

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

RK

Mailed: April 18, 2013

Opposition No. 91205081

Merck Sharp & Dohme B.V.

v.

Dynamic Sports Nutrition, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

On December 27, 2012, the Board issued an order wherein dates in this proceeding were reset, including the deadline for initial disclosures (reset to April 25, 2013). On April 17, 2013, applicant filed a motion for summary judgment with no indication that it had served its initial disclosures.

In Board *inter partes* proceedings commenced after November 1, 2007, a party cannot file a motion for summary judgment until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Board. Trademark Rule 2.127(e)(1); *see also Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251, 1255 (TTAB 2009); Notice of Final Rulemaking, 72 Fed. Reg. 42242, 42245 (August 1, 2007). As there is no indication that applicant has served its initial disclosures on opposer or that the basis of

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applicant's motion falls within one of the exceptions listed in Trademark Rule 2.127(e)(1), applicant's motion for summary judgment is hereby **DENIED as premature**. Dates remain as last reset.

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