer's Document Request Nos. 1-37, within twenty (20) days of the Board order determining Opposer's Motion.

Schering further requests that the Board order Applicant to admit or deny Schering's First Requests for Admissions Nos. 1-11, 16-18 and 20-23 (also served on Applicant on May 12, 2008) pursuant to Trademark Rule 2.120(h) and Fed.R.Civ.P. 36(a)(6). TBMP §524.01 (Second Edition rev. 2004). The specific involved requests for Admissions are set forth below, with Applicant's Responses.

APPLICANT'S RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST NO. 1

Admit that Applicant has not used Applicant's DIRACTIN Mark in commerce in or with the United States.

RESPONSE TO REQUEST NO. 1

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

This Request is clear and relevant. The Section 1(b) basis of Applicant's applicant (assertion of a *bona fide* intention to use the mark in commerce) does not protect Applicant from admitting or denying Opposer's Request for Admission regarding use of the mark DIRACTIN.

REQUEST NO. 2

Admit that Applicant has used Applicant's DIRACTIN Mark in commerce in or with the United States.

RESPONSE TO REQUEST NO. 2

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

The Section 1(b) basis of Applicant's applicant (assertion of a *bona fide* intention to use the mark in commerce) does not protect Applicant from admitting or denying Opposer's Request for Admission regarding use of the mark DIRACTIN.

REQUEST NO. 3

Admit that Applicant can claim no rights prior to December 22, 2006 in the DIRACTIN Mark in the United States.

RESPONSE TO REQUEST NO. 3

Responding Party Admits only that Applicant filed the instant intent-to-use trademark application in the United States Patent and Trademark Office on December 22, 2006.

The Section 1(b) basis of Applicant's applicant (assertion of a *bona fide* intention to use the mark in commerce) does not protect Applicant from admitting or denying Opposer's Request for Admission regarding any rights Applicant may assert that are prior to the filing date of Applicant's application.

REQUEST NO. 4

Admit that Applicant does not have a bona fide intention to use the DIRACTIN Mark in connection with pharmaceutical preparations for medical and therapeutic use namely, the prevention and treatment of pain.

RESPONSE TO REQUEST NO. 4

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

This Request is clear and relevant. Applicant's asserted *bona fide* intent is relevant and the Request for Admission is clear. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 5

Admit that Applicant does not have a bona fide intention to use the DIRACTIN Mark in connection with pharmaceutical preparations for dermal administration, to treat pain and inflammation.

RESPONSE TO REQUEST NO. 5

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

This Request is clear and relevant. Applicant's asserted *bona fide* intent is relevant and the Request for Admission is clear. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 6

Admit that Applicant did not conduct a search for possibly conflicting marks prior to Applicant's selection of Applicant's DIRACTIN Mark.

RESPONSE TO REQUEST NO. 6

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

This Request for Admissions whether Applicant conducted a search prior to selecting its mark is clear and relevant. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 7

Admit that no one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's selection of Applicant's DIRACTIN Mark.

RESPONSE TO REQUEST NO. 7

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

This Request regarding whether Applicant conducted a search prior to selecting its mark is clear and relevant. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 8

Admit that Applicant did not conduct a search for possibly conflicting marks prior to Applicant's filing of Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 8

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

This Request regarding whether Applicant conducted a search prior to selecting its mark is clear and relevant. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 9

Admit that no one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's filing of Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 9

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

This Request regarding whether Applicant conducted a search prior to selecting its mark is clear and relevant. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 10

Admit that Applicant knew about the use of Opposer's Marks before selecting Applicant's DIRACTIN Mark for use by Applicant.

RESPONSE TO REQUEST NO. 10

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain.

This Request for Admission regarding Applicant's knowledge of Opposer's marks is relevant and clear. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 11

Admit that Applicant knew about the use of Opposer's Marks before filing Applicant's application to register Applicant's DIRACTIN Mark.

RESPONSE TO REQUEST NO. 11

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain.

This Request for Admission regarding Applicant's knowledge of Opposer's marks is relevant and clear. Applicant should be ordered to admit or deny this Request for Admission.

REQUEST NO. 16

Admit that on December 22, 2006, Stacey J. Farmer, Esq. electronically signed the Declaration supporting Applicant's application including the facts relating to Applicant's asserted ownership of the mark, and submitted same to the USPTO.

RESPONSE TO REQUEST NO. 16

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is unduly burdensome, oppressive and harassing. Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to

the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

This Request for Admission is clear and straightforward seeking only an admission or denial of a fact relating to the electronic submission by Applicant's then attorney, Stacey J. Farmer, to the USPTO. Applicant should be ordered to admit or deny same.

REQUEST NO. 17

Admit that on December 22, 2006, Stacey J. Farmer, Esq. electronically signed the Declaration supporting Applicant's application including the facts relating to any other entity's right to use the mark in commerce, and submitted same to the USPTO.

RESPONSE TO REQUEST NO. 17

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is unduly burdensome, oppressive and harassing. Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

This Request for Admission is clear and straightforward seeking only an admission or denial of a fact relating to the electronic submission by Applicant's then attorney, Stacey J. Farmer, to the USPTO. Applicant should be ordered to admit or deny same.

REQUEST NO. 18

Admit that on May 30, 2007 Stacey J. Farmer, Esq. submitted to the USPTO a statement that the term "DIRACTIN has no known significance in the Applicant's trade or industry, any geographical significance, or any meaning in any foreign language.

RESPONSE TO REQUEST NO. 18

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is unduly burdensome, oppressive and harassing. Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

This Request for Admission is clear and straightforward seeking only an admission or denial of a fact relating to the electronic submission by Applicant's then attorney, Stacey J. Farmer, to the USPTO. Applicant should be ordered to admit or deny same.

REQUEST NO. 20

Admit that attached as Exhibit 1 are three pages from Applicant's website <www.idea-ag.de> and that on the third page is the statement "The Company's, clinically late stage, leading products are in the area of pain and dermatology."

RESPONSE TO REQUEST NO. 20

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

This Request for Admission is relevant and clear, identifying the exhibit and thereafter seeking simply an admission or denial of a fact relating to a specific statement on Applicant's website. Applicant should be ordered to admit or deny same.

REQUEST NO. 21

Admit the truth of the statements set forth in both Opposer's Request for Admission No. 20 and Exhibit 1.

RESPONSE TO REQUEST NO. 21

Applicant hereby incorporates all of the objections made in response to Request No. 1, above. Applicant also objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

This Request for Admission is relevant and clear. It seeks simply an admission or denial of a fact relating to a specific statement on Applicant's website. Applicant should be ordered to admit or deny same.

REQUEST NO. 22

Admit that attached as Exhibit 2 is the corporate fact sheet from Applicant's website <www.idea-ag.de>, and that on the first page is the statement "The Company's leading products are in the area of dermatology and pain."

RESPONSE TO REQUEST NO. 22

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

This Request for Admission is relevant and clear, identifying the exhibit and thereafter seeking simply an admission or denial for of a fact relating to a specific statement on Applicant's website. Applicant should be ordered to admit or deny same.

REQUEST NO. 23

Admit the truth of the statements set forth in both Opposer's Request for Admission No. 22 and Exhibit 2.

RESPONSE TO REQUEST NO. 23

Applicant hereby incorporates all of the objections made in response to Request No. 1, above. Applicant also objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

This Request for Admission is relevant and clear. It seeks simply an admission or denial of a fact relating to a specific statement on Applicant's website. Applicant should be ordered to admit or deny same.

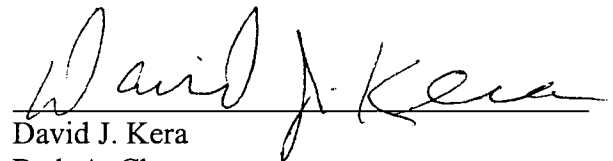
Based on the foregoing, Schering respectfully requests that the Board order Applicant to admit or deny Opposer's Requests for Admissions Nos. 1-11, 16-18 and 20-23 pursuant to Trademark Rule 2.120(h) and Fed.R.Civ.P. 36(a)(6). TBMP § 524.01 (Second Edition rev. 2004).

In summary, Opposer respectfully requests that the Board: (i) suspend this opposition pending Opposer's Motion in accordance with Trademark Rules 2.120(e)(2) and 2.120(h)(2); (ii) grant Opposer's Motion to Compel, ordering Applicant to fully and completely respond to Opposer's First Set of Interrogatories Nos. 4, 8-10, 12-14, 19, 20 and 22, and ordering Applicant to fully and completely respond to Opposer's First Request for Production of Documents and Things Nos. 1-37; and (iii) grant Opposer's Motion to Test the Sufficiency of Applicant's Responses to Opposer's First Requests for Admissions, ordering Applicant to admit or deny Opposer's Requests for Admission Nos. 1-11, 16-18, and 20-23.

Respectfully submitted,

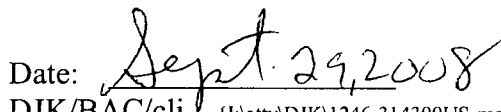
SCHERING CORPORATION

By:



David J. Kera
Beth A. Chapman
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Date:



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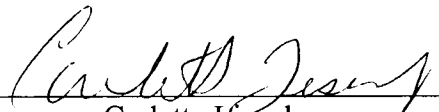
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S MOTION TO COMPEL APPLICANT TO FULLY RESPOND TO OPPOSER'S FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS PURSUANT TO TRADEMARK RULE 2.120(e) and MOTION TO TEST THE SUFFICIENCY OF APPLICANT'S RESPONSES TO OPPOSER'S FIRST REQUESTS FOR ADMISSIONS PURSUANT TO TRADEMARK RULE 2.120(h) was served on counsel for Applicant, this 29th day of September, 2008, by sending same via First Class mail, postage prepaid, to:

Stacey J. Farmer, Ph.D., Esquire
GRUND INTELLECTUAL PROPERTY GROUP
Nikolaistrasse 15
D-80802 Munich
Germany

and by sending same via first class mail, prepaid, to:

Eric J. Sidebotham, Esquire.
ERIC J. SIDEBOTHAM, APC
TechMart Center
Suite 320
5201 Great America Parkway
Santa Clara, CA 95054



Carlette Lisenby

EXHIBIT 1

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

SCHERING CORPORATION,

Opposer,

y.

IDEA AG,

Applicant.

Opposition No.: 91/180,212
Appln. Serial No. 77/070,074
Mark: **DIRACTIN**

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer, SCHERING CORPORATION (“Opposer”), by and through its attorneys, hereby serves the following interrogatories under Rule 33, Fed.R.Civ.P., and Rules 2.116 and 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office, to be answered separately and fully in writing under oath by Applicant, IDEA AG, (“Applicant”).

DEFINITIONS AND INSTRUCTIONS

Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules and Applicant shall provide Opposer with any supplemental answers and additional information responsive to the interrogatories which becomes available to Applicant at a later date.

The following interrogatories and requests are subject to the definitions set forth below:

A. The term “document” shall be construed in its broadest permissible sense, and shall include any and all means of conveying, storing or memorializing information, whether in paper, electronic or other form, in the possession, custody or control of Applicant.

B. The term “person” shall include, but is not limited to, any natural or juristic person.

C. “Identify” when used with reference to a natural person means to state the person’s full name and present or last-known address, his or her current and prior employment positions and affiliations, and the dates of each. “Identify” when used with reference to any juristic person means to state that person’s full name and form of legal existence, present or last-known address, and relationship, if any, to Applicant.

D. “Identify” when used with reference to a document means to state the date and author or creator (and, if different, the signer or signers), the addressee, type of document (e.g., letter, memorandum, e-mail, telegram, chart, magnetic tape, computer printout, tangible physical item etc.), its present or last known location and custodian, its general subject matter(s) content, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a request for its production pursuant to Rule 34, Fed. R. Civ. P., or a subpoena *duces tecum*. In the alternative, Applicant may produce the document(s) for inspection and copying at a time and place mutually convenient to the parties.

E. “State” or “state all facts” means to state all facts discoverable under Rule 26(b), Fed. R. Civ. P., that are known to Applicant. When used in reference to a contention, “state,” “state all facts,” “identify,” “identify all documents,” and “identify all communications” shall include all facts, documents, and communications negating, as well as supporting, the contention.

When used in reference to a contention, “identify each person” shall include persons having knowledge of facts negating, as well as supporting, the contention.

F. If Applicant refuses to produce a document(s) based upon a claim of privilege, it shall (i) identify the document as set forth in paragraph D above, and (ii) set forth the particular basis for the claim of privilege.

G. “Applicant” shall include Applicant’s agents, employees, affiliates, predecessors in interest, successors in interest, licensees, franchisees, U.S. importers, U.S. distributors, or any other related organization.

H. “Applicant’s Mark” refers to the mark DIRACTIN that is the subject of Application Serial No. 77/070,074, alone or in combination with other words or designs, unless otherwise stated in the Interrogatory or Document Request or Request for Admission.

I. “Opposer’s Marks” refers to the TINACTIN, TOUGH ACTIN’ TINACTIN and TOUGH ACTIN’ marks pleaded in the Notice of Opposition, alone or in combination with other words or designs, unless otherwise stated in the Interrogatory or Document Request or Request for Admission.

J. The word “or” shall be conjunctive or disjunctive and the word “and” shall be conjunctive or disjunctive whenever the context permits such construction.

INTERROGATORIES

INTERROGATORY NO. 1

State the address of each location at which Applicant maintains an office or other place of business where there is any authority relating to the present or intended use of DIRACTIN and describe the dates of operation and functions carried out at each office or other such place of business.

INTERROGATORY NO. 2

Briefly state the nature of Applicant's principal business and the period of time during which Applicant has conducted such business.

INTERROGATORY NO. 3

Identify the person(s) who first conceived of and/or decided to adopt Applicant's Mark as a possible mark for use by Applicant.

INTERROGATORY NO. 4

Identify all documents referring or relating to such first conception and adoption of Applicant's Mark.

INTERROGATORY NO. 5

Identify Applicant's officers by name, title, and business address.

INTERROGATORY NO. 6

State the name(s) and address(es) of the principal officer(s) of each past and present importer and distributor of Applicant's goods sold under Applicant's Mark in the United States.

INTERROGATORY NO. 7

Identify the person(s) most knowledgeable regarding Applicant's goods sold or intended to be sold under Applicant's Mark in the United States.

INTERROGATORY NO. 8

For each product identified in Application Serial No. 77/070,074, state the date of first use of Applicant's Mark in commerce in or with the United States.

INTERROGATORY NO. 9

State with regard to Applicant's use of its DIRACTIN Mark on or in connection with each product on which the mark has been used in the United States, the date of commencement

of use, the commencement date of each period of nonuse; the reason for each such period of nonuse; and the date when use was resumed.

INTERROGATORY NO. 10

Identify the person(s) most knowledgeable about Applicant's sales, marketing, advertising, and promotion of its products under Applicant's Mark in the United States.

INTERROGATORY NO. 11

Identify by publication, title, issue date, and page number, all written or electronic publications from every source in which Applicant advertised, promoted or otherwise referred to products offered for sale under Applicant's Mark in the United States since Applicant's first use in commerce.

INTERROGATORY NO. 12

Identify each printed and electronic publication in which the products intended to be sold under Applicant's Mark are described or referred to.

INTERROGATORY NO. 13

Identify all agreements including, but not limited to, licenses, permissions or consents entered into by Applicant and any other entities relating to use of the Applicant's Mark in the United States and identify all documents relating or referring to each such agreement.

INTERROGATORY NO. 14

Identify by cities and dates every trade show, trade fair, trade convention and other promotional trade events where Applicant's products have been promoted or are planned to be promoted in connection with Applicant's Mark in the United States.

INTERROGATORY NO. 15

Identify each instance of actual confusion involving Applicant's Mark and Opposer's Mark, including the name and address or contact information of each person who has knowledge of the actual confusion.

INTERROGATORY NO. 16

Identify each channel of distribution in the United States within which Applicant's products are or are intended to be promoted, distributed, and sold in connection with Applicant's Mark.

INTERROGATORY NO. 17

Identify each geographical area of trade in the United States within which Applicant's products are or are intended to be promoted, distributed, and sold in connection with Applicant's Mark.

INTERROGATORY NO. 18

Identify each class of purchaser to which Applicant has sold or intends to sell Applicant's goods under Applicant's Mark in the United States.

INTERROGATORY NO. 19

Describe Applicant's business relationship with McNeil Specialty Pharmaceuticals / McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson, insofar as the relationship refers, relates or pertains, directly or indirectly, to Applicant's Mark DIRACTIN.

INTERROGATORY NO. 20

Describe Applicant's business relationship with TDT, subsidiary of Celtic Pharmaceutical Holdings LP, insofar as the relationship refers, relates or pertains, directly or indirectly, to Applicant's Mark DIRACTIN.

INTERROGATORY NO. 21

State the facts on which each of Applicant's "affirmative defenses" as pleaded in "AFFIRMATIVE DEFENSES" Paragraphs 1-8 of Applicant's Answer to Opposer's Notice of Opposition are based.

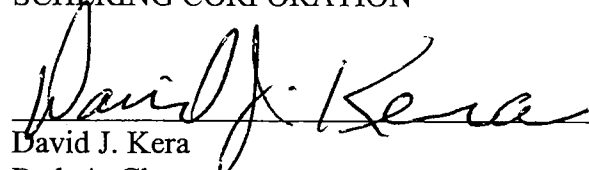
INTERROGATORY NO. 22

Identify each and every person known by Applicant to have supplied information for, or participated in responding to, these interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Requests for Admissions.

Respectfully submitted,

SCHERING CORPORATION

By:


David J. Kera
Beth A. Chapman
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: tmdocket@oblon.com

Date: May 12, 2008
DJK/BAC/mjo {I:\atty\DJK\1246-314399US-int.doc}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** was served on counsel for Applicant, this 12th day of May, 2008, by sending same via international air mail service, prepaid, to:

Stacey J. Farmer, Ph.D., Esq.
GRUND INTELLECTUAL PROPERTY GROUP
Nikolaistrasse 15
D-80802 Munich
Germany

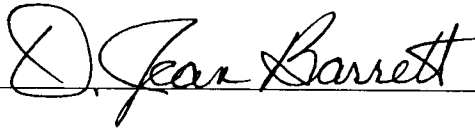


EXHIBIT 2

Applicant.

Opposition No.: 91/180,212
Appln. Serial No. 77/070,074
Mark: DIRACTIN

OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS

DEFINITIONS AND INSTRUCTIONS

The definitions and instructions contained in Opposer's First Set of Interrogatories to Applicant (the "interrogatories") are incorporated herein by reference. In addition, the following instructions shall also apply:

With respect to any document requested below for which a claim of privilege (attorney-client or work product) is made, indicate the nature of the document; identify by name, address, title and business affiliation of the writer, the addressee, and all recipients of copies thereof; set forth the general subject matter to which the document relates and its date; and state the nature of the privilege asserted for withholding the document.

Applicant shall separately identify the responses to each request by number.

A written response to this request is required pursuant to Fed.R.Civ.P. 34.

REQUESTS

1. Specimens of advertisements (appearing in printed, electronic, or broadcast media) for Applicant's goods sold by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

2. Specimens of labels for Applicant's goods sold by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

3. Specimens of packages for Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

4. Specimens of printed items (such as, but not limited to brochures, technical bulletins and manuals, promotional literature) to promote the sale and use of Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

5. Specimens of electronic publications (such as, but not limited to brochures, technical bulletins and manuals, promotional literature) to promote the sale and use of

Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

6. All documents which evidence, refer, or relate to the creation, selection, and adoption of Applicant's Mark by Applicant or any related company or predecessor, individuals or companies.

7. All documents which evidence, refer, or relate to consent, authorization or permission given to Applicant by any person to use Applicant's Mark in the United States.

8. All documents evidencing, relating, or referring to Applicant's first use of its mark DIRACTIN in commerce in or with the United States in connection with each of the goods set forth in Application Serial No. 77/070,074.

9. All documents evidencing, relating, or referring to Applicant's continuous use of its mark DIRACTIN in commerce in or with the United States in connection with each of the goods set forth in Application Serial No. 77/070,074.

10. All documents evidencing, relating or referring to Applicant's products set forth in Application Serial No. 77/070,074 sold under its mark DIRACTIN in commerce in or with the United States.

11. Documents evidencing the dollar volume of Applicant's annual sales in the United States for each product sold under Applicant's Mark for each year since Applicant's first use of Applicant's Mark in commerce.

12. Documents evidencing the number of units for each of Applicant's products sold in the United States under Applicant's Mark for each year since Applicant's first use of Applicant's Mark in commerce.

13. All documents evidencing the dollar volume expended by Applicant for advertising and promotional materials under Applicant's Mark in the United States for each year since Applicant's first use of Applicant's Mark in commerce.

14. All documents sufficient to identify each media (including print, electronic, broadcast, Internet) in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote the sale and use of goods under Applicant's Mark in the United States.

15. All documents including reports and opinions referring or relating to trademark searches or any other type of search conducted by Applicant in connection with its adoption, use or application for registration of Applicant's Mark.

16. All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, or competitors, either written or oral, relating to Opposer or Opposer's TINACTIN Marks.

17. All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, competitors or other third parties, either written or oral, known to Applicant relating to the quality of goods sold under Applicant's Mark.

18. All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, competitors or other third parties, either written or oral, known to Applicant relating to Applicant's Mark.

19. All documents known to Applicant which evidence, refer or relate to instances of actual consumer confusion involving Applicant's Mark and Opposer's Marks.

20. All documents relating or referring to the channels of distribution through which Applicant's goods are sold in the United States under Applicant's Mark.

21. All documents relating or referring to the categories of consumers with whom Applicant does business or to whom Applicant offers its goods under Applicant's Mark.

22. All documents which evidence, refer, or relate to any U.S. importers or U.S. distributors of Applicant's goods sold under Applicant's Mark in the United States.

23. All studies, surveys, market research tests, focus group inquiries, or memoranda including, but not limited to, demographic or consumer profile studies, relating to the purchasers or potential purchasers of Applicant's products sold, offered for sale, advertised or promoted under Applicant's Mark in the United States.

24. All licenses granted by Applicant to any person to use Applicant's Mark in connection with any product, including all amendments or modifications to any such licenses, and all documents relating or referring to any such licenses or amendments or modifications thereof.

25. All documents referring or relating to Applicant's purchase of North American rights in compounds which directly or indirectly involve Applicant's DIRACTIN products from McNeil Specialty Pharmaceuticals, subsidiary of Johnson & Johnson.

26. All documents referring or relating to Applicant's purchase of North American rights in compounds which directly or indirectly involve Applicant's DIRACTIN products from McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson.

27. All documents evidencing, relating, or referring to Applicant's *bona fide* intention to use the mark DIRACTIN in commerce.

28. All documents relating or referring to market plans, marketing projections, or other marketing or market share documents concerning Applicant's goods sold in association with Applicant's Mark in the United States.

29. All documents referring or relating to Applicant's business relationship with TDT, a subsidiary of Celtic Pharmaceutical Holdings LP.

30. All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by McNeil Specialty Pharmaceuticals.

31. All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by McNeil Consumer and Specialty Pharmaceuticals.

32. All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by Johnson & Johnson.

33. All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by TDT.

34. All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by Celtic Pharmaceutical Holdings LP.

35. All documents identified in Applicant's Responses to Opposer's First Set of Interrogatories.

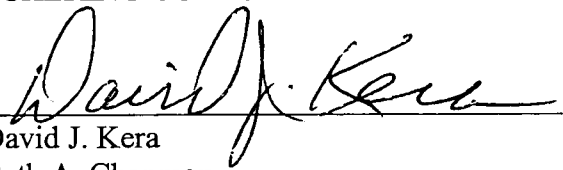
36. For every request for Admission which is not admitted without qualification, all documents which support or relate to the denial or qualification of the admission.

37. All documents, not otherwise requested herein, referred to by Applicant in responding to Opposer's First Set of Interrogatories and Opposer's First Requests for Admissions.

Respectfully submitted,

SCHERING CORPORATION

By:



David J. Kera
Beth A. Chapman
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: tmdocket@oblon.com

Date: May 12, 2008

DJK/BAC/mjo {I:\atty\DJK\1246-314399US-pod.doc}

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on counsel for Applicant, this 12th day of May, 2008, by sending same via international air mail service, prepaid, to:

Stacey J. Farmer, Ph.D., Esq.
GRUND INTELLECTUAL PROPERTY GROUP
Nikolaistrasse 15
D-80802 Munich
Germany

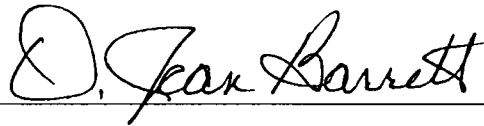


EXHIBIT 3

Opposition No.: 91/180,212
Appln. Serial No. 77/070,074
Mark: DIRACTIN

OPPOSER'S FIRST REQUESTS FOR ADMISSIONS

DEFINITIONS AND INSTRUCTIONS

B. If any request for an Admission is denied or objected to, in whole or in part, Applicant shall state in detail the reasons for the denial or objection.

1. Admit that Applicant has not used Applicant's DIRACTIN Mark in commerce in _____ or with the United States.

2. Admit that Applicant has used Applicant's DIRACTIN Mark in commerce in or with the United States.

3. Admit that Applicant can claim no rights prior to December 22, 2006 in the DIRACTIN Mark in the United States.

4. Admit that Applicant does not have a *bona fide* intention to use the DIRACTIN Mark in connection with pharmaceutical preparations for medical and therapeutic use namely, the prevention and treatment of pain.

5. Admit that Applicant does not have a *bona fide* intention to use the DIRACTIN Mark in connection with pharmaceutical preparations for dermal administration, to treat pain and inflammation.

6. Admit that Applicant did not conduct a search for possibly conflicting marks prior to Applicant's selection of Applicant's DIRACTIN Mark.

7. Admit that no one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's selection of Applicant's DIRACTIN Mark.

8. Admit that Applicant did not conduct a search for possibly conflicting marks prior to Applicant's filing of Application Serial No. 77/070,074.

9. Admit that no one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's filing of Application Serial No. 77/070,074.

10. Admit that Applicant knew about the use of Opposer's Marks before selecting Applicant's DIRACTIN Mark for use by Applicant.

11. Admit that Applicant knew about the use of Opposer's Marks before filing Applicant's application to register Applicant's DIRACTIN Mark.

12. Admit that Opposer's TINACTIN® Mark is famous in the United States for pharmaceutical preparations and particularly antifungal preparations.

13. Admit that Opposer's TINACTIN® Brand pharmaceutical preparations are used to treat fungal infections.

14. Admit that Opposer's TINACTIN® Brand pharmaceutical preparations are used to treat burning/itching of the skin.

15. Admit that Opposer's TINACTIN® Brand pharmaceutical preparations are used to treat chaffing/cracking of the skin.

16. Admit that on December 22, 2006, Stacey J. Farmer, Esq. electronically signed the Declaration supporting Applicant's application including the facts relating to Applicant's asserted ownership of the mark, and submitted same to the USPTO.

17. Admit that on December 22, 2006, Stacey J. Farmer, Esq. electronically signed the Declaration supporting Applicant's application including the facts relating to any other entity's right to use the mark in commerce, and submitted same to the USPTO.

18. Admit that on May 30, 2007 Stacey J. Farmer, Esq. submitted to the USPTO a statement that the term "DIRACTIN" has no known significance in the Applicant's trade or industry, any geographical significance, or any meaning in any foreign language.

19. Admit the genuineness pursuant to Fed.R.Civ.P. 36(a)(1)(B) of all documents produced by Applicant in response to Opposer's First Set of Interrogatories and First Request for Production of Documents and Things.

20. Admit that attached as Exhibit 1 are three pages from Applicant's website <www.idea-ag.de> and that on the third page is the statement "The Company's, clinically late stage, leading products are in the area of pain and dermatology."

21. Admit the truth of the statements set forth in both Opposer's Request for Admission No. 20 and Exhibit 1.

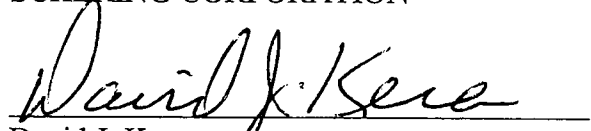
22. Admit that attached as Exhibit 2 is the corporate fact sheet from Applicant's website <www.idea-ag.de>, and that on the first page is the statement "The Company's leading products are in the area of dermatology and pain."

23. Admit the truth of the statements set forth in both Opposer's Request for Admission No. 22 and Exhibit 2.

Respectfully submitted,

SCHERING CORPORATION

By:



David J. Kera

Beth A. Chapman

Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.

1940 Duke Street

Alexandria, Virginia 22314

(703) 413-3000

fax (703) 413-2220

e-mail: tmdocket@oblon.com

Date: May 12, 2008

DJK/BAC/mjo {I:\atty\DJK\1246-314399US-adm.doc}

EXHIBIT 1

About us

- [Welcome!](#)
- [The Company](#)
- [Core Technology](#)

Welcome!



Especially in the biotech industry, being first makes all the difference. We have discovered the 'smart carriers' that can cross intact skin and other semi-permeable barriers to transport effectively a wide variety of drugs into the body.

Our leadership in the design of self-regulating carrier systems puts us in a position to develop prototypes rapidly and to focus quickly on the best product candidates. Extensive *in vivo* studies have shown the effectiveness of our proprietary drug delivery technology.

The basis of IDEA's proprietary technology is a bio-compatible, highly deformable and self-regulating, water based agent carrier called Transfersome®. The Company developed new product candidates based on such carriers of whom several are in the clinic; the current focus is on dermatological and pain therapeutics. IDEA is testing in the clinic Transfersome® formulations for the targeted transdermal delivery of steroidal or nonsteroidal anti-inflammatory drugs (NSAID) for improved safety and higher specificity through Transfersome® mediated delivery. IDEA is also exploring the development of transdermally delivered protein therapeutics as well as transnasal / transdermal vaccination.

The Company

IDEA is a product-oriented company, founded in 1993 by Prof. Dr. Gregor Cevc from the Technical University of Munich, following his invention of an ultradeformable vesicle (Transfersome®), and the demonstration of its unique drug transporting capabilities. The Company is located in the Munich Technology Centre and employs around 45 highly motivated and skilled people

from different nationalities. IDEA is backed by top-tier European and US investors.

[Executive Board](#)

[Supervisory Board](#)

[Management Team](#)

[Scientific Advisors](#)

Core Technology

Unlike conventional transdermal technologies which disrupt the skin barrier to enable drug passage through the skin IDEA's proprietary drug carriers (Transfersomes®) activate the natural, but normally closed, pathways through the barrier. This only happens for a selected period of time and does not compromise the protective properties of the organ. It is therefore possible to transport various agents either into the skin or through the skin into underlying tissues or the whole body. This offers ample opportunities for pharmaceutical product development and improvement.



IDEA permanently works on widening and strengthening the scientific basis of its technology. The Company also continuously generates new applications in the field of drug delivery. This includes strategies for improved drug-carrier-association, for better temporal control of drug release and vaccine application, amongst others. The Company has built-up a strong intellectual property base for its technology platform.

[go to top](#) | [^ back ^](#)

[Impressum](#)

© IDEA AG

IDEA AG develops therapeutics using self-optimising carriers for targeted and non-invasive delivery of drugs, including proteins.

The proprietary carriers, Transfersomes®, are typically applied on the skin and can be engineered to achieve high drug concentration at or near the site of application, diminish local or systemic adverse side effects, and often increase drug potency. The Company's, clinically late stage, leading products are in the area of pain and dermatology.

A Transfersome®



In-house capabilities range from formulation and small-scale (GMP) manufacturing work up to clinical testing.

[go to top](#) | [back](#) ^

[Impressum](#)

© IDEA AG

EXHIBIT 2



Targeted Therapeutics

Corporate Fact Sheet – Q3 2006 *The Company*

KEY DATA

Founded: 1999 (incorporated)

Number of employees: 45

Ownership: private

Investors: 3i (UK), Celtic Pharma (Bermuda), Gilde (NL), HealthCap (SE), LSP (NL), Quest for Growth (B), TechnoStart (GE)

LOCATION

Frankfurter Ring 193a
P.O. Box 40 09 21
80807 Munich
Germany
Tel.: +49 89 324 6330
Fax: +49 89 324 1684

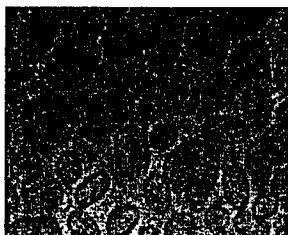
CONTACT

idea@idea-aq.de

MORE INFORMATION

www.idea-aq.de

Transfersome® carriers, close-up



IDEA AG develops therapeutics using self-optimising carriers for targeted and non-invasive delivery of drugs, including proteins.

The proprietary carrier, Transfersome®, is typically applied on the skin and can be engineered to achieve high drug concentration at or near the site of application, diminish local or systemic adverse side effects, and often increase drug potency. The Company's leading products are in the area of dermatology and pain. In-house capabilities range from formulation and small-scale (GMP) manufacturing work up to clinical testing.

IDEA has attracted a motivated and efficient management team with complementary skills representing more than half a century of cumulative industrial experience. The Executive Board consists of Prof. Dr. Gregor Cevc, IDEA's founding CEO, and Matthias Rother, MD PhD (ex-Aventis), Head of Research & Clinical Development. Besides an experienced Supervisory Board, IDEA draws on dedicated specialists for each clinical candidate project.

Business Strategy

The Company is an innovator in peripheral pain treatment and leads the development of physically targeted therapeutics, with focus on dermatology. IDEA will therefore expand the number its product opportunities in fields of dermatology and peripheral pain. The three most advanced product candidates target at least 20 mill. patients each, all with clear unmet medical needs that can be addressed using Transfersome® technology. Exclusive use of known drugs, excipients, and therapeutic concepts allows IDEA to develop such products rapidly, and at relatively low costs and risk. The Company is acting on its own when dealing with the non-steroidal deep pain killers and in collaboration with its recent partner TDT outside this field. The resulting products should reach their respective pain and dermatological markets within next 2-4 years, facilitated by use of unmatched delivery technology that can transform established drugs into superior and newly patented products.

Collaborations

IDEA AG recently re-acquired its lead targeted analgesic project, IDEA-033, from its partner in the North America, McNeil Specialty Pharmaceuticals of Johnson & Johnson (JNJ), and now controls the global rights to all non-steroidal (NSAID) analgesics in Transfersome® technology for deep pain treatment. Dermatological and other improved products based on the Company technology are outlicensed exclusively to TDT Ltd, but IDEA continues to act as the primary developer of all such products. The Company will also participate in the final commercial success of the resulting Transfersome® based therapeutics.

Intellectual Property

IDEA holds close to 60 issued patents from 9 international patent families for the Transfersome® technology and its transdermal, transnasal applications, incl. vaccination, in Europe, USA, Canada and Australia and has patents pending in Japan and other major markets.



BOARD OF DIRECTORS

G. Joseph Blaker, PhD

Chairman (ex-Glaxo)

David Haselkorn, PhD

Ex-Clal Industries & Investments

Andreas Kochhäuser

3i Group

Michael Mayer

TechnoStart

John Mayo, CBE

Celtic Pharma

Joachim Rothe, PhD

Life Sciences Partners

MANAGEMENT TEAM

Prof. Gregor Cevc, PhD

CEO (Exec. Board)

Mathias Rother, MD PhD

Head of R&D (Exec. Board)

Stefan Mazgareanu, PhD

VP Project Management

Sabine Hauck, PhD

VP Pharmaceutical

Ulrich Vierl, PhD

Principal Scientist

Jens Peter Wartmann, CFA

VP Finance

KEY SCIENTIFIC ADVISORS

PAIN

Prof. Michael Doherty

University of Nottingham (UK)

Prof. Gerold Stucki

LMU, Munich (GE)

DERMATOLOGY

Prof. Charles Ellis

University of Michigan (US)

Prof. Thomas Luger

University of Muenster (GE)

Science and Technology

IDEA's platform technology, based on Transfersomes[®], allows versatile targeted delivery of a broad range of therapeutics, unlimited by molecular size or physico-chemical properties, without disruption or irritation of the skin, and without the need for a delivery device or pre-treatment of the skin.

Transfersomes[®] are highly deformable, pharmaceutically acceptable, self-regulating carriers, consisting of natural amphipats, most often phospholipids, suspended in a water-based solution. The carriers form a bilayer surrounding an aqueous core, similar to liposomes. However, unlike liposomes, Transfersomes[®] can incorporate cone-shaped biocompatible surfactants or other ingredients that soften the membrane, resulting in a highly flexible and adaptable vesicle (see illustration on next page). Water-soluble drugs can be incorporated into the core of the vesicle, while lipophilic drugs can be inserted into the bilayer.

After placing Transfersomes[®] suspension on the skin, its water begins to evaporate, causing the vesicles to dry out. During the process the hydrophilic properties of the lipid drive the closed bilayer down the increasing water gradient into the body interior. Optimised for extreme flexibility, Transfersomes[®] deform under stress caused by the resulting driving force, such that they can enter pores between skin cells that are considerably smaller than the vesicle. Consequently, Transfersomes[®] are able to enter and widen the tiny cracks in the skin usually reserved for water movement, creating 'virtual channels'. Driven by the ever-present water gradient, Transfersomes[®] and their therapeutic load pass through these channels and accumulate in the underlying tissue. Here they either release the drug or continue to distribute further into the body.

Technology and Product Portfolio

IDEA-033 is currently in Ph III (EU) / Ph II (US). According to the Company's current plan, the product should complete the phase III programme in Europe and then be submitted for EMEA regulatory approval in early 2007. The recently conducted marketing studies in the US and EU indicate an excellent market potential for the product. IDEA's further pipeline includes both, early and advanced stage dermatological products. In February 2006 the Company has outlicensed these product rights to TDT Ltd., a newly founded entity controlled by Celtic Pharma.

Project	Indication	Research/ Preclinical	Phase I	Phase II	Phase III
IDEA-033 EU	Osteoarthritis, Peripheral Pain				
IDEA-033 US	Osteoarthritis, Peripheral Pain				
IDEA-070	Skin Pain & Inflammation				
IDEA-068	CS Dermatitis & Psoriasis				
IDEA-067	Onychomycosis				
IDEA-077	Neuropathic Pain				
IDEA-073	IFNa Sensitive Dermal Diseases				

**CELTIC
PHARMA.**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S FIRST REQUESTS FOR ADMISSIONS** was served on counsel for Applicant, this 12th day of May, 2008, by sending same via international air mail service, prepaid, to:

Stacey J. Farmer, Ph.D., Esq.
GRUND INTELLECTUAL PROPERTY GROUP
Nikolaistrasse 15
D-80802 Munich
Germany

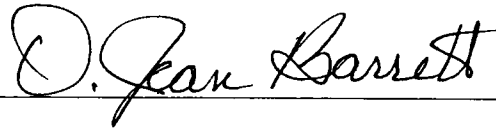


EXHIBIT 4

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF
INTERROGATORIES**

Applicant, IDEA AG ("Applicant"), by and through its attorneys, hereby serves the following responses to interrogatories of SCHERING CORPORATION ("Opposer"), in compliance with Fed. R. Civ. P. 33, and Rules 2.116 and 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office.

PRELIMINARY AND GENERAL OBJECTIONS

1. The following responses are based on discovery available as of the date of this response. Discovery is continuing, and these responses are subject to change accordingly. It is anticipated that further investigation, research and analysis may lead to the discovery of additional information, supply additional facts, and add meaning to known facts, as well as establish entirely new factual conclusions and legal contentions,

all of which may lead to additions to, changes to, or variations from the information set forth herein.

2. The following responses are given without prejudice to Applicant's right to produce or rely on subsequently discovered information, facts, or documents. Applicant accordingly reserves the right to change the responses as additional facts are ascertained, analysis is made, legal research is completed, and contentions are made.

3. The following responses are made in a good faith effort to comply with the Trademark Rules of Practice, the Trademark Trial and Appeals Board Manual of Procedure, and with applicable provisions of the Federal Rules of Civil Procedure, and to supply such responsive information as exists and is presently within Applicant's possession, custody, or control, but should in no way be deemed to be to the prejudice of Applicant in relation to further investigation, research, and analysis.

4. Applicant objects to the extent that any of the interrogatories seek to require Applicant to disclose information or materials that are protected under the attorney-client privilege and/or attorney work-product doctrine, and expressly declines to waive any such privileges.

5. Applicant objects to the extent that any of the interrogatories seek to
- require Applicant to disclose information or materials that are, in whole or part proprietary and/or protectable trade secret. Applicant shall withhold providing said information until such time as the parties enter into an adequate protective order.

6. Applicant objects that the nature and scope of interrogatories appears to extend significantly beyond the subject matter of these opposition proceedings, and in particular related to registration of the current mark. Given this objection, and subject to it, Applicant has made every good faith effort to respond to each of Opposer's interrogatories that reasonably relate to the opposition proceedings.

7. Applicant objects that the nature and scope of these interrogatories significantly extend beyond the subject matter of the opposition proceedings, which is to

determine the registration of Applicant's mark. Given this objection, and subject to it, Applicant has made every good faith effort to cooperate and respond to each of Opposer's interrogatories under a scope which includes those issues that have a reasonable bearing to subject-matter of this opposition proceeding.

8. Applicant objects that Opposer is in violation of TBMP § 405.03(d), in that many of Opposer's interrogatories contain numerous separate and distinct sub parts.

9. Applicant objects that the a substantial number of the following interrogatories appear to involve topics where it is suitable and/or appropriate for Opposer to obtain an expert opinion to ensure a full response. Applicant, however, has not had the opportunity to obtain any such expert opinion, and thus may not be able to answer all of the interrogatories fully. Applicant reserves the right to supplement any response herein at a future date to include information that becomes known once Applicant engages any such necessary expert witnesses.

10. Applicant objects that the following interrogatories assume facts which are either false or have not been legally established. None of Applicant's answers provided herein is intended to or shall be deemed to admit the truth of any alleged and unsubstantiated facts contained within these interrogatories.

11. Applicant objects that this set of interrogatories, in combination with the other discovery propounded by Opposer, is unduly burdensome, harassing, and intended to harass, annoy, embarrass or increase the litigation expenses of Applicant.

12. Applicant objects that Opposer has lulled Applicant into inactivity by launching this opposition proceeding and then taking absolutely no action until the very last possible day of the set discovery period, at which time Opposer propounded this extensive set of interrogatories and numerous other discovery requests. Opposer appears to have purposefully delayed action until the very last minute, to propound its discovery for obtaining an improper tactical advantage in that Opposer would obtain the maximum of beneficial information via this discovery process, while Applicant would not. Such

calculated manipulation is persuasive evidence that Opposer appears to be pursuing an alternative purpose unrelated to the registration of the present mark, which should not be countenanced.

RESPONSE TO INTERROGATORIES

INTERROGATORY NO. 1

State the address of each location at which Applicant maintains an office or other place of business where there is any authority relating to the present or intended use of DIRACTIN and describe the dates of operation and functions carried out at each office or other such place of business.

RESPONSE TO INTERROGATORY NO. 1

Applicant objects to this interrogatory on grounds that it seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is compound (containing at least three sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: The only place where Applicant maintains an office or other place of business is Frankfurter Ring 193a, 80807 Muenchen, Germany.

INTERROGATORY NO. 2

Briefly state the nature of Applicant's principal business and the period of time during which Applicant has conducted such business.

RESPONSE TO INTERROGATORY NO. 2

Applicant objects to this interrogatory on grounds that it seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is compound (containing at least two sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant is a biotechnology company that was founded in 1993. Since that time, Applicant has worked to develop a proprietary transdermal and targeted drug carrier, as well as drugs to be deployed via that carrier.

INTERROGATORY NO. 3

Identify the person(s) who first conceived of and/or decided to adopt Applicant's Mark as a possible mark for use by Applicant.

RESPONSE TO INTERROGATORY NO. 3

Applicant objects to this interrogatory on grounds that it seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is compound (containing at least two sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: Dr. Sabine Hauck, Dr. Stefan Mazgareanu, Dr. Matthias Rother, Dr. Ulrich Vierl, Prof./Dr. Gregor Cevc, Jens Peter Wartmann, Dr. Chi-kao Hu and Dr. Johannes Stegmeier.

INTERROGATORY NO. 4

Identify all documents referring or relating to such first conception and adoption of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 4

Applicant objects to this interrogatory on grounds that it may seek information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that Interrogatory No. 3, to which this interrogatory refers, is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the interrogatory

appears to seek information protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the interrogatory is compound (containing at least two sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant is unaware of the existence of such non-privileged documents.

INTERROGATORY NO. 5

Identify Applicant's officers by name, title, and business address.

RESPONSE TO INTERROGATORY NO. 5

Applicant objects to this interrogatory on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, and without waiving them, Applicant responds as follows: Executive Board members are Prof. Gregor Cevc and Dr. Matthais Rother, both at Frankfurter Ring 193a, 80807 Muenchen, Germany.

INTERROGATORY NO. 6

State the name(s) and address(es) of the principal officer(s) of each past and present importer and distributor of Applicant's goods sold under Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 6

Applicant objects to this interrogatory on grounds that it seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is unduly burdensome and oppressive. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information.

Applicant further objects that the interrogatory is compound (containing at least two sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: No sales of any goods under Applicant's mark have occurred in the United States.

INTERROGATORY NO. 7

Identify the person(s) most knowledgeable regarding Applicant's goods sold or intended to be sold under Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 7

Applicant objects to this interrogatory on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is unduly burdensome and oppressive. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to these objections, and without waiving them, Applicant responds as follows: Prof. Gregor Cevc.

INTERROGATORY NO. 8

For each product identified in Application Serial No. 77/070,074, state the date of first use of Applicant's Mark in commerce in or with the United States.

RESPONSE TO INTERROGATORY NO. 8

Applicant objects to this interrogatory on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is unduly burdensome and oppressive. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use.

INTERROGATORY NO. 9

State with regard to Applicant's use of its DIRACTIN Mark on or in connection with each product on which the mark has been used in the United States, the date of commencement of use, the commencement date of each period of nonuse; the reason for each such period of nonuse; and the date when use was resumed.

RESPONSE TO INTERROGATORY NO. 9

Applicant objects to this interrogatory on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects on grounds that the interrogatory is unduly burdensome and oppressive. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). *See* TBMP § 405.03(d). Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use.

INTERROGATORY NO. 10

Identify the person(s) most knowledgeable about Applicant's sales, marketing, advertising, and promotion of its products under Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 10

Applicant objects to this interrogatory on grounds that it is harassing in that it is duplicative of other interrogatories propounded by Opposer, including but not limited to Interrogatory No. 7. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that this interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: No “sales, marketing, advertising or promotion” under Applicant’s mark have occurred in the United States.

INTERROGATORY NO. 11

Identify by publication, title, issue date, and page number, all written or electronic publications from every source in which Applicant advertised, promoted or otherwise referred to products offered for sale under Applicant’s Mark in the United States since Applicant’s first use in commerce.

RESPONSE TO INTERROGATORY NO. 11

Applicant objects to this interrogatory on grounds that it is overbroad, unduly burdensome, oppressive, and harassing. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is compound (containing at least three sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: No sales or offers for sale under Applicant’s mark have occurred in the United States.

INTERROGATORY NO. 12

Identify each printed and electronic publication in which the products intended to be sold under Applicant’s Mark are described or referred to.

RESPONSE TO INTERROGATORY NO. 12

Applicant objects to this interrogatory on grounds that it is overbroad, unduly burdensome, oppressive, and harassing. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is harassing in that it is duplicative of other interrogatories propounded

by Opposer, including but not limited to Interrogatory No. 11. Applicant further objects that the interrogatory seeks information that is not in the possession, custody or control of Applicant, and is equally available to Opposer.

INTERROGATORY NO. 13

Identify all agreements including, but not limited to, licenses, permissions or consents entered into by Applicant and any other entities relating to use of the Applicant's Mark in the United States and identify all documents relating or referring to each such agreement.

RESPONSE TO INTERROGATORY NO. 13

Applicant objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this interrogatory on grounds that it is unduly burdensome and oppressive. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is compound (containing at least four sub-parts). *See* TBMP § 405.03(d).

INTERROGATORY NO. 14

Identify by cities and dates every trade show, trade fair, trade convention and other promotional trade events where Applicant's products have been promoted or are planned to be promoted in connection with Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 14

Applicant objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this interrogatory on grounds that it is unduly burdensome and oppressive. Applicant further objects that the interrogatory appears to seek confidential, proprietary and/or secret information. Applicant further

objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity.

Applicant further objects that the interrogatory is compound (containing at least four sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: It is expected that Applicant's product to be associated with the mark will be promoted, in the future, in various meetings, seminars and other public forums, to be located at various locations in the United States.

INTERROGATORY NO. 15

Identify each instance of actual confusion involving Applicant's Mark and Opposer's Mark, including the name and address or contact information of each person who has knowledge of the actual confusion.

RESPONSE TO INTERROGATORY NO. 15

Applicant objects to this interrogatory on grounds that it seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory seeks information that is not in the possession, custody or control of Applicant. Applicant further objects that the interrogatory is compound (containing at least two sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant is unaware of any instance of actual confusion involving Applicant's mark and Opposer's mark.

INTERROGATORY NO. 16

Identify each channel of distribution in the United States within which Applicant's products are or are intended to be promoted, distributed, and sold in connection with Applicant's Mark.

///

RESPONSE TO INTERROGATORY NO. 16

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is compound (containing at least three sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: It is expected that Applicant's product to be associated with the mark will be available to the relevant consumer following a medical consultation and by prescription only, and thus the anticipated future channels of distribution will include primarily health care providers and pharmacists.

INTERROGATORY NO. 17

Identify each geographical area of trade in the United States within which Applicant's products are or are intended to be promoted, distributed, and sold in connection with Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 17

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory is compound (containing at least three sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: It is expected that Applicant's product to be associated with the mark will be promoted, distributed, and sold throughout the United States.

INTERROGATORY NO. 18

Identify each class of purchaser to which Applicant has sold or intends to sell Applicant's goods under Applicant's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 18

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity.

Subject to these objections, and without waiving them, Applicant responds as follows: It is presently contemplated that future purchasers of Applicant's product in the United States will be patients who suffer from a medical condition relating to osteoarthritis of the knees and other joints, either chronically or acutely.

INTERROGATORY NO. 19

Describe Applicant's business relationship with McNeil Specialty Pharmaceuticals / McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson, insofar as the relationship refers, relates or pertains, directly or indirectly, to Applicant's Mark DIRACTIN.

RESPONSE TO INTERROGATORY NO. 19

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is harassing in that it is duplicative of other interrogatories propounded by Opposer. Applicant further objects that the interrogatory is unduly burdensome and oppressive.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant's mark has no relationship, business or otherwise, with "McNeil Specialty Pharmaceuticals / McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson."

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INTERROGATORY NO. 20

Describe Applicant's business relationship with TDT, subsidiary of Celtic Pharmaceutical Holdings LP, insofar as the relationship refers, relates or pertains, directly or indirectly, to Applicant's Mark DIRACTIN.

RESPONSE TO INTERROGATORY NO. 20

Applicant objects to this interrogatory on grounds that it appears to seek confidential, proprietary and/or secret information. Applicant further objects that the interrogatory is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the interrogatory seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the interrogatory is harassing in that it is duplicative of other interrogatories propounded by Opposer. Applicant further objects that the interrogatory is unduly burdensome and oppressive.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant's mark has no relationship, business or otherwise, with "TDT, subsidiary of Celtic Pharmaceutical Holdings LP."

INTERROGATORY NO. 21

State the facts on which each of Applicant's "affirmative defenses" as pleaded in "AFFIRMATIVE DEFENSES" Paragraphs 1-8 of Applicant's Answer to Opposer's Notice of Opposition are based.

RESPONSE TO INTERROGATORY NO. 21

Applicant objects to this interrogatory on grounds that investigation and analysis continue, and thus Applicant is not fully capable of responding to this interrogatory. Applicant's "affirmative defenses" have been alleged, at least in part, to preserve Applicant's rights in the instant matter. Applicant expressly reserves the right to supplement this interrogatory as new information is discovered and appreciated.

Applicant further objects that the interrogatory is compound (containing at least 8 sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows:

Affirmative Defense No. 1. There is no likelihood of confusion between Applicant's mark and Opposer's mark, or other affirmative defenses exist, such that Opposer's opposition should be denied.

Affirmative Defense No. 2. There is no likelihood of confusion between Applicant's mark and Opposer's mark.

Affirmative Defense No. 3. Opposer has not been damaged in any respect as a result of Applicant's application for the present mark and, since there is no likelihood of confusion between Applicant's mark and Opposer's mark, Opposer will not be damaged.

Affirmative Defense No. 4. It is expected that Applicant's product will be exclusively available to a user by prescription from health care providers following medical consultation, and is intended for use with Applicant's proprietary drug carrier, for patients who suffer from a medical condition relating to osteoarthritis of the knees and other joints, either chronically or acutely, wherein the product is a transdermally administered and targeted anti-inflammatory treatment. It is not contemplated that Applicant's product will be offered to a user on an "over the counter" basis or that it will be in any way used for the treatment of foot fungus and jock itch (i.e., topically applied anti-fungal treatments).

Affirmative Defense No. 5. Affirmative Defense No. 5 is self-explanatory.

Affirmative Defense No. 6. There are numerous registered and pending trademarks in the United States currently incorporating the phrase "ACTIN," in whole or part, for goods and services that, like Applicant's mark, bear no resemblance to Opposer's goods. Upon good faith information and belief, there are numerous other prior art uses of "ACTIN," in whole or part, applied to goods and services that, like

Applicant's mark, bear no resemblance to Opposer's goods, wherein such uses predate Opposer's use Opposer's marks. Significantly, none of Opposer's marks were raised by the examining attorney in connection with the prosecution of the underlying application as a basis to support a finding of a likelihood of confusion. The remainder of this Affirmative Defense is self-explanatory.

Affirmative Defense No. 7. Applicant is a German company, as set forth above, and has applied for and obtained registration for the mark DIRACTIN for use in Germany, and indeed has been using that mark in Germany. Opposer never challenged or even questioned Applicant's use of the mark DIRACTIN in Germany (or in any other jurisdiction.

Affirmative Defense No. 8. As indicated immediately above, Opposer has not made any challenge or issue, at any time or in any way, with regard to Applicant's registration or use of the word DIRACTIN in Germany. Moreover, upon good faith information and belief, Opposer appears to have initiated this opposition based on an improper purpose in that its chief motivation, as made plain by the extent and scope of this discovery, is that Opposer seeks to obtain improper market insight and/or advantage by exploiting these proceedings in order to obtain information, commercial and otherwise, relating to Applicant's universal business objectives within the United States and elsewhere.

INTERROGATORY NO. 22

Identify each and every person known by Applicant to have supplied information for, or participated in responding to, these interrogatories, Opposer's First Request for Production of Documents and Things, and Opposer's First Requests for Admissions.

RESPONSE TO INTERROGATORY NO. 22

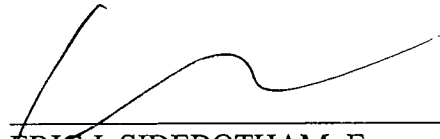
Applicant objects to this interrogatory to the extent that it seeks information that is protected by the attorney-client privilege and/or the attorney work-product doctrine.

Applicant further objects that the interrogatory is compound (containing at least three sub-parts). *See* TBMP § 405.03(d).

Subject to these objections, and without waiving them, Applicant responds as follows: Prof. Gregor Cevc.

DATED: August 18, 2008

IDEA AG

A handwritten signature in black ink, appearing to read 'Eric J. Sidebotham', is written over a horizontal line.

ERIC J. SIDEBOTHAM, Esq.

DANIEL M. SHAFER, Esq.

ERIC J. SIDEBOTHAM, APC

TechMart Center

5201 Great America Parkway, Suite 320

Santa Clara, CA 95054

Telephone: (408) 856-6000

Facsimile: (408) 608-6001

VERIFICATION

I, Prof. Gregor Cevc, declare:

I am the Chief Executive Officer of IDEA, AG, a party to the above-entitled action. I have read Applicant's Responses to Opposer's Special Interrogatories, Set One, and know the contents thereof. The same is true of my own knowledge, except as to those matters, which are therein stated upon my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of July, 2008, in Munich, Germany

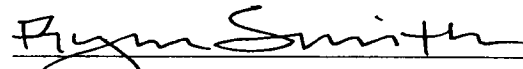
By: _____

PROF. GREGOR CEVC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES was served on counsel for Opposer, this 18 day of August, 2008, by sending same via U.S. Mail, prepaid, to:

David J. Kera, Esq.
Beth A. Chapman, Esq.
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314



RYAN SMITH

EXHIBIT 5

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

Applicant, IDEA AG ("Applicant"), by and through its attorneys, hereby serves the following responses to the first set of requests for production of documents of SCHERING CORPORATION ("Opposer"), in compliance with Fed. R. Civ. P. 34, and Rules 2.116 and 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office.

PRELIMINARY AND GENERAL OBJECTIONS

1. The following responses are based on discovery available as of the date of this response. Discovery is continuing, and these responses are subject to change accordingly. It is anticipated that further discovery, investigation, and analysis may lead to the discovery of additional information, supply additional facts, and add meaning to

known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions to, changes to, or variations from the information set forth herein.

2. The following responses are given without prejudice to Applicant's right to produce or rely on subsequently discovered information, facts, or documents.

Applicant accordingly reserves the right to change the responses as additional facts are ascertained, analysis is made, legal research is completed, and contentions are made. This response is made in a good faith effort to comply with the Trademark Rules of Practice, the Trademark Trial and Appeals Board Manual of Procedure, and with applicable provisions of the Federal Rules of Civil Procedure, and to supply such responsive information as exists and is presently within Applicant's possession, custody, or control, but should in no way be deemed to be to the prejudice of Applicant in relation to further discovery, research, and analysis.

3. Applicant objects to the extent that any of the requests seek to require Applicant to disclose materials that are protected under the attorney-client privilege and/or attorney work-product doctrine, and expressly declines to waive any such privilege.

4. Applicant objects to the extent that any of the requests seek to require Applicant to disclose materials that are confidential and/or proprietary. Applicant may withhold producing said materials until such time as the parties enter into a protective order that provides suitable protection therefor.

5. Applicant objects that the nature and scope of these requests appears to extend significantly beyond the subject matter of the opposition proceedings related to the registration of Applicant's mark. Given this objection, and subject to it, Applicant has made every good faith effort to respond to each of Opposer's requests under a scope which includes those issues that have some reasonable bearing to this opposition proceeding.

6. Applicant objects that the following interrogatories assume facts which are either false or have not been legally established. None of Applicant's answers provided herein is intended to or shall be deemed to admit the truth of any alleged and unsubstantiated facts contained within these interrogatories.

7. Applicant objects that Opposer has lulled Applicant into inactivity by launching this opposition proceeding and then taking absolutely no action until the very last possible day of the set discovery period, at which time Opposer propounded this extensive set of requests. Opposer appears to have purposefully delayed action until the very last minute, to propound its discovery for obtaining an improper tactical advantage in that Opposer would obtain the maximum of beneficial information via this discovery process, while Applicant would not. Such calculated manipulation is persuasive evidence that Opposer appears to be pursuing an alternative purpose unrelated to the registration of the present mark, which should not be countenanced.

RESPONSE TO REQUESTS

REQUEST NO. 1

Specimens of advertisements (appearing in printed, electronic, or broadcast media) for Applicant's goods sold by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 1

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the United States Patent and Trademark Office ("USPTO") in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark, nor reasonably calculated to lead to the discovery of

admissible evidence, or materials that are not in the possession, custody and control of Applicant.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and/or control exist, since no sales of any product under Applicant's mark have been made in the United States.

REQUEST NO. 2

Specimens of labels for Applicant's goods sold by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 2

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and/or control exist, since no sales of any product under Applicant's mark have been made in the United States.

REQUEST NO. 3

Specimens of packages for Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

///

RESPONSE TO REQUEST NO. 3

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant shall produce all non-privileged responsive “specimens of packages” in Applicant’s possession, custody and control as soon as the parties enter into a suitable stipulated protective order.

REQUEST NO. 4

Specimens of printed items (such as, but not limited to brochures, technical bulletins and manuals, promotional literature) to promote the sale and use of Applicant’s goods used by Applicant or any predecessor or related company bearing Applicant’s Mark as used in the United States.

RESPONSE TO REQUEST NO. 4

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the

request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request is harassing in that it is duplicative of other requests propounded by Opposer, including but not limited to Request for Production of Documents (Set One) No. 1.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and/or control exist, since no sales or offers for sale of any product under Applicant's mark have been made in the United States.

REQUEST NO. 5

Specimens of electronic publications (such as, but not limited to brochures, technical bulletins and manuals, promotional literature) to promote the sale and use of Applicant's goods used by Applicant or any predecessor or related company bearing Applicant's Mark as used in the United States.

RESPONSE TO REQUEST NO. 5

Applicant objects to this request on the grounds that Applicant has not yet submitted any specimens to the USPTO in the underlying application. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request is harassing in that it is duplicative of other requests propounded by Opposer, including but not limited to Request for Production of Documents No. 1.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and/or control exist, since no sales or offers for sale of any product under Applicant's mark have been made in the United States.

REQUEST NO. 6

All documents which evidence, refer, or relate to the creation, selection, and adoption of Applicant's Mark by Applicant or any related company or predecessor, individuals or companies.

RESPONSE TO REQUEST NO. 6

Applicant objects to this request on grounds that it is vague, uncertain, overbroad and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 7

All documents which evidence, refer, or relate to consent, authorization or permission given to Applicant by any person to use Applicant's Mark in the United States.

///

RESPONSE TO REQUEST NO. 7

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 8

All documents evidencing, relating, or referring to Applicant's first use of its mark DIRACTIN in commerce in or with the United States in connection with each of the goods set forth in Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 8

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the

extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 9

All documents evidencing, relating, or referring to Applicant's continuous use of its mark DIRACTIN in commerce in or with the United States in connection with each of the goods set forth in Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 9

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 10

All documents evidencing, relating or referring to Applicant's products set forth in Application Serial No. 77/070,074 sold under its mark DIRACTIN in commerce in or with the United States.

RESPONSE TO REQUEST NO. 10

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the

category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 11

Documents evidencing the dollar volume of Applicant's annual sales in the United States for each product sold under Applicant's Mark for each year since Applicant's first use of Applicant's Mark in commerce.

RESPONSE TO REQUEST NO. 11

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the

extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 12

Documents evidencing the number of units for each of Applicant's products sold in the United States under Applicant's Mark for each year since Applicant's first use of Applicant's Mark in commerce.

RESPONSE TO REQUEST NO. 12

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

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REQUEST NO. 13

All documents evidencing the dollar volume expended by Applicant for advertising and promotional materials under Applicant's Mark in the United States for each year since Applicant's first use of Applicant's Mark in commerce.

RESPONSE TO REQUEST NO. 13

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 14

All documents sufficient to identify each media (including print, electronic, broadcast, Internet) in which Applicant has advertised or promoted, is advertising or promoting, or plans to advertise or promote the sale and use of goods under Applicant's Mark in the United States.

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RESPONSE TO REQUEST NO. 14

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, as Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the requested documents may not be in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 15

All documents including reports and opinions referring or relating to trademark searches or any other type of search conducted by Applicant in connection with its adoption, use or application for registration of Applicant's Mark.

RESPONSE TO REQUEST NO. 15

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor

reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 16

All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, or competitors, either written or oral, relating to Opposer or Opposer's TINACTIN Marks.

RESPONSE TO REQUEST NO. 16

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 17

All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, competitors or other third parties, either written or oral, known to Applicant relating to the quality of goods sold under Applicant's Mark.

RESPONSE TO REQUEST NO. 17

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 18

All documents which evidence, refer, or relate to statements, inquiries, comments, or other communications by or from Applicant's customers, competitors or other third parties, either written or oral, known to Applicant relating to Applicant's Mark.

RESPONSE TO REQUEST NO. 18

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further

objects that documents responsive to this request may be in the exclusive possession, custody and control of third parties and/or are already in the possession custody and control of Opposer.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 19

All documents known to Applicant which evidence, refer or relate to instances of actual consumer confusion involving Applicant's Mark and Opposer's Marks.

RESPONSE TO REQUEST NO. 19

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 20

All documents relating or referring to the channels of distribution through which Applicant's goods are sold in the United States under Applicant's Mark.

RESPONSE TO REQUEST NO. 20

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 21

All documents relating or referring to the categories of consumers with whom Applicant does business or to whom Applicant offers its goods under Applicant's Mark.

RESPONSE TO REQUEST NO. 21

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects to the extent that the request appears to seek production of materials protected by the

attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 22

All documents which evidence, refer, or relate to any U.S. importers or U.S. distributors of Applicant's goods sold under Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 22

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 23

All studies, surveys, market research tests, focus group inquiries, or memoranda including, but not limited to, demographic or consumer profile studies, relating to the purchasers or potential purchasers of Applicant's products sold, offered for sale, advertised or promoted under Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 23

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with

reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant shall produce all non-privileged responsive documents in Applicant's possession, custody and control as soon as the parties enter into a suitable stipulated protective order.

REQUEST NO. 24

All licenses granted by Applicant to any person to use Applicant's Mark in connection with any product, including all amendments or modifications to any such licenses, and all documents relating or referring to any such licenses or amendments or modifications thereof.

RESPONSE TO REQUEST NO. 24

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 25

All documents referring or relating to Applicant's purchase of North American rights in compounds which directly or indirectly involve Applicant's DIRACTIN products from McNeil Specialty Pharmaceuticals, subsidiary of Johnson & Johnson.

RESPONSE TO REQUEST NO. 25

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 26

All documents referring or relating to Applicant's purchase of North American rights in compounds which directly or indirectly involve Applicant's DIRACTIN products from McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson.

RESPONSE TO REQUEST NO. 26

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 27

All documents evidencing, relating, or referring to Applicant's *bona fide* intention to use the mark DIRACTIN in commerce.

RESPONSE TO REQUEST NO. 27

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 28

All documents relating or referring to market plans, marketing projections, or other marketing or market share documents concerning Applicant's goods sold in association with Applicant's Mark in the United States.

RESPONSE TO REQUEST NO. 28

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

Subject to these objections, and without waiving them, Applicant responds as follows: Applicant shall produce all non-privileged responsive "specimens of packages" in Applicant's possession, custody and control.

REQUEST NO. 29

All documents referring or relating to Applicant's business relationship with TDT, a subsidiary of Celtic Pharmaceutical Holdings LP.

RESPONSE TO REQUEST NO. 29

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 30

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by McNeil Specialty Pharmaceuticals.

RESPONSE TO REQUEST NO. 30

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 31

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by McNeil Consumer and Specialty Pharmaceuticals.

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RESPONSE TO REQUEST NO. 31

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 32

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by Johnson & Johnson.

RESPONSE TO REQUEST NO. 32

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 33

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by TDT.

RESPONSE TO REQUEST NO. 33

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome,

oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 34

All documents which evidence, refer, or relate to any direct or indirect rights in the mark DIRACTIN owned or previously owned by Celtic Pharmaceutical Holdings LP.

RESPONSE TO REQUEST NO. 34

Applicant objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request is unduly burdensome, oppressive, and harassing. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information.

REQUEST NO. 35

All documents identified in Applicant's Responses to Opposer's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 35

Applicant hereby incorporates by this reference all objections made in response to Opposer's Special Interrogatories, Set One.

Subject to these objections, and without waiving them, Applicant responds as follows: No non-privileged responsive documents in Applicant's possession, custody and control exist.

REQUEST NO. 36

For every request for Admission which is not admitted without qualification, all documents which support or relate to the denial or qualification of the admission.

RESPONSE TO REQUEST NO. 36

Applicant incorporates here by reference all objections stated in response to any Request in Opposer's Request for Admissions. Applicant further objects to this request on grounds that it is unduly burdensome, oppressive, and harassing. Applicant further objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark, nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that documents responsive to this request may be in the exclusive possession, custody and control of third parties and/or are already in the possession custody and control of Opposer. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 37

All documents, not otherwise requested herein, referred to by Applicant in responding to Opposer's First Set of Interrogatories and Opposer's First Requests for Admissions.

RESPONSE TO REQUEST NO. 37

Applicant incorporates here by reference all objections stated in response to any Request in Opposer's Request for Admissions. Applicant further objects to this request on grounds that it is unduly burdensome, oppressive, and harassing. Applicant further

objects to this request on grounds that it is vague, uncertain, overbroad, and lacks specificity. Applicant further objects that the request fails to identify with reasonable particularity the category of materials requested. Applicant further objects that the request seeks materials neither relevant to the registration of the present mark, nor reasonably calculated to lead to the discovery of admissible evidence, or materials that are not in the possession, custody and control of Applicant. Applicant further objects that documents responsive to this request may be in the exclusive possession, custody and control of third parties and/or are already in the possession custody and control of Opposer. Applicant further objects that the request appears to seek confidential, proprietary and/or secret information. Applicant further objects to the extent that the request appears to seek production of materials protected by the attorney-client privilege and/or the attorney work-product doctrine.

DATED: August 18, 2008

IDEA AG

A handwritten signature in black ink, appearing to read "Eric J. Sidebotham", is written over a horizontal line.

ERIC J. SIDEBOTHAM, Esq.

DANIEL M. SHAFER, Esq.

ERIC J. SIDEBOTHAM, APC

TechMart Center

5201 Great America Parkway, Suite 320

Santa Clara, CA 95054

Telephone: (408) 856-6000

Facsimile: (408) 608-6001

VERIFICATION

I, Prof. Gregor Cevc, declare:

I am the Chief Executive Officer of IDEA AG, a party to the above-entitled action.

I have read Applicant's Responses to Opposer's Request for Production of Documents, Set One, and know the contents thereof. The same is true of my own knowledge, except as to those matters, which are therein stated upon my information and belief, and as to those matters I believe it to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18th day of August, 2008, in Munich, Germany

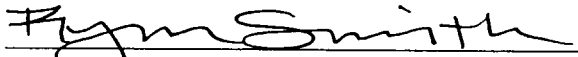
By: 

PROF. GREGOR CEVC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Applicant's Response To
Opposer's First Set Of Request For Production Of Documents was served on counsel for
Opposer, this 18 day of August, 2008, by sending same via U.S. Mail, prepaid, to:

David J. Kera, Esq.
Beth A. Chapman, Esq.
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314



RYAN SMITH

EXHIBIT 6

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR
ADMISSIONS**

Applicant, IDEA AG ("Applicant"), by and through its attorneys, hereby serves the following responses to the first set of requests for admissions of SCHERING CORPORATION ("Opposer"), in compliance with Fed. R. Civ. P. 33, and Rules 2.116 and 2.120 of the Trademark Rules of Practice of the United States Patent and Trademark Office.

PRELIMINARY AND GENERAL OBJECTIONS

1. The following responses are based on discovery available as of the date of this response. Discovery is continuing, and these responses are subject to change accordingly. It is anticipated that further discovery, investigation, and analysis may lead to the discovery of additional information, supply additional facts, and add meaning to

known facts, as well as establish entirely new factual conclusions and legal contentions, all of which may lead to additions to, changes to, or variations from the information set forth herein.

2. The following responses are given without prejudice to Applicant's right to produce or rely on subsequently discovered information, facts, or documents. Applicant accordingly reserves the right to change the responses as additional facts are ascertained, analysis is made, legal research is completed, and contentions are made. This response is made in a good faith effort to comply with the Trademark Rules of Practice, the Trademark Trial and Appeals Board Manual of Procedure, and with applicable provisions of the Federal Rules of Civil Procedure, and to supply such responsive information as exists and is presently within Applicant's possession, custody, or control, but should in no way be deemed to be to the prejudice of Applicant in relation to further discovery, research, and analysis.

3. Applicant objects to the extent that any of the requests seek to require Applicant to disclose information or materials that are protected under the attorney-client privilege and/or attorney work-product doctrine, and expressly declines to waive any such privileges.

4. Applicant objects to the extent that any of the requests seek to require Applicant to disclose information or materials that are, in whole or part proprietary and/or protectable trade secret. Applicant shall withhold providing said information until such time as the parties enter into an adequate protective order.

5. Applicant objects that the following interrogatories assume facts which are either false or have not been legally established. None of Applicant's answers provided herein are intended to or shall be deemed to admit the truth of any alleged and unsubstantiated facts contained within these requests.

6. Applicant objects that the nature and scope of these interrogatories significantly extend beyond the subject matter of the opposition proceedings, which is to

determine the registration of Applicant's mark. Given this objection, and subject to it, Applicant has made every good faith effort to cooperate and respond to each of Opposer's interrogatories under a scope which includes those issues that have a reasonable bearing to subject-matter of this opposition proceeding.

7. Applicant objects that Opposer has lulled Applicant into inactivity by launching this opposition proceeding and then taking absolutely no action until the very last possible day of the set discovery period, at which time Opposer propounded this extensive set of admissions and numerous other discovery requests. Opposer appears to have purposefully delayed action until the very last minute, to propound its discovery for obtaining an improper tactical advantage in that Opposer would obtain the maximum of beneficial information via this discovery process, while Applicant would not. Such calculated manipulation is persuasive evidence that Opposer appears to be pursuing an alternative purpose unrelated to the registration of the present mark, which should not be countenanced.

RESPONSE TO REQUESTS

REQUEST NO. 1

Admit that Applicant has not used Applicant's DIRACTIN Mark in commerce in or with the United States.

RESPONSE TO REQUEST NO. 1

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

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REQUEST NO. 2

Admit that Applicant has used Applicant's DIRACTIN Mark in commerce in or with the United States.

RESPONSE TO REQUEST NO. 2

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

REQUEST NO. 3

Admit that Applicant can claim no rights prior to December 22, 2006 in the DIRACTIN Mark in the United States.

RESPONSE TO REQUEST NO. 3

Responding Party Admits only that Applicant filed the instant intent-to-use trademark application in the United States Patent and Trademark Office on December 22, 2006.

REQUEST NO. 4

Admit that Applicant does not have a *bona fide* intention to use the DIRACTIN Mark in connection with pharmaceutical preparations for medical and therapeutic use namely, the prevention and treatment of pain.

RESPONSE TO REQUEST NO. 4

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to

file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

REQUEST NO. 5

Admit that Applicant does not have a *bona fide* intention to use the DIRACTIN Mark in connection with pharmaceutical preparations for dermal administration, to treat pain and inflammation.

RESPONSE TO REQUEST NO. 5

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use. Applicant further objects that the request is vague, ambiguous and uncertain.

REQUEST NO. 6

Admit that Applicant did not conduct a search for possibly conflicting marks prior to Applicant's selection of Applicant's DIRACTIN Mark.

RESPONSE TO REQUEST NO. 6

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

REQUEST NO. 7

Admit that no one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's selection of Applicant's DIRACTIN Mark.

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RESPONSE TO REQUEST NO. 7

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

REQUEST NO. 8

Admit that Applicant did not conduct a search for possibly conflicting marks prior to Applicant's filing of Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 8

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

REQUEST NO. 9

Admit that no one on Applicant's behalf conducted a search for possibly conflicting marks prior to Applicant's filing of Application Serial No. 77/070,074.

RESPONSE TO REQUEST NO. 9

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privileged and/or the attorney work-product doctrine.

REQUEST NO. 10

Admit that Applicant knew about the use of Opposer's Marks before selecting Applicant's DIRACTIN Mark for use by Applicant.

RESPONSE TO REQUEST NO. 10

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain.

REQUEST NO. 11

Admit that Applicant knew about the use of Opposer's Marks before filing Applicant's application to register Applicant's DIRACTIN Mark.

RESPONSE TO REQUEST NO. 11

Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain.

REQUEST NO. 12

Admit that Opposer's TINACTIN Mark is famous in the United States for pharmaceutical preparations and particularly antifungal preparations.

RESPONSE TO REQUEST NO. 12

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is vague, ambiguous and uncertain.

Subject to and without waiving said objections, because Applicant does not currently have sufficient facts enabling it to admit or deny this request, Applicant therefore denies it.

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REQUEST NO. 13

Admit that Opposer's TINACTIN Brand pharmaceutical preparations are used to treat fungal infections.

RESPONSE TO REQUEST NO. 13

Applicant objects to this request on grounds that it seeks information that is not in the possession, custody and control of Applicant. Applicant further objects that the request is vague, ambiguous and uncertain.

Subject to and without waiving said objections, because Applicant does not currently have sufficient facts enabling it to admit or deny this request, Applicant therefore denies it.

REQUEST NO. 14

Admit that Opposer's TINACTIN Brand pharmaceutical preparations are used to treat burning/itching of the skin.

RESPONSE TO REQUEST NO. 14

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request seeks information that is not in the possession, custody and control of Applicant. Applicant further objects that the request is vague, ambiguous and uncertain.

Subject to and without waiving said objections, because Applicant does not currently have sufficient facts enabling it to admit or deny this request, Applicant therefore denies it.

REQUEST NO. 15

Admit that Opposer's TINACTIN Brand pharmaceutical preparations are used to treat chaffing/cracking of the skin.

RESPONSE TO REQUEST NO. 15

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request seeks information that is not in the possession, custody

and control of Applicant. Applicant further objects that the request is vague, ambiguous and uncertain.

Subject to and without waiving said objections, because Applicant does not currently have sufficient facts enabling it to admit or deny this request, Applicant therefore denies it.

REQUEST NO. 16

Admit that on December 22, 2006, Stacey J. Farmer, Esq. electronically signed the Declaration supporting Applicant's application including the facts relating to Applicant's asserted ownership of the mark, and submitted same to the USPTO.

RESPONSE TO REQUEST NO. 16

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is unduly burdensome, oppressive and harassing. Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 17

Admit that on December 22, 2006, Stacey J. Farmer, Esq. electronically signed the Declaration supporting Applicant's application including the facts relating to any other entity's right to use the mark in commerce, and submitted same to the USPTO.

RESPONSE TO REQUEST NO. 17

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is unduly burdensome, oppressive and harassing. Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably

calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 18

Admit that on May 30, 2007 Stacey J. Farmer, Esq. submitted to the USPTO a statement that the term “DIRACTIN” has no known significance in the Applicant’s trade or industry, any geographical significance, or any meaning in any foreign language.

RESPONSE TO REQUEST NO. 18

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request is unduly burdensome, oppressive and harassing. Applicant objects to this request on grounds that it is overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that the request is vague, ambiguous and uncertain. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

REQUEST NO. 19

Admit the genuineness pursuant to Fed. R. Civ. P. 36(a)(1)(B) of all documents produced by Applicant in response to Opposer’s First Set of Interrogatories and First Request for Production of Documents and Things.

RESPONSE TO REQUEST NO. 19

Applicant hereby incorporates by this reference all objections asserted by Applicant in response to Opposer’s First Set of Interrogatories and in response to Opposer’s First Request for Production of Documents and Things. Applicant further objects to this request on grounds that it is compound. Applicant further objects that the request is overbroad, unduly burdensome, oppressive, and harassing. Applicant further

objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving said objections, Applicant responds as follows:
Admit.

REQUEST NO. 20

Admit that attached as Exhibit 1 are three pages from Applicant's website <www.idea-ag.de> and that on the third page is the statement "The Company's, clinically late stage, leading products are in the area of pain and dermatology."

RESPONSE TO REQUEST NO. 20

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 21

Admit the truth of the statements set forth in both Opposer's Request for Admission No. 20 and Exhibit 1.

RESPONSE TO REQUEST NO. 21

Applicant hereby incorporates all of the objections made in response to Request No. 1, above. Applicant also objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 22

Admit that attached as Exhibit 2 is the corporate fact sheet from Applicant's website <www.idea-ag.de>, and that on the first page is the statement "The Company's leading products are in the area of dermatology and pain."

///

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RESPONSE TO REQUEST NO. 22

Applicant objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST NO. 23

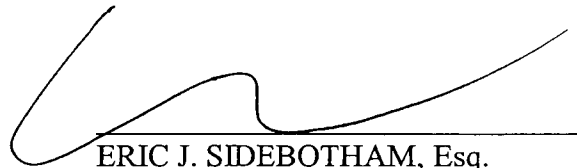
Admit the truth of the statements set forth in both Opposer's Request for Admission No. 22 and Exhibit 2.

RESPONSE TO REQUEST NO. 23

Applicant hereby incorporates all of the objections made in response to Request No. 1, above. Applicant also objects to this request on grounds that it is compound. Applicant further objects that the request seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence.

DATED: August 18, 2008

IDEA AG

A handwritten signature in black ink, appearing to read 'Eric J. Sidebotham', is written over a horizontal line.

ERIC J. SIDEBOTHAM, Esq.

DANIEL M. SHAFER, Esq.

ERIC J. SIDEBOTHAM, APC

TechMart Center

5201 Great America Parkway, Suite
320

Santa Clara, CA 95054

Telephone: (408) 856-6000

Facsimile: (408) 608-6001

VERIFICATION

I, Prof. Gregor Cevc, declare:

I am the Chief Executive Officer of IDEA AG, a party to the above-entitled action.

I have read Applicant's Responses to Opposer's Request for Admissions, Set One, and know the contents thereof. The same is true of my own knowledge, except as to those matters, which are therein stated upon my information and belief, and as to those matters I believe it to be true.

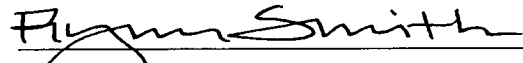
I declare under penalty of perjury that the foregoing is true and correct. Executed on this 18. day of August, 2008, in Munich, Germany

By: 
PROF. GREGOR CEVC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Applicant's Response To
Opposer's First Set Of Request For Admissions was served on counsel for Opposer, this
18 day of August, 2008, by sending same via U.S. Mail, prepaid, to:

David J. Kera, Esq.
Beth A. Chapman, Esq.
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314



RYAN SMITH

EXHIBIT 7

David J. Kera

From: David J. Kera
Sent: Wednesday, June 11, 2008 12:31 PM
To: 'eric.sidebotham@ejs-law.com'
Subject: Schering Corporation v. IDEA AG

Dear Mr. Sidebotham:

Schering Corporation hereby consents to an extension of time of sixty days from June 17 for IDEA to respond to Opposer's discovery. The new date is therefore August 16, but since August 16 is a Saturday, the effective new date is August 18, 2008.

If you file a revised motion, you should set out expressly the new dates for the testimony periods.

If you do not want to use the TTAB's standard protective order, please propose a protective order.

Sincerely yours,



David J. Kera

Attorney at Law
Oblon, Spivak, McClelland, Maier & Neustadt

1940 Duke Street
Alexandria, Virginia 22314
703.413.3000 W
703.413.2220 F
703.412.6456 D
dkera@oblon.com

6/11/2008

EXHIBIT 8

Beth A. Chapman

From: Eric J. Sidebotham [eric.sidebotham@ejs-law.com]
Sent: Friday, August 08, 2008 6:05 PM
To: David J. Kera; Beth A. Chapman
Cc: Dan Shafer; Ryan Smith
Subject: Schering v. IDEA
Importance: High
Attachments: Protective Order.doc

Dear Counsel,

Attached hereto is a draft protective order we respectfully request that you consider entering into related to the above-referenced proceeding. As I mentioned previously, I do not believe that the standard TTAB protective order provides adequate protection in this case (given the flavor of Schering's requests). Thus, unless we enter into a suitable protective order, IDEA is inclined at this point to decline to respond to requests or provide documents that constitute or include sensitive proprietary and/or confidential information. Furthermore, IDEA will be interposing probing requests of Schering either in discovery or during the testimony periods, so I would expect that a robust protective order would also be in Schering's interest as well.

I look forward to your prompt response. And although I do not expect this matter to have any impact on IDEA's ability to timely respond to Schering's outstanding discovery requests, we will need to resolve this issue prior to production of any documents that constitute or include sensitive proprietary and/or confidential information.

Thank you,

Eric

Eric J. Sidebotham

Attorney-at-Law
Eric J. Sidebotham, APC
TechMart Center
5201 Great America Parkway, Suite 320
Santa Clara, CA 95054
Main: (408) 856-6000
Direct: (408) 465-4061
Facsimile: (408) 608-6001
eric.sidebotham@ejs-law.com
www.ejs-law.com



This e-mail is from a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

9/29/2008

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

**PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION
DISCLOSED DURING BOARD PROCEEDING**

Applicant IDEA, AG and opposer Schering Corp., parties to the above captioned opposition proceeding, hereby stipulate, agree and enter into this order for protecting the confidentiality of certain information ("Protective Order"). The basis for this Protective Order is that it is anticipated that both parties and/or non-party witness may be required during this opposition proceeding to disclose information, including oral testimony and documentary materials (regardless of how generated, stored or maintained), that may be considered by a party or witness to be confidential, trade secret, proprietary and/or commercially sensitive (collectively referred to herein as "Confidential Information"). To preserve and protect the Confidential Information, the parties agree to be bound by the terms of this Protective Order.

Agreement of the parties to this Protective Order is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of this Protective Order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of this Protective Order. If the parties have signed this Protective Order, they have also intended to create enforceable contractual obligations. The terms are binding from the date the parties or their attorneys sign this Protective Order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge, whichever occurs first, and shall continue in effect as set forth in paragraph 14.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. This Protective Order is not intended to be used to undermine that public inspection. Instead, this Protective Order is intended by the parties to protect Confidential Information from public disclosure. Therefore, when appropriate, a party or witness, on its own or through its attorney, may seek to protect Confidential Information by employing one of the following designations:

a. **“Confidential”** is to be used for information that may not be disclosed to the public, and is to be shielded by the Board from public access. Information designated as “confidential,” however, may be disclosed without limitation, to the parties, in-house counsel, outside counsel, consultants and experts retained by the parties.

b. **“Highly Confidential”** is to be used for information that may not to be disclosed to the public, and is to be shielded by the Board from public access. In addition, information designated as “highly confidential” may be disclosed without limitation, to the in-house counsel, outside counsel, consultants and experts retained by the parties but not the opposing party.

c. **“Trade Secret/Commercially Sensitive”** is to be used for information that may not to be disclosed to the public, the opposing parties and their in-house counsel, and is to be shielded by the Board from public access. Information designated as “Trade Secret” may be disclosed to outside counsel and retained experts and consultants.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this Protective Order; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the express written approval of the designating party.

3) Access to and Use of Confidential Information.

A party may only use Confidential Information that is disclosed or produced by another party or by a non-party in connection with this proceeding for prosecuting, defending, or attempting to settle this proceeding. Access to Confidential Information (including but not limited to information extracted therefrom, as well as copies, excerpts, summaries, compilations, plus testimony, conversations or presentations by parties or attorneys in court or other settings that might reveal Confidential Information) shall be strictly limited and restricted, as follows:

a. **Parties**, defined as individuals, officers of corporations, partners of partnerships, and management employees of any type of business entity, shall have access to Confidential Information designated as **confidential**, but shall not have access to Confidential Information designated as **highly confidential** or **trade secret/commercially sensitive**.

b. **In-house counsel**, defined to be duly licensed lawyers regularly employed by a Party, shall have access to Confidential Information designated as **confidential** and **highly confidential**. but shall not have access to Confidential Information designated as **trade secret/commercially sensitive**.

c. **Outside counsel**, defined to be counsel of record in this action who are not employees of a party (including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other similar employees or independent contractors operating under counsel's express instruction and control, however such persons may not be employees of a party) shall have access to Confidential Information designated as **confidential**, **highly confidential** and/or **trade secret/commercially sensitive**.

d. **Retained experts or consultants**, defined to be persons retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys, shall have access to Confidential Information designated as **confidential**, **highly confidential** and/or **trade secret/commercially sensitive**, subject to the limitations set forth in paragraph 4, below.

e. **Non-party witnesses**, defined to be any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness, shall not have access to Confidential Information under any designation, except Confidential Information of which they are the author, originator, creator, or otherwise in lawful possession of such Confidential Information.

f. **Judges, attorneys, and other employees of the Board** are bound to honor the parties' designations of Confidential Information, but are not required to sign forms acknowledging the terms and existence of this Protective Order.

g. Court reporters, stenographers, video technicians or others who may be regularly employed by the parties or their attorneys to perform services incidental to this proceeding shall be entitled to have access to Confidential Information under any designation, provided such access is limited to situations where that person is performing duties in the course and scope of their services to be provided in this proceeding, and such persons are bound to maintain the confidentiality as set forth in this Agreement. The parties or their attorneys shall require such individuals to comply with paragraph 4 and sign Exhibit A.

4) Disclosure to Retained Experts or Consultants.

a. Prior to disclosure of Confidential Information by any party or its attorney to any retained expert or consultant under the terms of this Protective Order, the retained expert or consultant shall be informed of the existence of this Protective Order and provided with a copy to read. The retained expert or consultant will then be required to certify in writing that this Protective Order has been read and understood and that the terms shall be binding on the retained expert or consultant. No retained expert or consultant shall receive any Confidential Information until the party or attorney proposing to disclose the Confidential Information has received the signed certification from the retained expert or consultant. A form for such certification is attached to this Protective Order as Exhibit A. The party or attorney receiving the completed form shall retain the original.

b. In addition, any party or attorney proposing to share Confidential Information with a retained expert or consultant must also notify the party which designated the Confidential Information. Notification must be personally served or forwarded by facsimile and certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the retained expert or consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the retained expert or consultant. If objection is made, then the parties must meet and confer on the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney challenging disclosure to bring the matter before the Board with an explanation of the need to prevent the disclosure and a report on the efforts the parties have made to settle their dispute. The party seeking the disclosure will be expected to respond with its arguments as to why the disclosure should be permitted.

5) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by

informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Confidential Information not in accordance with the provisions of paragraph 11.

6) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies containing Confidential Information shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered Confidential Information during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies considered Confidential Information with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Confidential Information not in accordance with the provisions of paragraph 11.

7) Depositions.

Confidential Information discussed or produced during a discovery deposition, or offered into evidence during a testimony deposition, shall be orally noted on the record as such by the producing or offering party at the outset of or immediately after any discussion or production of the Confidential Information. In addition, any documents containing Confidential Information must be prominently stamped or marked with the appropriate designation from paragraph 1 within a reasonable time after discussion or production.

The transcript of any deposition and all exhibits or attachments shall be considered Confidential Information for thirty (30) days following notice of receipt of the transcript by the party that took the deposition. During that thirty (30) day period, either party may designate the portions of the transcript, and any specific exhibits or attachments containing Confidential Information, by notifying the other party in writing of the appropriate designation from paragraph 1. Appropriate stampings or markings should also be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected, subject to paragraph 12.

8) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the Confidential Information, so as to maintain the protected status of the Confidential Information.

9) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss Confidential Information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 11 of this order.

10) Handling of Confidential Information.

Disclosure of Confidential Information under the terms of this Protective Order is intended only to facilitate the prosecution or defense of this case. The recipient of any Confidential Information disclosed in accordance with the terms of this Protective Order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

11) Redaction; Filing Material With the Board.

When a party or attorney must file Confidential Information with the Board, or a brief that discusses such information, the Confidential Information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

The rule of reasonableness is defined as follows: Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily Confidential Information. If only a sentence or short paragraph of a page of material is confidential, covering that portion when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing Confidential Information be affected when only some limited number of pages contain such material. In contrast, if almost every page of the document contains some Confidential Information, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Confidential Information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that is/are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

12) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as Confidential Information shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as Confidential Information shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

13) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to meet and confer in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

14) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over this Protective Order shall end thirty (30) days after this proceeding is terminated. A proceeding is terminated only after: (i) a dismissal is filed with the Board; (ii) a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal with the Board has passed without the filing of any appeal by any party; or (iii) all party and persons have fully complied with the remainder of this paragraph.

Within ten (10) days after the date of termination of this proceeding, the parties and all persons shall either return all Confidential Information (including but not limited to information extracted therefrom, as well as copies, excerpts, summaries, compilations, plus testimony, conversations or presentations by parties or attorneys in court or other settings that might reveal Confidential Information) of a party to that party, or shall destroy all such documents and any other materials, and provide the party with a declaration under penalty of perjury certifying that such destruction has in fact been carried out by that party or person, or at that party's or person's express instruction. The parties or persons shall not preserve or maintain any copies, archival or otherwise, of any Confidential Information, or materials that in any way refer to or in any way belong to the Confidential Information of the a party, once this period has expired. The parties and persons shall otherwise strictly maintain the confidentiality of the Confidential Information obtained or learned during this opposition proceeding, and expressly agree to not use it in any respect or disclose it to any third party.

15) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable objections or claims of privilege during discovery or at trial. The parties may subsequently agree to modifications or additions to this Protective Order, subject to Board approval or may make a motion to the Board for an order modifying this Protective Order.

IDEA AG

DATED: August _____, 2008

ERIC J. SIDEBOTHAM, Esq.
DANIEL M. SHAFER, Esq.
ERIC J. SIDEBOTHAM, APC
TechMart Center
5201 Great America Pkwy, Suite 320
Santa Clara, California 95054
Telephone: (408) 856-6000
Facsimile: (408) 608-6001

SCHERING CORP.

DATED: August _____, 2008

DAVID KERA, Esq.
BETH A. CHAPMAN, Esq.
**OBLON, SPIVAK,
MCCLELLAND, MAIER &
NEUSTADT, P.C.**
1940 Duke Street
Alexandria, Virginia 22314
Telephone: (703) 413-3000
Facsimile: (703) 413-2220

By Order of the Board.

DATED: August _____, 2008

[print or type name and title of Board attorney
or judge imposing order]

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

EXHIBIT A

ACKNOWLEDGMENT OF AGREEMENT OR ORDER PROTECTING
CONFIDENTIALITY OF INFORMATION REVEALED DURING BOARD
PROCEEDING

I, _____ [print name], declare that I have been provided with a copy of the Protective Order or agreement regarding the disclosure of, and protection of, certain types of information and documents during and after, in the above-captioned opposition proceeding before the Trademark Trial and Appeal Board ("TTAB").

I have read the Protective Order or agreement and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any materials or documents disclosed to me designated as Confidential Information in conjunction with any part I take in this proceeding. I further hereby expressly consent to the jurisdiction of the TTAB over me regarding my participation in this proceeding, and my obligations under this Protective Order or agreement.

I declare under the penalty of perjury that these statements are true and correct.

[signature]

[date]

[print title, if applicable]

EXHIBIT 9

Beth A. Chapman

From: Eric J. Sidebotham [eric.sidebotham@ejs-law.com]
Sent: Tuesday, August 12, 2008 12:55 PM
To: David J. Kera
Cc: Anger, Sophie; Beth A. Chapman
Subject: RE: Schering v. IDEA
Attachments: Protective Order Redline.doc

David, I was actually attempting to explain "what," which necessarily involved "why." The main change, as I mention below, is making the duties of confidentiality last past resolution of the matter (see Para 15). The other changes were more organic, and were meant to generally tighten up the agreement in a way to make it more predictable and workable.

The redline version is attached.

Thanks,

Eric

From: David J. Kera [mailto:DKera@oblon.com]
Sent: Tuesday, August 12, 2008 9:37 AM
To: Eric J. Sidebotham
Cc: Anger, Sophie; Beth A. Chapman
Subject: RE: Schering v. IDEA

Eric,

Your explanation of "why" does not explain "what".

Please send me a red-lined version showing your changes in the TTAB protective order.

Thank you,

**David J. Kera**

Attorney at Law
 Oblon, Spivak, McClelland, Maier & Neustadt
 1940 Duke Street
 Alexandria, Virginia 22314
 703.413.3000 W
 703.413.2220 F
 703.412.6456 D
dkera@oblon.com

From: Eric J. Sidebotham [mailto:eric.sidebotham@ejs-law.com]
Sent: Monday, August 11, 2008 7:29 PM
To: David J. Kera

Cc: Beth A. Chapman; Dan Shafer; Ryan Smith
Subject: RE: Schering v. IDEA

David, thank you for the prompt reply. The draft protective order sent to you has many variations from the standard TTAB protective order, based primarily on my experience in cases that involve proprietary and/or trade secret information. My problems with the standard TTAB

PO can be distilled down to two main categories. First, and most important, the standard TTAB PO does not provide for adequate protection of confidential information after conclusion of the matter. See, e.g., <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm> at Para 15. Second, the TTAB PO is, in my view, not drafted very well from a procedural perspective. For example, Para 1 simply says that information that is "confidential" "must be shielded by the Board from public access." There is no clear duty with respect to the parties. The standard TTAB PO also appears to be a three tier PO, without a clear delineation as to who can see what info. Et cetera.

My revision to the standard agreement is intended to address both of these issues, and produce a clear protective order for the parties to follow. Based on Schering's discovery so far (and without conceding that any of this is proper), it occurs to me that this case may get pretty deep into the confidential/proprietary information of my client; IDEA will thus need seek similar types of information about Schering's new drugs in development.

My goal here, really, is to protect both parties. I hope that answers your questions. If not, give me a call tomorrow.

Thanks,

Eric

From: David J. Kera [mailto:DKera@oblon.com]
Sent: Monday, August 11, 2008 7:27 AM
To: Eric J. Sidebotham
Cc: Beth A. Chapman
Subject: RE: Schering v. IDEA

Dear Mr. Sidebotham:

We have received your proposed protective order. Please send us a detailed analysis of how and where your proposed order differs from the standard protective order of the Trademark Trial and Appeal Board. Our consideration of your proposed order will follow our receipt of your analysis.

Sincerely,



David J. Kera

Attorney at Law
 Oblon, Spivak, McClelland, Maier & Neustadt

1940 Duke Street
 Alexandria, Virginia 22314
 703.413.3000 W
 703.413.2220 F
 703.412.6456 D
dkera@oblon.com

From: Eric J. Sidebotham
 [mailto:eric.sidebotham@ejs-law.com]
Sent: Friday, August 08, 2008 6:05 PM
To: David J. Kera; Beth A. Chapman

Cc: Dan Shafer; Ryan Smith
Subject: Schering v. IDEA
Importance: High

Dear Counsel,

Attached hereto is a draft protective order we respectfully request that you consider entering into related to the above-referenced proceeding. As I mentioned previously, I do not believe that the standard TTAB protective order provides adequate protection in this case (given the flavor of Schering's requests). Thus, unless we enter into a suitable protective order, IDEA is inclined at this point to decline to respond to requests or provide documents that constitute or include sensitive proprietary and/or confidential information. Furthermore, IDEA will be interposing probing requests of Schering either in discovery or during the testimony periods, so I would expect that a robust protective order would also be in Schering's interest as well.

I look forward to your prompt response. And although I do not expect this matter to have any impact on IDEA's ability to timely respond to Schering's outstanding discovery requests, we will need to resolve this issue prior to production of any documents that constitute or include sensitive proprietary and/or confidential information.

Thank you,

Eric

Eric J. Sidebotham

Attorney-at-Law

Eric J. Sidebotham, APC

TechMart Center

5201 Great America Parkway, Suite 320

Santa Clara, CA 95054

Main: (408) 856-6000

Direct: (408) 465-4061

Facsimile: (408) 608-6001

eric.sidebotham@ejs-law.com

www.ejs-law.com



This e-mail is from a law firm, and may contain information that is confidential or privileged. If you are not the intended recipient, do not read, copy or distribute the e-mail or any attachments. Instead, please notify the sender and delete the e-mail and any attachments. Thank you.

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED~~DISCLOSED~~ DURING BOARD PROCEEDING

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, ~~either~~ the parties have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, ~~or~~ the Board has ordered that the parties be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Applicant IDEA, AG and opposer Schering Corp., parties to the above captioned opposition proceeding, hereby stipulate, agree and enter into this order for protecting the confidentiality of certain information ("Protective Order"). The basis for this Protective Order is that it is anticipated that both parties and/or non-party witness may be required during this opposition proceeding to disclose information, including oral testimony and documentary materials (regardless of how generated, stored or maintained), that may be considered by a party or witness to be confidential, trade secret, proprietary and/or commercially sensitive (collectively referred to herein as "Confidential Information"). To preserve and protect the Confidential Information, the parties agree to be bound by the terms of this Protective Order.

Agreement of the parties to this Protective Order is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of ~~the order~~ this Protective Order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of ~~the order~~ this Protective Order. If the parties have signed ~~the order~~, ~~they may have created a contract~~ this Protective Order, they have also intended to create enforceable contractual obligations. The terms are binding from the date the parties or their attorneys sign ~~the order~~ this Protective Order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge, whichever occurs first, and shall continue in effect as set forth in paragraph 14.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. ~~The terms of this order are not~~ This Protective Order is not intended to be used to undermine that public access to files. When inspection. Instead, this Protective Order is intended by the parties to protect Confidential Information from public disclosure. Therefore, when appropriate, ~~however~~, a party or witness, on its own or through its attorney, may seek to protect ~~the confidentiality of information~~ Confidential Information by employing one of the following designations:

a. “Confidential—Material” is to be used for information that may not be disclosed to the public, and is to be shielded by the Board from public access. Information designated as “confidential,” however, may be disclosed without limitation, to the parties, in-house counsel, outside counsel, consultants and experts retained by the parties.

b. “Highly Confidential” is to be used for information that may not to be disclosed to the public, and is to be shielded by the Board from public access. In addition, information designated as “highly confidential” may be disclosed without limitation, to the in-house counsel, outside counsel, consultants and experts retained by the parties but not the opposing party.

~~Highly Confidential—Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.~~

~~Trade Secret/Commercially Sensitive—Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel~~

~~for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.~~

c. “Trade Secret/Commercially Sensitive” is to be used for information that may not to be disclosed to the public, the opposing parties and their in-house counsel, and is to be shielded by the Board from public access. Information designated as “Trade Secret” may be disclosed to outside counsel and retained experts and consultants.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document Protective Order; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the express written approval of the designating party.

3) Access to Protected and Use of Confidential Information.

~~The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.~~

~~Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.~~

A party may only use Confidential Information that is disclosed or produced by another party or by a non-party in connection with this proceeding for prosecuting, defending, or attempting to settle this proceeding. Access to Confidential Information (including but not limited to information extracted therefrom, as well as copies, excerpts, summaries, compilations, plus testimony, conversations or presentations by parties or attorneys in court or other settings that might reveal Confidential Information) shall be strictly limited and restricted, as follows:

a. ~~Parties~~ are, defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization entity, shall have access to Confidential Information designated as **confidential**, but shall not have access to Confidential Information designated as **highly confidential** or **trade secret/commercially sensitive**.

~~Attorneys for parties are defined as including in-house counsel and outside counsel.~~
b. ~~In-house counsel~~, defined to be duly licensed lawyers regularly employed by a Party, shall have access to Confidential Information designated as **confidential** and **highly confidential**, but shall not have access to Confidential Information designated as **trade secret/commercially sensitive**.

c. ~~Outside counsel~~, defined to be counsel of record in this action who are not employees of a party (including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other similar employees or independent contractors operating under counsel's express instruction- and control, however such persons may not be employees of a party) shall have access to Confidential Information designated as **confidential**, **highly confidential** and/or **trade secret/commercially sensitive**.

~~Independent.~~ **Retained experts or consultants** include individuals, defined to be persons retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys-, shall have access to Confidential Information designated as **confidential**, **highly confidential** and/or **trade secret/commercially sensitive**, subject to the limitations set forth in paragraph 4, below.

- ~~e. **Non-party witnesses** include-, defined to be any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.~~

~~Parties and their attorneys, shall not have access to information designated as **confidential** or **highly confidential**, subject to any agreed exceptions.~~

~~Outside counsel, but not in-house counsel, shall have access to information designated as **trade secret/commercially sensitive**.~~

~~Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be afforded access to **confidential** or **highly confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5. Confidential Information under any designation, except Confidential Information of which they are the author, originator, creator, or otherwise in lawful possession of such Confidential Information.~~

f. Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of Confidential Information, but are not required to sign forms acknowledging the terms and existence of this Protective Order.

g. Court reporters, stenographers, video technicians or others who may be regularly employed by the parties or their attorneys to perform services incidental to this proceeding shall be entitled to have access to Confidential Information under any designation, provided such access is limited to situations where that person is performing duties in the course and scope of their services to be provided in this proceeding, and such persons are bound to maintain the confidentiality as set forth in this Agreement. The parties or their attorneys shall require such individuals to comply with paragraph 4) and sign Exhibit A.

4) Disclosure to Any Individual Retained Experts or Consultants.

a. Prior to disclosure of ~~protected information~~ Confidential Information by any party or its attorney to any individual ~~not already provided access to such information by the terms of this order, the individual~~ retained expert or consultant under the terms of this Protective Order, the retained expert or consultant shall be informed of the existence of this ~~order~~ Protective Order and provided with a copy to read. The ~~individual~~ retained expert or consultant will then be required to certify in writing that ~~the order~~ this Protective Order has been read and understood and that the terms shall be binding on the ~~individual~~ retained expert or consultant. No ~~individual~~ retained expert or consultant shall receive any ~~protected information~~ Confidential Information until the party or attorney proposing to disclose the ~~information~~ Confidential Information has received the signed certification from the ~~individual~~ retained expert or consultant. A form for such certification is attached to this ~~order~~ Protective Order as Exhibit A. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

b. In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share ~~disclosed information with an independent~~ Confidential Information with a retained expert or consultant must also notify the party which designated the ~~information as protected~~ Confidential Information. Notification must be personally served or forwarded by facsimile and certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the retained expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the retained expert or independent consultant. If objection is made, then the parties must negotiate, meet and confer on the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney ~~proposing~~ challenging disclosure to bring the matter before the Board with an explanation of the need ~~for to prevent the~~ disclosure and a report on the efforts the

parties have made to settle their dispute. The party ~~objecting to seeking the~~ disclosure will be expected to respond with its arguments ~~against disclosure or its objections will be deemed waived as to why the disclosure should be permitted.~~

~~6)5)~~ Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of ~~protected information~~ Confidential Information not in accordance with the provisions of paragraph ~~4211~~.

~~7)6)~~ Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies containing Confidential Information shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered ~~protected~~ Confidential Information during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies considered Confidential Information with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of ~~protected information~~ Confidential Information not in accordance with the provisions of paragraph ~~4211~~.

~~8)7)~~ Depositions.

~~Protected documents~~ Confidential Information discussed or produced during a discovery deposition, or offered into evidence during a testimony deposition, shall be orally noted on the record as such by the producing or offering party at the outset of or immediately after any discussion or production of the document or information contained in the document Confidential Information. In addition, ~~the any documents~~ documents containing Confidential Information must be prominently stamped or marked with the appropriate designation.

~~During from paragraph 1 within a reasonable time after discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information or production.~~

The transcript of any deposition and all exhibits or attachments shall be considered ~~protected~~Confidential Information for thirty (30) days following the date of service notice of receipt of the transcript by the party that took the deposition. During that thirty (30-) day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, ~~that are to be treated as protected~~ containing Confidential Information, by ~~electing~~notifying the other party in writing of the appropriate designation from paragraph 1. Appropriate stampings or markings should also be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected, subject to paragraph 12.

9)8) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the ~~information~~Confidential Information, so as to maintain the protected status of the ~~information~~Confidential Information.

40)9) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss ~~protected information~~Confidential Information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 4211 of this order.

44)10) Handling of Protected~~Confidential~~ Information.

Disclosure of ~~information-protected~~Confidential Information under the terms of this order~~Protective Order~~ is intended only to facilitate the prosecution or defense of this case. The recipient of any ~~protected information~~Confidential Information disclosed in accordance with the terms of this order~~Protective Order~~ is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

42)11) Redaction; Filing Material With the Board.

When a party or attorney must file ~~protected information~~Confidential Information with the Board, or a brief that discusses such information, the ~~protected information~~Confidential Information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

The rule of reasonableness is defined as follows: Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily ~~confidential material~~Confidential Information. If only a sentence or

short paragraph of a page of material is confidential, covering that ~~material~~ portion when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing ~~confidential material be effected~~ Confidential Information be affected when only some ~~small~~ limited number of pages contain such material. In contrast, if almost every page of the document contains some ~~confidential material~~ Confidential Information, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information

Confidential Information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that is/are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) 12) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as ~~protected~~ Confidential Information shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as ~~protected~~ Confidential Information shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) 13) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to ~~negotiate~~ meet and confer in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences,

the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) 14) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this Protective Order shall end thirty (30) days after this proceeding is terminated. A proceeding is terminated only after: (i) a dismissal is filed with the Board; (ii) a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal with the Board has passed without the filing of any appeal by any party; or (iii) all party and persons have fully complied with the remainder of this paragraph.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

16) Within ten (10) days after the date of termination of this proceeding, the parties and all persons shall either return all Confidential Information (including but not limited to information extracted therefrom, as well as copies, excerpts, summaries, compilations, plus testimony, conversations or presentations by parties or attorneys in court or other settings that might reveal Confidential Information) of a party to that party, or shall destroy all such documents and any other materials, and provide the party with a declaration under penalty of perjury certifying that such destruction has in fact been carried out by that party or person, or at that party's or person's express instruction. The parties or persons shall not preserve or maintain any copies, archival or otherwise, of any Confidential Information, or materials that in any way refer to or in any way belong to the Confidential Information of the a party, once this period has expired. The parties and persons shall otherwise strictly maintain the confidentiality of the Confidential Information obtained or learned during this opposition proceeding, and expressly agree to not use it in any respect or disclose it to any third party.

15) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable objections or claims of privilege during discovery or at trial. ~~Not shall the order~~

~~preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order. The parties may subsequently agree to modifications or additions to this Protective Order, subject to Board approval or may make a motion to the Board for an order modifying this Protective Order.~~

DATED: August _____, 2008

IDEA AG

ERIC J. SIDEBOTHAM, Esq.
DANIEL M. SHAFER, Esq.
ERIC J. SIDEBOTHAM, APC
TechMart Center
5201 Great America Pkwy, Suite 320
Santa Clara, California 95054
Telephone: (408) 856-6000
Facsimile: (408) 608-6001

DATED: August _____, 2008

SCHERING CORP.

DAVID KERA, Esq.
BETH A. CHAPMAN, Esq.
OBLON, SPIVAK,
MCCLELLAND, MAIER &
NEUSTADT, P.C.
1940 Duke Street
Alexandria, Virginia 22314
Telephone: (703) 413-3000
Facsimile: (703) 413-2220

By Order of the Board.

DATED: August _____, 2008

[print or type name and title of Board attorney
or judge imposing order]

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

SCHERING CORPORATION,

_____, Opposer,

v.

IDEA AG,

_____, Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

EXHIBIT A

ACKNOWLEDGMENT OF
AGREEMENT OR ORDER PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING

I, _____ [print name], declare that I have been provided with a copy of the ~~Agreement or Order~~ Protective Order or agreement regarding the disclosure of, and protection of, certain types of information and documents during and after, in the above-captioned opposition or cancellation proceeding before the Trademark Trial and Appeal Board ("TTAB").

I have read the ~~Agreement or Order~~ Protective Order or agreement and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any ~~information~~ materials or documents disclosed to me designated as Confidential Information in conjunction with any part I take in this proceeding. I further hereby expressly consent to the jurisdiction of the TTAB over me regarding my participation in this proceeding, and my obligations under this Protective Order or agreement.

I declare under the penalty of perjury that these statements are true and correct.

[signature]

[date]

[print title, if applicable]

EXHIBIT 10

Beth A. Chapman

From: Beth A. Chapman
Sent: Tuesday, September 09, 2008 9:05 AM
To: 'Eric J. Sidebotham'
Cc: Dan Shafer; Ryan Smith; David J. Kera; Jean Barrett
Subject: RE: Schering v. IDEA
Attachments: 1246-314399US-spo3-redline.pdf; 1246-314399US-spo3a.pdf

Eric,

Your revised Protective Order (sent to us on September 5, 2008) is acceptable only with the changes indicated in the attached document. Both a redline copy and a clean copy with our changes are attached.

As you, David Kera and I discussed last week, a Protective Order which does not include Paragraph 17 "Court Jurisdiction; Venue" in New Jersey is not acceptable to our client.

Please provide two copies executed by your client and by yourself as Idea AG's attorney, and return both copies to us. We will sign it and arrange for execution of the Protective Order by Schering. We will then promptly send a fully executed copy of the Protective Order to you, and file a copy with the Trademark Trial and Appeal Board.

Please let us know whether you will be sending the signed Protective Order.
We again note that, if not, the Board's Standard Protective Order is then automatically the effective protective order in the opposition. Trademark Rule 2.116(g).

Regards,
Beth
Beth Chapman
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314
703-412-7028 (direct)
703-413-2220 (fax)
bchapman@oblon.com

From: Eric J. Sidebotham [<mailto:eric.sidebotham@ejs-law.com>]
Sent: Friday, September 05, 2008 5:51 PM
To: David J. Kera; Beth A. Chapman
Cc: Dan Shafer; Ryan Smith
Subject: Schering v. IDEA

Dear David and Beth,

Per our discussion yesterday, here is my revisions to the latest version sent to me from Beth.
Please let me know if this language is acceptable to your client.

Thanks,

Eric

Eric J. Sidebotham

Attorney-at-Law

Eric J. Sidebotham, APC

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

**PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION
DISCLOSED DURING BOARD PROCEEDING**

Applicant IDEA, AG and opposer SCHERING CORPORATION, parties to the above captioned opposition proceeding, hereby stipulate, agree and enter into this order for protecting the confidentiality of certain information ("Protective Order"). The basis for this Protective Order is that it is anticipated that both parties and non-party witnesses may be required during this opposition proceeding to disclose information, including oral testimony and documentary materials (regardless of how generated, stored or maintained), that may be considered by a party or witness to be confidential, trade secret, proprietary or commercially sensitive (collectively referred to herein as "Confidential Information"). To preserve and protect the Confidential Information, the parties agree to be bound by the terms of this Protective Order.

Agreement of the parties to this Protective Order is indicated by the signatures of the parties' attorneys and the parties themselves at the conclusion of this Protective Order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of this Protective Order. When the parties have signed this Protective Order, they have created enforceable contractual obligations. The terms are binding from the date the parties sign this Protective Order.

TERMS OF ORDER

1) Classes of Protected Information.

This Protective Order is intended by the parties to protect Confidential Information from public disclosure. Therefore, when appropriate, a party or witness, on its own or through its attorney, may seek to protect Confidential Information by employing one of the following designations:

a. **“Confidential”** is to be used for information that may not be disclosed to the public, and is to be shielded by the Board from public access. Information designated as “confidential,” however, may be disclosed without limitation, to the parties, in-house counsel, outside counsel, consultants and experts retained by the parties.

b. **“Highly Confidential”** is to be used for information that may not to be disclosed to the public, and is to be shielded by the Board from public access. In addition, information designated as “highly confidential” may be disclosed without limitation, to the in-house counsel, outside counsel, consultants and experts retained by the parties but not the opposing party.

c. **“Trade Secret/Commercially Sensitive”** is to be used for information that may not to be disclosed to the public, the opposing parties and their in-house counsel, and is to be shielded by the Board from public access. Proprietary information designated as “Trade Secret” or “Commercially Sensitive” may be disclosed to outside counsel and retained experts and consultants.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this Protective Order; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; (e) is disclosed by a non-designating party with the express written approval of the designating party; or (f) is disclosed voluntarily by the designating party and is not designated as protected information under paragraph 1 and is not an inadvertent disclosure under paragraph 13.

3) Access to and Use of Confidential Information.

A party may only use Confidential Information that is disclosed or produced by another party or by a non-party in connection with this proceeding for prosecuting,

defending, or attempting to settle this proceeding. Access to Confidential Information (including but not limited to information extracted therefrom, as well as copies, excerpts, summaries, compilations, plus testimony, conversations or presentations by parties or attorneys in court or other settings that might reveal Confidential Information) shall be strictly limited and restricted, as follows:

a. **Parties**, defined as individuals, officers of corporations, partners of partnerships, and management employees of any type of business entity, shall have access to Confidential Information designated as **confidential**, but shall not have access to Confidential Information designated as **highly confidential** or **trade secret/commercially sensitive**.

b. **In-house counsel**, defined to be duly licensed United States lawyers regularly employed by a Party, shall have access to Confidential Information designated as **confidential** and **highly confidential**, but shall not have access to Confidential Information designated as **trade secret/commercially sensitive**.

c. **Outside counsel**, defined to be the counsel of record in this action who are not employees of a party (including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other similar employees or independent contractors operating under counsel's express instruction and control, however such persons may not be employees of a party) shall have access to Confidential Information designated as **confidential**, **highly confidential** and/or **trade secret/commercially sensitive**.

d. **Retained experts or consultants**, defined to be persons retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys, shall have access to Confidential Information designated as **confidential**, **highly confidential** and/or **trade secret/commercially sensitive**, subject to the limitations set forth in paragraph 4, below.

e. **Non-party witnesses**, defined to be any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness, shall not have access to Confidential Information or Highly Confidential Information, except such Confidential Information or Highly Confidential Information of which they are the author, originator, creator, or otherwise in lawful possession of such Confidential Information or Highly Confidential Information.

f. **Court reporters, stenographers, video technicians or others who may be regularly employed by the parties or their attorneys to perform services incidental to this proceeding** shall be entitled to have access to Confidential Information under any designation, provided such access is limited to situations where a person is performing duties in the course and scope of the services to be provided in this proceeding, and such persons are bound to maintain the confidentiality as set forth in this Agreement. The parties or their attorneys shall require such individuals to comply with paragraph 4 and sign Exhibit A.

4) Disclosure to Retained Experts or Consultants.

a. Prior to disclosure of Confidential Information by any party or its attorney to any retained expert or consultant under the terms of this Protective Order, the retained expert or consultant shall be informed of the existence of this Protective Order and provided with a copy to read by the retaining party. The retained expert or consultant will then be required to certify in writing that this Protective Order has been read and understood and that the terms shall be binding on the retained expert or consultant. No retained expert or consultant shall receive any Confidential Information until the retaining party or attorney proposing to disclose the Confidential Information has received the signed certification from the retained expert or consultant. A form for such certification is attached to this Protective Order as Exhibit A. The retaining party or attorney receiving the completed form shall keep and maintain the original.

b. In addition, any party or attorney proposing to share Confidential Information with a retained expert or consultant must also notify the party which designated the Confidential Information. Notification must be personally served or forwarded by facsimile and certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the retained expert or consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the retained expert or consultant. If objection is made, then the parties must meet and confer on the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney challenging disclosure to bring the matter before the Board with an explanation of the need to prevent the disclosure and a report on the efforts the parties have made to settle their dispute. The party seeking the disclosure will be expected to respond with its arguments why the disclosure should be permitted.

5) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Confidential Information not in accordance with the provisions of paragraph 11.

6) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies containing Confidential Information shall be prominently stamped or marked, as necessary, with the

appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered Confidential Information during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies considered Confidential Information with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of Confidential Information not in accordance with the provisions of paragraph 11.

7) Depositions.

Confidential Information discussed or produced during a discovery deposition, or offered into evidence during a testimony deposition, shall be orally noted on the record as such by the producing or offering party at the outset of or immediately after any discussion or production of the Confidential Information. In addition, any documents containing Confidential Information must be prominently stamped or marked with the appropriate designation from paragraph 1 within a reasonable time after discussion or production.

The transcript of any deposition and all exhibits or attachments shall be considered Confidential Information for thirty (30) days following ~~notice of receipt of the transcript by the party whose information is confidential that took the deposition.~~ During that thirty (30) day period, either party may designate the portions of the transcript, and any specific exhibits or attachments containing Confidential Information, by notifying the other party in writing of the appropriate designation from paragraph 1. Appropriate stampings or markings should also be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected, subject to paragraph 12.

8) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the Confidential Information, so as to maintain the protected status of the Confidential Information.

9) Motion for Summary Judgment.

When a party or its attorney files a motion for summary judgment, response to a motion for summary judgment, or reply in support of summary judgment, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the Confidential Information, so as to maintain the protected status of the Confidential Information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss Confidential Information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 11 of this order.

11) Handling of Confidential Information.

Disclosure of Confidential Information under the terms of this Protective Order is intended only to facilitate the prosecution or defense of this case. The recipient of any Confidential Information disclosed in accordance with the terms of this Protective Order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file Confidential Information with the Board, or a brief that discusses such information, the Confidential Information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Confidential Information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that is/are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as Confidential Information shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as Confidential Information shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to meet and confer in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated by the Board. A proceeding is terminated only after: ~~(i) a dismissal is filed with the Board; or (ii) a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal with~~ from the Board's Order has elapsed ~~has passed without the filing of any appeal by any party.~~

Within ten (10) days after the date of termination of this proceeding, the parties and all persons shall either return all Confidential Information (including but not limited to information extracted therefrom, as well as copies, excerpts, summaries, compilations, plus testimony, or presentations by parties or attorneys in court or other settings that might reveal Confidential Information) , or shall destroy all such documents and any other materials, and provide the party with a declaration under penalty of perjury certifying that such destruction has in fact been carried out by that party or person, or at that party's or person's express instruction. The parties or persons shall not preserve or maintain any copies, archival or otherwise, of any Confidential Information, or materials that in any way refer to or in any way belong to the Confidential Information of the a party, once this period has expired. The parties and persons shall otherwise strictly maintain the confidentiality of the Confidential Information obtained or learned during this opposition proceeding, and expressly agree to not use it in any respect or disclose it to any third party.

The obligations to maintain the Confidential Information obtained or learned during this opposition proceeding shall survive termination of the opposition proceedings.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable objections or claims of privilege during discovery or at trial. The parties may subsequently agree to modifications or additions to this Protective Order, subject to Board approval or may make a motion to the Board for an order modifying this Protective Order.

17) Court Jurisdiction; Venue

In any action to enforce or recover for breach of any provision of the Protective Order, the law to be applied shall be the law of the State of New Jersey without regard to the choice of law provisions thereof of the laws of the State of New Jersey.

In any action to enforce or recover for breach of any provision of the Protective Order, venue shall be laid in the United States District Court for the District of New Jersey; and the parties agree the U.S. District Court for the District of New Jersey will have personal jurisdiction over the parties.

SCHERING CORP.

IDEA AG

Signature

Signature

Name

Name

Title

Title

Date

Date

SCHERING CORP.

IDEA AG

DAVID KERA, Esq.
BETH A. CHAPMAN, Esq.
**OBLON, SPIVAK, MCCLELLAND,
MAIER & NEUSTADT, P.C.**

ERIC J. SIDEBOTHAM, Esq.
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Santa Clara, California 95054
Telephone: (408) 856-6000
Facsimile: (408) 608-6001

By Order of the Board.

DATED: August _____, 2008

[print or type name and title of Board attorney
or judge imposing order]

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

SCHERING CORPORATION,

Opposer,

v.

IDEA AG,

Applicant.

Opposition No.: 91/180,212

App'n Serial No. 77/070,074

Mark: DIRACTIN

EXHIBIT A

ACKNOWLEDGMENT OF AGREEMENT OR ORDER PROTECTING
CONFIDENTIALITY OF INFORMATION REVEALED DURING BOARD
PROCEEDING

I, _____ [print name], declare that I have been provided with a copy of the Protective Order or agreement regarding the disclosure of, and protection of, certain types of information and documents during and after, in the above-captioned opposition proceeding before the Trademark Trial and Appeal Board ("TTAB").

I have read the Protective Order or agreement and understand its terms and provisions, by which I agree to be bound. Specifically, I agree to hold in confidence any materials or documents disclosed to me designated as Confidential Information in conjunction with any part I take in this proceeding. I further hereby expressly consent to the jurisdiction of the TTAB over me regarding my participation in this proceeding, and my obligations under this Protective Order or agreement.

I declare under the penalty of perjury that these statements are true and correct.

[signature]

[date]

[print title, if applicable]

EXHIBIT 11

Jean Barrett

31439945

From: Beth A. Chapman
Sent: Wednesday, September 17, 2008 8:06 AM
To: Jean Barrett
Subject: FW: Schering v. IDEA

From: David J. Kera
Sent: Tuesday, September 16, 2008 4:35 PM
To: 'Eric J. Sidebotham'
Cc: Beth A. Chapman
Subject: FW: Schering v. IDEA

Dear Mr. Sidebotham:

In the future, please copy me on every email that you send to my colleague, Ms. Chapman.

I am astonished that you did not send me a copy of your email of Sept. 15th in which you purported to represent my position.

To make our position entirely clear, we see no advantage to replacing the TTAB's standard protective order, which is in effect in this proceeding, with your different version. In the absence of a provision establishing the law of the State of New Jersey as the governing law for interpreting and enforcing the agreement, and in the absence of a provision laying venue in the U.S. District Court for the District of New Jersey, and in the absence of an agreement giving the U.S. District Court for the District of New Jersey personal jurisdiction over the parties in an action brought to enforce the agreement, we intend to rely upon, and to hold your client to, the terms of the TTAB's standard protective order.

Sincerely yours,



David J. Kera

Attorney at Law
Oblon, Spivak, McClelland, Maier & Neustadt

1940 Duke Street
Alexandria, Virginia 22314
703.413.3000 W
703.413.2220 F
703.412.6456 D
dkera@oblon.com

From: Eric J. Sidebotham [<mailto:eric.sidebotham@ejs-law.com>]

Sent: Monday, September 15, 2008 8:20 PM
To: Beth A. Chapman
Cc: Dan Shafer; Ryan Smith
Subject: RE: Schering v. IDEA

Beth, I apparently missed this email when it first came in. My apologies.

My recollection of the call last week is that Mr. Kera was agreeable to removal of Paragraph 17; certainly, I recall indicating that this was something that was *not* agreeable to my client. Mr. Kera mentioned that jurisdiction would likely be proper in New Jersey given your client's location. If that is true, then Para 17 is unnecessary. Finally, there is absolutely no reason for us to agree to personal

9/17/2008

jurisdiction in New Jersey--it seems as though Schering is trying to lay a trap for a district court action. Note also, this paragraph is not included in the Board's standard agreement.

I will respond to the other changes once we resolve this Para 17 issue. I'll try to give you a call tomorrow to discuss live. I would like to get this done so we can get an acceptable protective order in place to facilitate discovery.

Thanks,

Eric

From: Beth A. Chapman [mailto:BCchapman@oblon.com]
Sent: Tuesday, September 09, 2008 6:05 AM
To: Eric J. Sidebotham
Cc: Dan Shafer; Ryan Smith; David J. Kera; Jean Barrett
Subject: RE: Schering v. IDEA

Eric,

Your revised Protective Order (sent to us on September 5, 2008) is acceptable only with the changes indicated in the attached document. Both a redline copy and a clean copy with our changes are attached.

As you, David Kera and I discussed last week, a Protective Order which does not include Paragraph 17 "Court Jurisdiction; Venue" in New Jersey is not acceptable to our client.

Please provide two copies executed by your client and by yourself as Idea AG's attorney, and return both copies to us. We will sign it and arrange for execution of the Protective Order by Schering. We will then promptly send a fully executed copy of the Protective Order to you, and file a copy with the Trademark Trial and Appeal Board.

Please let us know whether you will be sending the signed Protective Order. We again note that, if not, the Board's Standard Protective Order is then automatically the effective protective order in the opposition. Trademark Rule 2.116(g).

Regards,
Beth
Beth Chapman
Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314
703-412-7028 (direct)
703-413-2220 (fax)
bchapman@oblon.com

From: Eric J. Sidebotham [mailto:eric.sidebotham@ejs-law.com]
Sent: Friday, September 05, 2008 5:51 PM
To: David J. Kera; Beth A. Chapman
Cc: Dan Shafer; Ryan Smith
Subject: Schering v. IDEA

Dear David and Beth,

9/17/2008

Per our discussion yesterday, here is my revisions to the latest version sent to me from Beth. Please let me know if this language is acceptable to your client.

Thanks,

Eric

Eric J. Sidebotham

Attorney-at-Law

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EXHIBIT 12


1968 - 2008

September 12, 2008



ATTORNEYS AT LAW

DAVID J. KERA
(703) 412-6456
DKERA@OBLON.COM

Eric J. Sidebotham, Esquire
ERIC J. SIDEBOTHAM, APC
TechMart Center
5201 Great America Parkway
Suite 320
Santa Clara, CA 95054

Re: *SCHERING CORPORATION v. IDEA AG*
Opposition No.: 91/180,212
Our Ref: 314399US-1246-9398-21

Dear Mr. Sidebotham:

After reviewing Applicant's Responses to Opposer's First Set of Interrogatories, First Requests for Admissions, and First Request for Production of Documents and Things, we believe that there are nonresponsive and incomplete answers. Pursuant to Trademark Rule 2.120(e), and in an effort to avoid bringing a motion to compel at the Trademark Trial and Appeal Board, we write in good faith to request that Applicant provide appropriate answers, responses, and responsive documents.

Improper Form Objections (and no Privilege Log)

Applicant responded with form objections to numerous Interrogatory, Admission, and Document Requests as seeking privileged and confidential information, even when there was nothing privileged or confidential that was requested (e.g. an interrogatory seeking information regarding Applicant's mark). To the extent any of Opposer's discovery requests may involve privileged information, Applicant did not provide a log of any assertedly privileged information as required by Fed.R.Civ.P. 26(b)(5). Accordingly, we request that Applicant promptly provide supplemental responses and a privilege log.

Confidentiality Objections

Applicant states that it will provide some non-privileged information "as soon as the parties enter into a suitable stipulated protective order." Because the parties have not agreed on a stipulated protective order, the Board's standard protective order is applicable under 37 C.F.R. § 2.116(g). Any objections or withholding of information based on a lack of a stipulated



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protective order are impermissible since the standard protective order is in place. Therefore, we request that you promptly provide all requested nonprivileged as well as confidential/proprietary information sought by the discovery requests.

Overbreadth, Relevance, and Compound Questions Objections

Applicant further objected to most of Opposer's discovery requests with additional form objections claiming the requests are "overbroad in scope and seeks information neither relevant to the registration of the present mark nor reasonably calculated to lead to the discovery of admissible evidence" or "unduly burdensome, oppressive, and harassing." Applicant did not indicate how Opposer's various discovery requests are "overbroad" or "unduly burdensome" in the information they seek.

Additionally, Applicant routinely includes with its objections evasive or incomplete answers to inquiries on topics on which Opposer is entitled to request discovery. For example, in response to Opposer's requests concerning Applicant's first use of, or *bona fide* intention to, use its mark, Applicant's repeated response that "Applicant's Application Serial No. 77/070,074 was filed as an intent-to-use application, and Applicant has yet to file a statement of use" is evasive and incomplete. Applicant has either used the mark in commerce or it has not used the mark. The fact that Applicant filed an application under Section 1(b) of the Trademark Act merely confirms Applicant's filing basis is an asserted *bona fide* intention to use the mark in commerce, but it is nonresponsive to the question of whether the mark has actually been used in commerce. Applicant's answers are also nonresponsive to inquiries regarding Applicant's application particulars and information available on Applicant's website.

Applicant's objection to several of Opposer's Interrogatories and Requests for Admissions as compound questions and citing TBMP §405.03(d) is not understood because compound questions are allowed and the TBMP section cited refers only to counting the total number of interrogatories served by a party.

Where Applicant agrees to produce documents, nothing has been produced.

Aside from the general deficiencies in Applicant's Responses/Objections, we raise the following specific matters.



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Applicant's Interrogatory Answers

Interrogatories Relating to Applicant's Adoption of its Proposed Mark

Interrogatory 4

Opposer is entitled to request discovery concerning a party's selection and adoption of its involved mark (TBMP §414(4), 2d. Edition rev. 2004). Contrary to Applicant's objections to Interrogatory 4, the information sought in this interrogatory is relevant and must be provided. If the interrogatory involves privileged information as Applicant's answer suggests, a supplemental response and privilege log are required.

Interrogatories Relating to Applicant's First Use and/or Intended Use of its Proposed Mark

Interrogatories 8-10, 12-14, 22

Opposer is entitled to request discovery concerning a party's first use of its involved mark (TBMP §414(5), 2d. Edition rev. 2004). Applicant's responses to Interrogatories 8 and 9 merely stating that Applicant filed an intent-to-use application and has yet to file a statement of use are evasive, incomplete, and nonresponsive. Either the mark has been used in commerce or it has not been used in commerce. Please provide a supplemental response.

Applicant's response to Interrogatory 10 is also nonresponsive. The interrogatory seeks the identity of the person most knowledgeable about "Applicant's sales, marketing, advertising, and promotion of its products under Applicant's mark in the United States," not whether any sales, advertising, or promotional activities have occurred. Please provide a supplemental response.

Interrogatory 12 seeks information regarding publications in which the products intended to be sold under Applicant's mark are described or referred to. Applicant's failure to respond on the grounds the information sought "is equally available to Opposer" is nonresponsive. The identity of any such documents is unknown to Opposer. Please provide a supplemental response.

Interrogatory 13 requests Applicant to identify agreements relating to the use of Applicant's mark. Applicant's response that interrogatory seeks confidential, proprietary and/or secret information is insufficient since the Board's standard protective order is in place. Please provide a supplemental response.

Applicant's response to Interrogatory 14 which seeks the cities and dates of Applicant's prior or planned promotional events is evasive and incomplete. Please provide a supplemental response.



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Contrary to Applicant's objections, Interrogatory 22 does not seek information protected by the attorney-client privilege. The identity of each person who supplied information for Applicant's responses to Opposer's discovery requests is not privileged. Please provide a supplemental response.

Applicant's Responses to Admissions

Admissions Relating to Applicant's Adoption and Use of Its Proposed Mark

Requests 1-5

In addition to form objections, Applicant repeatedly states that Applicant has filed an intent-to-use application and has yet to file a statement of use in response to several of Opposer's requests for admissions, specifically Admissions 1 thru 5. As discussed above, this response is evasive and nonresponsive. Please provide supplemental responses that properly "admit" or "deny" in accordance with Fed.R.Civ.P. 36.

Admissions Relating to Search Reports

Requests 6-9

Opposer is entitled to request discovery concerning search reports (TBMP §414(6), 2d. Edition rev. 2004). Applicant's objections to Opposer's Requests for Admissions concerning whether a search for possibility conflicting marks was conducted prior to Applicant's selection of its DIRACTIN mark are inapplicable. Please provide supplemental responses to Admissions 6 thru 9 that properly "admit" or "deny" in accordance with Fed.R.Civ.P. 36.

Admissions Relating to Applicant's Actual Knowledge of Opposer's Use of its Pleaded Marks

Requests 10-12

Opposer is entitled to request discovery concerning a party's awareness of third-party use and registration of the same or similar marks for the same or closely related goods or services (TBMP §414(10), 2d. Edition rev. 2004). Applicant's objections that Admissions 10 and 11 are overbroad in scope are nonresponsive. Please provide supplemental responses that properly "admit" or "deny" in accordance with Fed.R.Civ.P. 36.



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**Admissions Relating to Applicant's Application
Serial No. 77/070,074 and Applicant's Website**

Requests 16-18, 20-23

Opposer is entitled to request discovery relating to Opposer's involved registered marks. Applicant's answers to Admissions 16 thru 18 are nonresponsive. Likewise, Applicant's answers to Opposer's requests for admissions regarding Applicant's website and the truth of Applicant's responses regarding the same, specifically requests 20 thru 23, are nonresponsive. Please provide supplemental responses that properly "admit" or "deny" in accordance with Fed.R.Civ.P. 36. To the extent these requests for admissions may involve privileged information, we request Applicant promptly provide a privilege log.

Applicant's Responses to Opposer's Document Requests

Document Requests 3 and 23

In response to Document Request Nos. 3 and 23, Applicant states that it will provide nonprivileged information "as soon as the parties enter into a stipulated protective order." As stated above, because the Board's standard protective order is applicable in this case, this objection is inapplicable. Please provide all requested responsive documents promptly.

Document Request 28

Applicant agrees to produce documents in response to Request No. 28, but has failed to do so. Applicant's response, however, limits the scope of documents it agrees to produce to "specimens of packages." Opposer reminds Applicants that all responsive documents must be produced, even if they are beyond the scope of "specimens of packages." Please produce responsive documents immediately.

Document Requests 1-2, 4-22, 24-27, 29-37

As for the remaining requests, Applicant generally objects to each of them on the grounds that nonprivileged documents are not available or that the information is confidential, proprietary and/or protected by the attorney/client privilege or work product doctrine. Where Applicant intends to rely on its objections that the information sought is privileged, a privilege log must be produced. Where Applicant objects on the grounds the information sought is confidential and proprietary, the Board's standard protective order is in place so responsive documents must be produced promptly.



Eric J. Sidebotham, Esq.
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We expect that Applicant will correct these deficiencies and provide supplemental responses by October 3, 2008.

Kindly advise when you are available this week to discuss the discovery matters discussed in this letter. I look forward to hearing from you.

Sincerely yours,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

A handwritten signature in black ink, appearing to read "David J. Kera". The signature is fluid and cursive, with a large initial "D".

David J. Kera

DJK/KCK/ojb {I:\ATTY\DJ\1246-314399US-LTR_V2.DOC}

EXHIBIT 13

Beth A. Chapman

From: Beth A. Chapman
Sent: Tuesday, September 23, 2008 10:47 AM
To: Eric J. Sidebotham
Cc: David J. Kera; Jean Barrett
Subject: RE: Schering/IDEA

Eric,

In view of the information in your email of September 22, 2008, will you agree to a resetting of the close of plaintiff's testimony period to January 31, 2009, with a corresponding resetting of all subsequent dates? We look forward to your prompt reply.

Regards,
Beth

From: Eric J. Sidebotham [mailto:eric.sidebotham@ejs-law.com]
Sent: Monday, September 22, 2008 8:20 PM
To: David J. Kera; Beth A. Chapman
Subject: Schering/IDEA

David, I have just been handed the multipage letter you sent to me via regular mail, dated September 12, 2008. I will endeavor to respond in writing to this letter as quickly as possible. However, given the number of issues you raised and the fact that we will need to work through all of this--combined with the fact that my client is in Germany--I am doubtful that we will be able to meet the artificial deadline you have imposed in your letter.

In any event, to move this process forward, I suggest that we speak on the phone this Friday to see what can be worked out. Can you please let me know what time works for you and your colleague.

Thanks,

Eric

Eric J. Sidebotham

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EXHIBIT 14

Beth A. Chapman

From: David J. Kera
Sent: Thursday, September 25, 2008 3:00 PM
To: 'Eric J. Sidebotham'
Cc: Beth A. Chapman
Subject: Schering v. Idea

Dear Mr. Sidebotham,

I propose that we confer tomorrow, Sept. 26, at Noon Eastern time, 9:00 AM Pacific time.

You have not specified the subjects about which you want to confer. We understand that the topics will include our request for your agreement to resetting the close of discovery to January 31, 2009 and our letter of September 12 listing deficiencies in Idea's responses to discovery.

It would be particularly helpful in having an efficient conference if you would outline the specific discovery requests that you want to discuss.

Regards,



David J. Kera

Attorney at Law
Oblon, Spivak, McClelland, Maier & Neustadt

1940 Duke Street
Alexandria, Virginia 22314
703.413.3000 W
703.413.2220 F
703.412.6456 D
dkera@oblon.com

9/26/2008

EXHIBIT 15

Beth A. Chapman

From: Eric J. Sidebotham [eric.sidebotham@ejs-law.com]
Sent: Thursday, September 25, 2008 5:20 PM
To: David J. Kera
Cc: Beth A. Chapman
Subject: RE: Schering v. Idea

David, thank you for the email. Unfortunately, I am not going to be in the office tomorrow for personal reasons. Next week looks pretty good.

In addition, I am still awaiting a for a response from my client regarding Ms. Chapman's proposal. With the time difference and my client's travel situation, sometime there is a delay in connecting. I should have this resolved by next week.

So why don't you let me know when next week will be good for you and your colleague.

Thanks,

Eric

From: David J. Kera [mailto:DKera@oblon.com]
Sent: Thursday, September 25, 2008 12:00 PM
To: Eric J. Sidebotham
Cc: Beth A. Chapman
Subject: Schering v. Idea

Dear Mr. Sidebotham,

I propose that we confer tomorrow, Sept. 26, at Noon Eastern time, 9:00 AM Pacific time.

You have not specified the subjects about which you want to confer. We understand that the topics will include our request for your agreement to resetting the close of discovery to January 31, 2009 and our letter of September 12 listing deficiencies in Idea's responses to discovery.

It would be particularly helpful in having an efficient conference if you would outline the specific discovery requests that you want to discuss.

Regards,



David J. Kera

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