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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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Attachments	1246-314399US-mot.pdf (4 pages)(98400 bytes)

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

Schering Corporation,)	
)	
Opposer)	Opposition No.: 91/180,212
)	U. S. Appln. Serial No.: 77/070,074
v.)	v. DIRACTIN
)	
IDEA, AG,)	
)	
Applicant)	

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

**MOTION TO STRIKE APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO
COMPEL DISCOVERY RESPONSES AND MOTION TO TEST SUFFICIENCY OF
RESPONSES**

AND

**APPLICANT’S MOTION FOR MODIFICATION OF THE BOARD’S STANDARD
PROTECTIVE ORDER (TBMP § 412.02(a))**

Opposer, Schering Corporation, hereby moves to strike the brief of Applicant, IDEA AG, entitled Applicant’s Opposition to Opposer’s Motion to Compel Discovery Responses and Motion to Test Sufficiency of Responses and Applicant’s Motion for Modification of the Board’s Standard Protective Order (TMBP § 412.02(a)) on the ground that Applicant’s brief exceeds the twentyfive-page limit for a brief on a motion prescribed by 37 C.F.R.. § 2.127(a).

The limitation of twenty five pages cannot be waived by action, inaction, or consent of the parties. *Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220 (TTAB 2003).

Applicant's brief, exclusive of exhibits, comprises thirty pages. Pages 6 and 7 comprise the argument entitled "A Modified Version of the Standard Protective Order is Completely Warranted". Page 29 is the signature page and contains no other matter, and Page 30 has the certificate of service.

Even after subtracting Pages 6 and 7 and 29 and 30 from the total number of pages, there are still twentysix pages in Applicant's brief, which exceeds the allowable limit.

In the *Saint-Gobain* case, Opposer's brief comprised twentysix pages (twentythree pages of argument and three pages containing a table of contents and an index of cases and authorities), and Applicant's opposing brief comprised twentyseven pages, which were twentyfive pages of argument preceded by two pages containing a table of contents and an index of cases and authorities. Thus, in the *Saint-Gobain* matter, one party's brief exceeded the twentyfive page limit by one page and the other party's brief exceeded the twenty five page limit by two pages. Both briefs were found to be procedurally improper and in violation of Board rules regarding page limitations for briefs on motions, for which reason neither opposer's motion for summary judgment nor applicant's brief in opposition thereto received consideration.

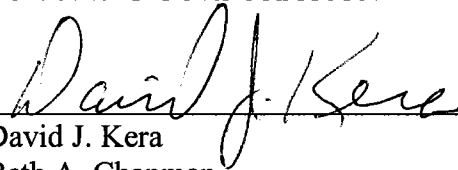
In view of the excessive number of pages in Applicant's brief in opposition to Opposer's Motion to Compel Discovery Responses and Motion to Test Sufficiency of Responses and Applicant's Motion for Modification of the Board's Standard Protective Order, Applicant's brief

should receive no consideration.

Respectfully submitted,

SCHERING CORPORATION

By:



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Date: October 17, 2008

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **MOTION TO STRIKE APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES AND MOTION TO TEST SUFFICIENCY OF RESPONSES AND APPLICANT'S MOTION FOR MODIFICATION OF THE BOARD'S STANDARD PROTECTIVE ORDER (TBMP § 412.02(a))** was served on counsel for Applicant, this 17th day of October, 2008, by sending same via First Class mail, postage prepaid, to:

Eric J. Sidebotham, Esquire.
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