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

Proceeding	91233046
Party	Plaintiff Mediderm Laboratories, LLC
Correspondence Address	KAMRAN FATTAHI LAW OFFICES OF KAMRAN FATTAHI 15303 VENTURA BLVD, SUITE 900 SHERMAN OAKS, CA 91403 UNITED STATES Email: Kamran@FattahiLaw.com
Submission	Reply in Support of Motion
Filer's Name	Kamran Fattahi
Filer's email	Kamran@FattahiLaw.com
Signature	/Kamran Fattahi/
Date	10/16/2017
Attachments	2017-10-16-Mediderm Labs Reply re combined Cross-MSJ-Opposition 91233046.pdf(112374 bytes) 2017-10-16-Supp Decl of Fattahi re Mediderm Labs Reply re Combined Cross-MSJ-91233046.pdf(73320 bytes) 2017-10-16-Exhibits to Supp Decl of Fattahi re Mediderm Labs Reply re Combined Cross-MSJ-91233046.pdf(1650363 bytes)

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

MEDIDERM LABORATORIES, LLC, Opposer, v. SESDERMA, S.L., Applicant.	Opposition No. 91233046 (parent) Attorney Docket No.: 11340-Mediderm
SESDERMA, S.L., Petitioner, v. MEDIDERM LABORATORIES, LLC, Respondent.	

MEDIDERM'S REPLY RE MEDIDERM'S COMBINED CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO SESDERMA'S MOTION FOR SUMMARY JUDGMENT

Mediderm Laboratories, Inc. ("Mediderm") hereby submits its Reply regarding its combined Cross-Motion for Summary Judgment and its opposition to Sesderma, S.L.'s ("Sesderma") Motion for Summary Judgment.

I. Sesderma Failed to Timely Respond to Mediderm's First Set of Requests for Admission

Mediderm's First Set of Requests for Admission Nos. 1-124 were properly and duly served upon Sesderma on November 30, 2016 by e-mail from Mediderm's attorney to Sesderma's attorney of record. A record of such e-mail service has been presented by Mediderm in this proceeding. [See Fattahi Decl. Exs. A and B]

Faced with the indisputable fact that Sesderma has not responded to Mediderm's Admissions Requests (Fattahi Decl. ¶ 4), Sesderma now claims that its attorneys never received the November 30, 2016 e-mail. In its September 25, 2017 reply, Sesderma has presented printouts of e-mail listings between its attorneys and Mediderm's attorney around the November 30, 2016 date in question, purporting to show that Sesderma's attorneys never received the November 30, 2016 e-mail. However,

the absence of a listing for that e-mail from Sesderma's attorney's printed e-mail log does not really prove that such e-mail was never received by them or their paralegal, because anyone can simply delete an e-mail from the inbox of their e-mail software and then print out the list to try to show that the e-mail is not there. The more appropriate inquiry is to determine if the e-mail was successfully sent and received on the date and time in question.

In this connection, Mediderm has previously submitted a true and correct printout of its attorney's November 30, 2016 e-mail with the date/time indicated and with the description of the admissions requests listed both in the body of the e-mail and in the file name for the attachment listed therein. [Fattahi Decl. Ex. A] In addition, Mediderm is submitting with this reply a true and correct printout of a listing showing all e-mails exchanged between its attorney and Sesderma's attorneys around the date of November 30, 2016. [Fattahi Supplemental Decl. ¶ 3, Ex. H, filed concurrently herewith] As can be seen in Exhibit H, an entry exists for an e-mail dated November 30, 2016 sent by Mediderm's attorney (Kamran Fattahi) to Sesderma's attorneys and paralegal wherein the subject of that e-mail as well as its date and time are indicated and they exactly match the subject, date and time of the e-mail in question as fully printed out in Exhibit A to the Fattahi Declaration.

Furthermore, according to publicly available information on Yahoo's website (the company responsible for handling the e-mails of Mediderm's attorney), in response to the question of "How can I tell if my sent email was received or read?," Yahoo provide this explanation: "If you send an email from Yahoo Mail and don't receive a failed delivery message, the email was delivered to your intended recipient's email system." [Fattahi Supplemental Decl. ¶¶ 4-5, Ex. I] In the instant case, Mediderm's attorney did not ever receive a "failed delivery message" from Yahoo Mail in connection with the subject November 30, 2016 e-mail which he sent to Sesderma's attorneys and paralegal for service of

Mediderm's First Set of Requests for Admission. [Fattahi Supplemental Decl. ¶ 6]

All of the documents and evidence presented by Mediderm lead to and amply support one conclusion – that Mediderm properly and duly served its Admissions Requests on Sesderma's attorneys and paralegal, but Sesderma failed to timely serve any responses thereto. Accordingly, all of Mediderm's requests for admissions are deemed admitted by Sesderma and are conclusively established by operation of law. Fed. R. Civ. P. 36(a)(3); TBMP 407.03(a) and 407.04; Fram Trak Industries v. Wiretracks LLC, 77 USPQ2d 2000, 2005 (TTAB 2006) (requests for admissions deemed admitted by respondent's failure to respond to petitioner's requests for admissions).

II. Sesderma's Argument That It Can Now Simply Change Its Dates of First Use Because It Had Claimed "As Early As" Dates in Its Applications Lack Merit, and Sesderma's Prior Statements Amount to Admissions Against Interest

When a party, as Sesderma has done, in its previous pleadings and in its trademark application has consistently relied on and alleged a later date of first use, but suddenly attempts to change its previously indicated date of first use to an earlier date, the Board must apply and require a heightened standard of proof by clear and convincing evidence. See Mt. Eden Organics, Inc. v. Native Nutrients, ___ USPQ2d ___ (TTAB 2015).

In the present case, Sesderma has previously repeatedly claimed the date of first use and first use in commerce of December 12, 2000 in connection with its MEDI+DERMA mark and the variant MEDIDERMA mark. More specifically, in its Application Serial No. 86/817,072 for the mark MEDI+DERMA (standard characters), and in its Second Amended Petition for Cancellation against Mediderm's registered MEDIDERM mark, Sesderma has alleged the date of first use and first use in

commerce of December 12, 2000 in connection with its MEDI+DERMA mark and the variant MEDIDERMA mark. [Opposition 91233046, 6 TTABVUE 3] Notably, on three occasions in its original and in its first and second amended pleadings in Cancellation No. 92062648, the last of which was filed on April 28, 2017, Sesderma alleged this same date of December 12, 2000 as being its date of first use and first use in commerce for its MEDI+DERMA mark and the variant MEDIDERMA mark.

Faced with a priority contest, Sesderma cannot now come before the Board and argue that it can simply change its previously stated date of first use to a much earlier date because the previously stated date of first use was couched in terms of "as early as" date of first use. Otherwise, there would be no real meaning behind or consequences to the date of first use that is set forth in any trademark application or registration, and the public could not count on such important information included in trademark applications and registrations. It is submitted that the Board should view Sesderma's present-day claim of 1997 as its date of first use for purposes of priority with much skepticism, and should further consider Sesderma's previous alleged date of first use of December 12, 2000 as an admission against interest.

III. Sesderma's Evidence of Earlier Use Is Inadmissible and Does Not Prove It Has Priority

Even if a party is technically allowed to back-track and assert an earlier date of first use than it has previously claimed, Sesderma's evidence completely fails to establish Sesderma's newly asserted date of first use under the applicable clear and convincing standard.

Sesderma is wrong in claiming that its foreign language invoices are admissible and to further claim that they prove that Sesderma has priority of use and rights. Sesderma incorrectly states that any and all documents produced during discovery automatically become admissible. As part of its motion

for summary judgment, Sesderma has chosen to "file" with the Board foreign language documents as support for its priority claim. But according to the rules (TTAB 104) and case law, documents that are in a foreign language are not to be considered by the Board, and it does not matter that Sesderma had produced such documents in discovery. Nor was Mediderm required during discovery to object to the foreign language invoice documents. Once Sesderma "filed" such documents with the Board in connection with its motion for summary judgment, Mediderm made timely and proper objections to their admissibility. In addition, Mediderm has properly objected to Sesderma's reliance on those documents on the issue of priority, because they clearly are not invoices issued by Sesderma, the party in these TTAB proceedings. Sesderma's vague and improper explanation - attempting to show that "Mediderma, S.L." (the entity under whose name the invoices were purportedly issued) is legally related to and is the predecessor-in-interest of the entity who is actually a party in these proceedings - falls way short of solid proof that the Board can rely on for the issue of priority of rights. Sesderma has failed to offer admissible and reliable proof that it is entitled to the benefit, if any, of whatever may be shown in the invoices or other documents it has offered for purposes of establish priority.

IV. CONCLUSION

In view of the foregoing, Sesderma has failed to prove that it has prior trademark rights. Instead, Mediderm has established that it is entitled to priority of rights and there is a likelihood of confusion between its MEDIDERM mark on the one hand and Sesderma's MEDI+DERMA mark, the variant MEDIDERMA mark, and the MEDI+DERMA BY SESDERMA mark on the other hand. Moreover, Mediderm has also shown that Sesderma's application Serial No. 86/817,072 for MEDI+DERMA is *void ab initio*.

Accordingly, Sesderma's motion for summary judgment should be denied, and summary judgment should be entered in favor of Mediderm on the issue of priority. The three currently pending TTAB proceedings should be concluded in favor of Mediderm Laboratories, LLC.

Respectfully submitted,

Dated: October 16, 2017

/Kamran Fattahi/
Kamran Fattahi
LAW OFFICES OF KAMRAN FATTAHI
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Attorneys for Opposer/Respondent,
Mediderm Laboratories, LLC

CERTIFICATE OF SERVICE

As counsel for Mediderm Laboratories, LLC, I hereby certify that I caused a true and correct copy of the attached MEDIDERM'S REPLY RE MEDIDERM'S COMBINED CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO SESDERMA'S MOTION FOR SUMMARY JUDGMENT (In re Opposition No. 91233046 (parent)) to be served on this date via e-mail upon Sesderma, S.L.'s attorney of record as follows:

Sesderma, S.L.'s Attorney of Record
Jesus Sanchelima, Esq. / Chris Sanchelima, Esq.
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Dated: October 16, 2017

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Attorneys for Opposer/Respondent,
Mediderm Laboratories, LLC

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

MEDIDERM LABORATORIES, LLC, Opposer, v. SESDERMA, S.L., Applicant. _____ SESDERMA, S.L., Petitioner, v. MEDIDERM LABORATORIES, LLC, Respondent. _____	Opposition No. 91233046 (parent) Attorney Docket No.: 11340-Mediderm

SUPPLEMENTAL DECLARATION OF KAMRAN FATTAHI IN SUPPORT OF MEDIDERM'S COMBINED OPPOSITION TO SESDERMA'S MOTION FOR SUMMARY JUDGMENT AND MEDIDERM'S CROSS-MOTION FOR SUMMARY JUDGMENT

I hereby declare and represent the following:

1. My name is Kamran Fattahi, and am an attorney at the Law Offices of Kamran Fattahi. My law firm and I are counsel of record for Mediderm Laboratories, Inc. ("Mediderm") in the above-identified TTAB proceedings.

2. I am submitting this Supplemental Declaration in connection with these proceedings, and in support of Mediderm's combined opposition to motion for summary judgment filed by Sesderma, S.L. ("Sesderma") and Mediderm's cross-motion for summary judgment.

3. Attached hereto as **Exhibit H** is a true and correct copy of a printout from my e-mail browser software of a listing of e-mails exchanged before and after November 30, 2016 (including on that date) between me and Sesderma's attorneys and paralegal (attorney Chris Sanchelima at Chris@Sanchelima.com; attorney Jesus Sanchelima at Jesus@Sanchelima.com; and paralegal station at Paralegal@Sanchelima.com). Included on this list is an entry which I have highlighted by hand-drawn arrows for an e-mail I sent on November 30, 2016 to Sesderma's attorneys and paralegal, whereby I

served therewith as an attachment to my e-mail Respondent's [Mediderm's] First Set of Requests for Admission Nos. 1-124. The highlighted e-mail bears the subject "TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)" with the date of November 30, 2016 and time of 7:53 p.m., and is the same November 30, 2016 e-mail which I had attached as **Exhibit A** to my Declaration submitted on September 5, 2017 in this proceeding.

4. Yahoo Mail was the provider of my e-mail services at the time of sending my subject November 30, 2016 e-mail to Sesderma's attorneys and paralegal.

5. Attached hereto as **Exhibit I** is a true and correct printout of publicly available information on Yahoo's website wherein in response to the question of "How can I tell if my sent email was received or read?," Yahoo provide this explanation: "If you send an email from Yahoo Mail and don't receive a failed delivery message, the email was delivered to your intended recipient's email system."

6. At no time have I received any notification from Yahoo Mail that would indicate that my November 30, 2016 e-mail to Sesderma's attorneys and paralegal (see Exhibits A and H of my Declarations) had failed to be sent or delivered to their recipients.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct. Executed in Sherman Oaks, California.

Dated: October 16, 2017

/Kamran Fattahi/
Kamran Fattahi

CERTIFICATE OF SERVICE

As counsel for Mediderm Laboratories, LLC, I hereby certify that I caused a true and correct copy of the attached SUPPLEMENTAL DECLARATION OF KAMRAN FATTAHI IN SUPPORT OF MEDIDERM'S COMBINED OPPOSITION TO SESDERMA'S MOTION FOR SUMMARY JUDGMENT AND MEDIDERM'S CROSS-MOTION FOR SUMMARY JUDGMENT (In re Opposition No. 91233046 (parent)) to be served on this date via e-mail upon Sesderma, S.L.'s attorney of record as follows:

Sesderma, S.L.'s Attorney of Record
Jesus Sanchelima, Esq. / Chris Sanchelima, Esq.
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Dated: October 16, 2017

/Kamran Fattahi/
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Attorneys for Opposer/Respondent,
Mediderm Laboratories, LLC

Exhibit “H”

!	From	Subject	Received	Size	Categories
	Legal	Re: Our file No: 370166 *** For: v. Mediderm Laboratories, LLC (MEDI+DERMA)Consolidated *** *** Cla...	Tue 6/20/2017 9:27 AM	27 KB	
	Kamran Fattahi	RE: Our file No: 370166 *** For: v. Mediderm Laboratories, LLC (MEDI+DERMA)Consolidated *** *** Cla...	Mon 6/19/2017 10:40 A...	13 KB	
	Legal	Our file No: 370166 *** For: v. Mediderm Laboratories, LLC (MEDI+DERMA)Consolidated *** *** ClassSt...	Wed 5/24/2017 2:10 PM	21 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Mon 5/22/2017 7:33 PM	53 KB	
	Legal	Our file No: 370223 *** For: v. Mediderm Laboratories, LLC (MEDI+DERMA BY SESDERMA) *** *** Class...	Mon 5/22/2017 2:54 PM	95 KB	
	Jesus Sanchelima	Re: TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Tue 5/16/2017 3:43 AM	30 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Mon 5/15/2017 8:47 PM	315 KB	
	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.110.000	Fri 4/28/2017 2:04 PM	148 KB	
	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.110.000	Thu 4/27/2017 12:01 PM	752 KB	
	Legal	Our file No: 370166 *** For: v. Mediderm Laboratories, LLC (MEDI+DERMA) *** *** ClassStatus: 8.15.000	Tue 4/4/2017 1:22 PM	125 KB	
	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Tue 2/28/2017 11:02 AM	812 KB	
	Pardega Station	Fwd: Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Thu 2/23/2017 7:54 AM	29 KB	
	Pardega Station	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Mon 2/20/2017 12:21 P...	18 MB	
	Pardega Station	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Fri 2/10/2017 1:13 PM	26 KB	
	Kamran Fattahi	RE: TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Wed 2/1/2017 10:56 AM	52 KB	
	Jessca Pedroza	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Thu 1/12/2017 2:56 PM	7 MB	
	Kamran Fattahi	RE: TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Wed 12/14/2016 8:55 P...	81 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Wed 12/14/2016 8:00 P...	346 KB	
	Kamran Fattahi	RE: TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Mon 12/12/2016 11:47 ...	12 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Fri 12/2/2016 9:52 AM	11 KB	
	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Thu 12/1/2016 12:13 PM	106 KB	
	Kamran Fattahi	RE: Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Thu 12/1/2016 11:02 AM	15 KB	
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	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Wed 11/30/2016 8:00 A...	20 KB	
	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Tue 11/29/2016 2:51 PM	142 KB	
	Legal	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Tue 11/29/2016 2:21 PM	121 KB	
	Kamran Fattahi	RE: Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Tue 11/29/2016 9:28 AM	20 KB	
	Jesus Sanchelima	Re: Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Tue 11/29/2016 9:23 AM	65 KB	
	Jessca Pedroza	Re: Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Tue 11/29/2016 9:06 AM	29 KB	
	Kamran Fattahi	RE: Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Mon 11/28/2016 7:16 P...	12 KB	
	Jessca Pedroza	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Mon 11/28/2016 1:36 P...	131 KB	
	Jessca Pedroza	Re: TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Mon 11/28/2016 1:36 P...	28 KB	
	Jessca Pedroza	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM) *** *** ClassStatus: 8.15.000	Mon 11/28/2016 6:29 A...	194 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Wed 11/23/2016 8:18 P...	72 KB	
	Kamran Fattahi	RE: TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Mon 11/21/2016 6:38 P...	92 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Thu 11/3/2016 7:19 PM	67 KB	
	Julio Menache	Our file No: 350751 *** For: v. Mediderm Laboratories, LLC (MEDIDERM)	Mon 10/24/2016 1:02 P...	120 KB	
	Kamran Fattahi	TTAB Cancellation 92062648 (Sesderma v. Mediderm Labs)	Mon 8/15/2016 1:38 PM	71 KB	

Exhibit "I"

How can I tell if my sent email was received or read?

If you send an email from Yahoo Mail and don't receive a failed delivery message, the email was delivered to your intended recipient's email system. But that doesn't guarantee the email was opened and/or read.

Yahoo Mail does not provide a "read/return receipt" feature.

To confirm that your recipient has received and/or read an important message, we suggest asking them to confirm receipt by sending you a reply.

If you're receiving "read/return receipts" in your Yahoo Mail account, they may be originating from:

- A mobile device
- An external email client
- The recipient's Internet Service Provider (ISP)

Was this article helpful? Yes No