

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: August 7, 2009

Opposition No. 91180212

SCHERING CORPORATION

v.

IDEA AG

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of (1) opposer's second motions (filed April 3, 2009) to compel responses to opposer's first set of interrogatories and first request for production of documents and things, and to test the sufficiency of applicant's responses to opposer's first requests for admissions, and (2) applicant's second motion (filed April 17, 2009) for modification of the Board's Standard Protective Order. The motions are fully briefed.

For the sake of brevity, the parties' arguments with respect to each of these contested motions will not be restated in their entireties herein.

Applicant's second motion for modification of the Board's Standard Protective Order.

By way of its motion, applicant essentially restates many of the assertions it made in its first motion for modification filed on October 14, 2008, and opposer, in turn, essentially restates many of its contentions in response thereto.

It is generally not the policy or intent of the Board to impose, in a contested inter partes proceeding, a modified protective order to which not all parties have agreed. Moreover, in this case, the Board has determined that the imposition of a modified protective order on which the parties have not achieved agreement would not likely advance this proceeding in a productive manner. Accordingly, applicant's second motion for modification of the Board's Standard Protective Order is denied. By operation of Trademark Rule 2.116(g), the Board's Standard Protective Order remains applicable and enforceable in this proceeding.

In the event that the parties reach agreement with respect to a single modified protective order, the Board will entertain a motion to substitute such order. Trademark Rule 2.116(g); *Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG*, 87 USPQ2d 1526, 1532 (TTAB 2008).

Opposer's second motion to compel

Initially, the Board finds that, upon review and consideration of the totality of the circumstances and communications that preceded the filing of opposer's first motion to compel and motion to test sufficiency (filed September 29, 2008), and that preceded the filing of its second motions presently at issue, opposer has demonstrated that it adequately satisfied its obligation to make a good faith effort to resolve with applicant the discovery disputes presented in the motions filed on April 3, 2009. Specifically, the telephone conference of February 24, 2009, and communications

between counsels following said conference, indicate that the parties, at a minimum, invited each other to articulate their respective positions, and that the parties achieved at least nominal clarification and redefinition of their positions. Furthermore, it is apparent to the Board, through the parties' communications, that the parties are indeed unable to reach agreement with respect to key points that have halted the progress of discovery.

Accordingly, opposer's second motion to compel, as well as its second motion to test sufficiency, are in compliance with the special requirements of Trademark Rule 2.120(e)(1); TBMP §§ 523.02 and 524.02 (2d ed. rev. 2004).

Because applicant has interposed general and specific objections on the ground of relevance, it is appropriate to note that, with respect to the discovery phase, the general scope of the discovery that may be obtained in inter partes proceedings before the Board is governed by Fed. R. Civ. P. 26(b)(1). See Trademark Rule 2.116(a); TBMP § 402.01(2d ed. rev. 2004). Furthermore, having reviewed the written discovery requests at issue, the Board finds that each such discovery request seeks matter and information relevant to the asserted grounds for opposition in this case, and likely to lead to the discovery of admissible evidence. In view thereof, applicant's objections based on relevance are overruled.

In response to opposer's first set of interrogatories, first set of requests for production of documents, and first set of requests for admissions, applicant invoked a preliminary

and general objection based on attorney-client privilege to the extent that any of the discovery requests seek information or materials that are protected under the privilege, and restated this position in the form of a specific objection with respect to certain discovery requests. Applicant argues that, pursuant to applicable German Law regarding attorney-client privilege, it cannot be compelled to disclose the content or the existence of any documents and/or communications that occurred or that may have passed between the Patentanwalt and their client.¹ Applicant asserts that German law absolutely precludes discovery of the content or the existence of any attorney-client communications, and that the laws governing the privilege cover the entirety of a Patentanwalt's scope of recognized professional practice, including activities relating to trademark protection.

By filing its involved application for registration of its mark with the U.S. Patent and Trademark Office on December 22, 2006, applicant made itself subject to the provisions of 18 U.S.C. Section 1001, and all other applicable authorities governing applications for trademark rights in the U.S., with respect to the statements, allegations and claims made in its application and in filings submitted or to be submitted in support thereof. Applicant is also subject to the jurisdiction of the Board, which is empowered to adjudicate applicant's

¹ Applicant identifies "Patentanwalt" as "a German Patent and Trademark Attorney" who is entitled to represent clients before various German Federal Courts in matters arising from the German Patent Act, German trademark law, and other proceedings involving a question of industrial property rights.

right to register its applied-for mark in the U.S. See TBMP § 102.01 (2d ed. rev. 2004). Similarly, applicant is subject to the Patent and Trademark Rules of Procedure, and substantive authorities that govern all inter partes proceedings before the Board. See TBMP § 101.01 *et seq.* (2d ed. rev. 2004).

The Board clearly recognizes that, in general, the attorney-client privilege protects the confidentiality of communications between attorney and client made for the purpose of obtaining legal advice, and that the work product doctrine protects the attorney's thought processes and legal recommendations. See *Genentech Inc. v. U.S. International Trade Commission*, 43 USPQ2d 1722, 1727 (Fed. Cir. 1997). In this case, applicant is represented by U.S. counsel, and this opposition is not before and does not involve a German attorney or a German court. Nevertheless, the Board acknowledges that the German law has been recognized by other U.S. courts and tribunals, that certain communications dealing with the subject matter opposer seeks by way of fact discovery in this proceeding may have taken place between applicant and a German attorney or attorneys, and that said attorney or attorneys may be bound by the provisions of German law that have been cited by applicant in its brief. See, *e.g.*, *Astra Aktiebolag v. Andrx Pharmaceuticals, Inc.*, 208 F.R.D. 92, 97-98, 64 USPQ2d 1331 (S.D.N.Y. 2002); *Softview Computer Products Corp. v. Haworth, Inc.*, 58 USPQ2d 1422, 1433 (S.D.N.Y. 2000); *Santrade, Ltd. v. General Elec. Co.*, 150 F.R.D. 539, 547 (E.D.N.C. 1993);

Golden Trade, S.r.L. v. Lee Apparel Co., 143 F.R.D. 514, 524 (S.D.N.Y. 1992).

The Board, however, cannot allow deference to German law to thwart or halt the discovery process in such a manner as would prevent the Board from ascertaining at trial the merits of opposer's grounds for opposition and applicant's defenses thereto. Board practice clearly precludes applicant from placing into evidence or relying at trial on any responsive information, documents or materials which applicant elects to withhold under an assertion of attorney-client privilege. See, e.g., *M.C.I. Foods, Inc. v. Bunte*, 86 USPQ2d 1044, 1049 (TTAB 2008). It is in the context of these parameters and interests that the Board has given consideration to opposer's motion to compel and motion to test the sufficiency.

Turning first to the specifics of opposer's motion to compel, opposer seeks an order from the Board compelling applicant to fully and completely respond to Interrogatory Nos. 4, 8-10, 12-14, 19, 20 and 22, as well as Document Request Nos. 1-37 inclusive.

Interrogatories

Interrogatory No. 4: Opposer seeks the identification of documents referring to the conception and adoption of applicant's mark. Information concerning a party's selection and adoption of its involved mark is clearly relevant, and is generally discoverable, particularly of a defendant; moreover, the identification of discovery documents is not privileged or confidential. See TBMP §§ 414(4) and 414(1) (2d ed. rev.

2004). Applicant's objections are overruled, and opposer's motion is granted.² Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in providing its response as directed, applicant may not introduce or rely on any information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to this interrogatory. Fed. R. Civ. P. 37(c)(1).

Interrogatory Nos. 8 and 9: Opposer seeks information with regard to applicant's involved mark regarding dates of first use in commerce, commencement of use, and any periods of nonuse and resumption, for each product identified in applicant's application. This information is clearly relevant and discoverable. See TBMP § 414(5) (2d ed. rev. 2004). Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a separate and full supplemental response to each interrogatory subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. The statement that "applicant has yet to file a statement of use" is an inadequate response; such a statement does not amount to or equate to an assertion that applicant has

² Applicant's objection, here and with respect to the other interrogatories at issue, on the ground that the discovery

not yet used its mark. In the event that applicant has not yet used its mark in the manner indicated in an interrogatory for a certain identified product or certain identified products, applicant must state so.

Interrogatory No. 10: Opposer seeks the identification of persons most knowledgeable about sales, marketing, advertising and promotion of applicant's products under its involved mark. What opposer seeks is relevant and discoverable. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. In the event that there is no person or there are no persons knowledgeable about the stated subject matter, applicant must state so.

Interrogatory No. 12: Opposer seeks the identification of printed and electronic publications in which applicant's products intended to be sold under its mark are described or referred to. This information is relevant and discoverable. Applicant's objections are overruled, and opposer's motion is granted. Applicant's partial response that the information opposer seeks "is equally available to Opposer" is insufficient. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

requests "contain numerous separate and distinct sub parts," is

Interrogatory No. 13: Opposer seeks the identification of all agreements relating to the use of applicant's involved mark and all documents relating or referring to each such agreement. This information is relevant and discoverable. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Interrogatory No. 14: Opposer seeks cities and dates of trade shows and similar events where applicant's products have been or are planned to be promoted. This information is relevant and discoverable. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. Such response must include the specific cities and dates of trade shows and similar events, if known to applicant, where its products have been or are planned to be promoted in connection with its mark in the United States.

Interrogatory Nos. 19 and 20: Opposer seeks a description of *applicant's* business relationship with McNeil Specialty Pharmaceuticals/McNeil Consumer and Specialty Pharmaceuticals, subsidiary of Johnson & Johnson, and with TDT, subsidiary of Celtic Pharmaceutical Holdings LP, insofar as it refers,

unsubstantiated and is overruled.

relates or pertains, directly or indirectly, to applicant's involved mark. This information is relevant and discoverable. Applicant's objections are overruled. Applicant's argument that opposer, through its second motion to compel, attempts to broaden the interrogatories is unsubstantiated. Opposer's motion is granted. Applicant is directed to serve a separate and full supplemental response to each interrogatory subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. In the event that *the entity Idea AG* has no business relationships with one or both of the identified entities insofar as that relationship refers, relates or pertains, directly or indirectly, to applicant's involved mark, applicant must state so.

Interrogatory No. 22: Opposer seeks the identities of persons known have supplied information for, or participated in responding to, opposer's written discovery requests. Applicant's objections are overruled, and opposer's motion is granted. In the event that applicant knows of any such individual in addition to the one individual applicant identified in its response, applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in responding as directed, applicant may not introduce or rely on any person, information, document,

fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to this interrogatory. Fed. R. Civ. P. 37(c)(1).

Request for production of documents

Requests Nos. 1 through 5: Opposer seeks, inter alia, specimens of advertisements, labels, packages, printed items, and electronic publications for applicant's goods. This information is relevant and discoverable. Applicant's objections to these requests are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response to each request, subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request Nos. 6 through 14: Opposer seeks documents relating to the creation of applicant's mark, consent given to applicant to use the mark, applicant's first use and continuous use in commerce, applicant's products, sales volumes, advertising and promotional expenditures, advertising and promoting media. With respect to each request, applicant has interposed several objections, including the attorney-client privilege, and in some instances has answered that no non-privileged responsive documents in applicant's possession, custody and control exist. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response to each request, subject to the Board's Standard Protective Order. Said

response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in providing a response as directed, applicant may not introduce or rely on any information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to these requests. Fed. R. Civ. P. 37(c)(1).

Request No. 15: Opposer seeks documents including reports and opinions referring or relating to trademark searches or any other type of search conducted by applicant in connection with its mark. Applicant has interposed several objections, including its assertion of attorney-client privilege. It is well-settled that search reports are discoverable; however, comments or opinions of attorneys relating to search reports are privileged and are not discoverable. TBMP § 414(6) (2d ed. rev. 2004); *Fisons Limited v. Capability Brown Limited*, 209 USPQ 167, 170 (TTAB 1980). Accordingly, opposer's motion is granted to the extent that the request seeks documents referring or relating to searches conducted, and is denied to the extent that it seeks comments or opinions of attorneys relating to any search reports. Applicant is directed to respond, identifying all discoverable and non-privileged documents responsive to this request, subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its

objection invoking the attorney-client privilege in providing a response as directed, applicant may not introduce or rely on any discoverable information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to this request. Fed. R. Civ. P. 37(c)(1).

Request Nos. 16 through 18: Opposer seeks documents relating to communications by or from applicant's customers competitors or other third parties relating to opposer's mark, the quality of goods sold under applicant's mark, and applicant's mark. With respect to each request, applicant has interposed several objections, including the attorney-client privilege. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response to each request subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in providing a response as directed, applicant may not introduce or rely on any discoverable information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to these requests. Fed. R. Civ. P. 37(c)(1).

Request Nos. 19 through 21: Opposer seeks documents relating to instances of actual confusion, channels of distribution in the U.S., and categories of consumers with whom

applicant does business. With respect to each request, applicant has invoked objections, including the attorney-client privilege, and has responded that no non-privileged responsive documents in its possession, custody and control exist. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response to each request, subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in providing a response as directed, applicant may not introduce or rely on any information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to these requests. Fed. R. Civ. P. 37(c)(1).

Request No. 22: Opposer seeks documents relating to U.S. importers or U.S. distributors of applicant's goods sold under its mark. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request No. 23: Opposer seeks documents relating to purchasers or potential purchasers of applicant's products sold, offered, advertised or promoted under its mark in the U.S. Applicant responded that it shall produce all non-privileged responsive documents in its possession as soon as

the parties enter into a suitable stipulated protective order. Opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request No. 24: Opposer seeks licenses granted by applicant to any person to use its mark in connection with any product. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request Nos. 25 and 26: Opposer seeks documents referring or relating to applicant's purchase of North American rights in compounds which involve applicant's products bearing the mark. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response to each request, subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request No. 27: Opposer seeks documents relating to applicant's bona fide intent to use the mark in commerce. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request No. 28: Opposer seeks documents relating to marketing plans and projections. Applicant invoked several objections, and responded that it shall produce all non-privileged responsive "specimens of packages" in its possession. This response is insufficient. See *M.C.I. Foods, Inc., supra* at 1046 (a mere promise to produce unspecified documents at a later time is an insufficient response). Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request No. 29: Opposer seeks documents relating to applicant's business relationship with a third party. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request Nos. 30 through 34: Opposer seeks documents relating to any rights in applicant's mark owned or previously owned by named third parties. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response to each request, subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate.

Request Nos. 35 and 36: Opposer's brief and exhibits in support of its motion are unclear with respect to whether opposer seeks an order compelling applicant to respond to these requests. Specifically, while opposer's Exhibit 2 includes these requests, opposer's Exhibit 26, which opposer identifies as setting forth the specific interrogatories and document requests in issue, does not include them. Nevertheless, the Board notes that opposer included these requests in the body and summary sections of its motion, and that applicant's responses are provided by way of opposer's Exhibit 5 to its motion. In view thereof, the Board has given consideration to these discovery requests in view of opposer's motion to compel.

With respect to Request No. 35, opposer seeks all documents identified in applicant's responses to opposer's first set of interrogatories. Inasmuch as applicant's objections are overruled, and inasmuch as the Board has found applicant's responses to the interrogatories at issue to be deficient and has ordered supplementation thereto, applicant is directed to serve a supplemental response to this request, subject to the Board's Standard Protective Order. If there are privileged responsive documents, applicant must provide a privilege log pursuant to Fed. R. Civ. P. 26(b)(5).

With respect to Request No. 36, opposer seeks all documents which support or relate to the denial or qualification of admission for every request for admission not admitted without qualification. Applicant has invoked several objections, including an objection based on attorney-client

privilege. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in providing a response as directed, applicant may not introduce or rely on any information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to this request. Fed. R. Civ. P. 37(c)(1).

Request No. 37: Opposer seeks all documents, not otherwise requested, referred to by applicant in responding to opposer's interrogatories and requests for admissions. Applicant invoked several objections, including an objection based on attorney-client privilege. Applicant's objections are overruled, and opposer's motion is granted. Applicant is directed to serve a supplemental response subject to the Board's Standard Protective Order. Said response may include a privilege log pursuant to Fed. R. Civ. P. 26(b)(5), as appropriate. To the extent that applicant maintains its objection invoking the attorney-client privilege in providing a response as directed, applicant may not introduce or rely on any information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive to this request. Fed. R. Civ. P. 37(c)(1).

As a final matter, with respect to each interrogatory and request for production to which applicant has been directed herein to serve a response or supplemental response, applicant may not, at trial, introduce or rely on any information, document, fact or evidence withheld, whether under a privilege or for any other reason, that would be responsive. Fed. R. Civ. P. 37(c)(1).

Opposer's second motion to test the sufficiency

If the Board, upon motion to test the sufficiency of a response to a request for admission, determines that an answer does not comply with the requirements of Fed. R. Civ. P. 36(a), it may order either that the matter is deemed admitted or that an amended answer be served. If the Board determines that an objection is not justified, it will order that an answer be served. See Fed. R. Civ. P. 36(a); TBMP § 524.01 (2d ed. rev. 2004).

Opposer seeks an order compelling applicant to admit or deny Requests for Admission Nos. 1-11, 16-18 and 20-23. With respect to each of the Requests at issue, the Board finds that applicant's response is insufficient, and applicant's objections are overruled.

Applicant's partial response to Request Nos. 1, 2, 4 and 5, whereby applicant has responded that it has yet to file a statement of use, is insufficient. Similarly, applicant's contention that any admission regarding use or non-use of its mark has no probative value lacks merit and is overruled. The fact that a statement of use has not been submitted in an

application that was filed based on Trademark Act Section 1(b) does not amount to or equate to an admission or denial of use of the mark.

Applicant's contention, in reference to Request No. 3, that priority is not at issue lacks merit in the absence of a stipulation between the parties with respect to priority.

Applicant has invoked the attorney-client privilege with respect to Request Nos. 6 through 9, and 16 through 18.³ To the extent that applicant maintains its objection invoking the attorney-client privilege in providing a response as directed, applicant may not rely at trial on any information that would be responsive to such a request for admission.

In view thereof, with respect to each of the Requests for Admission at issue, opposer's motion is granted. Accordingly, applicant is directed to provide, with respect to Requests for Admission Nos. 1-11, 16-18 and 20-23, a response which sufficiently either admits or denies each such request. See Trademark Rule 2.120(h).

Applicant is allowed thirty (30) days from the mailing date of this order in which to serve discovery responses as directed herein. The parties are allowed the same thirty days in which to serve any outstanding responses to discovery requests.

Schedule

³ It is noted that applicant's objections with respect to Request Nos. 16, 17 and 18, and in particular its assertion of the attorney-client privilege, are particularly perplexing inasmuch as the information needed in order to admit or deny these statements is apparent from the involved application itself.

Proceedings are resumed. Trial dates are reset as follows:

30-day testimony period for party in position of plaintiff to close: 01/22/10

30-day testimony period for party in position of defendant to close: 03/23/10

15-day rebuttal testimony period to close: 05/07/10

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.