

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Ey/wbc

December 9, 2020

Opposition No. 91244593

Cytozyme Laboratories, Inc.

v.

JH Biotech, Inc.

Wendy Boldt Cohen, Interlocutory Attorney:

The proceeding comes before the Board on Applicant's motion to strike Opposer's second and rebuttal notice of reliance filed October 23, 2020 arguing the evidence is improper rebuttal. 26 TTABVUE. Opposer opposes the motion. 27 TTABVUE.

An adverse party may object to a notice of reliance on substantive grounds, such as that evidence offered under the notice constitutes hearsay or improper rebuttal, or is incompetent, irrelevant, or immaterial. Objections of this nature normally should be raised in or with the objecting party's brief on the case or in an appendix or separate statement of objections attached to the brief. If a motion to strike a notice of reliance raises objections that cannot be resolved simply by reviewing the face of the notice of reliance (and attached documents), determination of the motion will be deferred by the Board until final hearing.

Whether Opposer's notice of reliance is improper rebuttal is a substantive objection. *See* TBMP §§ 532; 707.02(c) and authorities cited. In view thereof, the objection is **deferred** to final. *See Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992) (whether notice of reliance sought to introduce improper rebuttal evidence deferred).

In view of the Board's order, proceedings continue on with the schedule below:

Plaintiff's Main Brief Due	January 25, 2021
Defendant's Main Brief Due	February 24, 2021
Plaintiff's Reply Brief Due	March 11, 2021

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page

orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.¹ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the ESTTA help webpage.

¹ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.