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

Proceeding no.	91285714
Party	Defendant Paragon Implant LLC
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Date	09/16/2024
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 97/438,358
Implant Direct Sybron International
LLC,

Opposer,

v.

Paragon Implant, LLC,

Applicant.

Opposition No. 91285714

Opposition to Opposer's Motion for
Sanctions

Mark at Issue: Simply Smarter

1. Introduction

Opposer Implant Direct Sybron International LLC ("IDSI" or "Opposer") has read the declarations of Dr. Niznick, IDSI's former president, and of former IDSI implant marketing managers, Mr. Ken Mah and Mr. David Painter, filed in support of Applicant Paragon Implant, LLC's ("Applicant" or "Paragon") second motion for summary judgment ("MSJ2"). Opposer's MSJ2 Opposition presents no objection, evidentiary or otherwise, to any of these declarations. Moreover, Opposer's MSJ2 Opposition presents no declarations rebutting or contesting any of the Mah/Painter/ declarations. From these declarations, and from the concurrently-filed declaration of Dr. Niznick, IDSI's former CEO, Opposer realizes that this Board should properly grant Applicant's MSJ2, to dismiss Opposer's opposition to

Applicant being granted Trademark "Simply Smarter" . Opposer's Opposition to MSJ2 all but concedes defeat of Opposer's Opposition.

In desperation, Opposer has resorted to Opposer's meritless sanctions motion (the "SanctionsM"). With its meritless SanctionsM, Opposer to avoid this Board granting Applicant's MSJ2 against Opposer, on the merits, as the Board should. Opposer's meritless SanctionsM says this Board should dismiss Applicant's trademark application, as a sanction, instead of ruling on Applicant's MSJ2, on the merits.

Opposer's SanctionsM falsely alleges Applicant's counsel committed five intentional breaches of the TTAB's standard protective order ("P.Order"). As explained below, these five events reduce to just three issues, none of which merits any sanction, much less the "capital punishment" sanction of dismissal of Applicant's trademark application.

SanctionsM.'s request that this Board refer Applicant's attorney, Mr. Bright, to the PTO or to the California state bar for discipline, is frivolous, particularly as Mr. Bright promptly made all corrections Opposer's counsel requested, exactly as Opposer's counsel directed.

The Board should deny Applicant's SanctionsM, because it is meritless for at least these reasons: First, none of the five events were intentional misdeeds. Second, Applicant promptly remedied all five events, exactly as

Opposer's counsel demanded, and as soon as Opposer's counsel so demanded. Third, Opposer's SanctionsM includes no evidence, by declaration or otherwise, that any of the five events caused any harm/damage to Opposer. Fourth, the SanctionsM presents no evidence that any unauthorized person saw any of Opposer's allegedly confidential information.

The SanctionsM consists of a brief that misstates the facts/applicable law, and a declaration of Mr. Blatt, Opposer's counsel. Mr. Blatt's declaration attaches some emails that reflect Mr. Bright's prompt, appropriately responsive remediation of Opposer's complaints. Opposer presents no evidentiary declarations from anyone attesting to the allegedly wrongful conduct. And no evidentiary basis for any of Mr. Blatt's attorney argument, or for his baseless character assassination of Mr. Bright and of Dr. Niznick.

2. The (Only) Two Cases the SanctionsM Cites as Authority are Obviously Factually Inapposite, so are Obviously Distinguishable

SanctionsM only cites two cases, both obviously distinguishable, as factually inapposite. In one of these two cases, *Revolution Jewelry Works, Inc. v. Stonebrook Jewelry, LLC*, 2022 U.S.P.Q. 2d (BNA)229, at *9-10 (TTAB 2022), Opposer Revolution Jewelry Works disclosed attorneys'-eyes-only (AEO) information to Applicant Stonebrook Jewelry in a TTAB filing, and allowed its executive, who was not allowed to see AEO

information, to remotely attend an AEO deposition, without consent.

Nothing like that happened here. In fact, Applicant's president, Dr. Niznick, attended the deposition of Opposer's sole fact witness, Ms. Christensen, with Opposer's knowledge and consent. No other deposition has taken place in this Opposition to date.

In the other case, *Benedict v. Super Bakery, Inc.*, 665 F.3d 1263, 1268 (Fed. Cir. 2011), Mr. Benedict, appearing in pro per, failed to comply with the Board's discovery orders, then tried to evade obeying by filing a baseless motion for summary judgment. Nothing like that happened here. In fact, Applicant has cooperated in all discovery matters here, avoiding any motion practice relating thereto.

The concurrently-filed declaration of Applicant's counsel in this Opposition, Patrick Bright (the "BrightDec"), attests to the facts relevant to the five events Opposer's SanctionsM raises, and to Mr. Bright's prompt, complete remediation of them, all made in accordance with the instructions of, and with the concurrence of, Opposer's counsel, Mr. Blatt.

3. SanctionsM Must Be Denied; SanctionsM Lacks Any Evidence that Any of the Five Events Complained of Caused Any Damage/Harm to Opposer

The SanctionsM must be denied, because it presents no evidence, by declaration or otherwise, of any actual harm/damage to Opposer from any of

the five events raised in the SanctionsM. As the BrightDec attests, Mr. Bright knows of no evidence that any harm to Opposer resulted from any of these five events. For example, the SanctionsM presents no evidence, by declaration or otherwise, that anyone other than the parties to this Opposition saw any allegedly confidential information on the TTABVUE public site, during the short period of time before the allegedly confidential information was removed from that site.

As the BrightDec attests, immediately upon Opposer's counsel directing Mr. Bright to remediate the allegedly wrongful events, Mr. Bright promptly, and completely, remediated all of them as Opposer's counsel directed. Mr. Bright's prompt, complete remediation prevented Opposer from suffering any damage/harm.

Because Applicant's counsel Bright promptly remediated all issues, exactly as Opposer requested, to Opposer's benefit, Opposer is equitably estopped from now seeking anything more from Applicant, by this SanctionsM, or otherwise, beyond the benefits Opposer has already received.

4. SanctionsM Must Be Denied Because It Lacks Any Evidence that Any of the Five Alleged Breaches of P.Order--if They Were Breaches at all--were Intentional

The SanctionsM presents no evidence that any of the five events complained of resulted from intentional breach of the P. Order, by Applicant, or by counsel for Applicant. Nor can/does the SanctionsM deny/dispute that Applicant's attorney, Mr. Bright, immediately and completely remedied each of these five events, in accordance with the directions of Opposer, immediately after Opposer complained to Mr. Bright.

Opposer does not/cannot deny that Applicant has remedied all five events as Opposer directed. As a result, Opposer should be estopped to receive any additional benefits beyond those Opposer has already received, and accepted.

5. Opposer Should be Equitably Estopped from Receiving Any Additional Relief From the SanctionsM., Under Applicable Federal Circuit Decisions; Applicant's Counsel Has Already Remediated All Five Events that SanctionsM. Raises Again

15 USC §1069 states that equitable estoppel applies in inter partes proceedings:

"In all inter partes proceedings, **equitable principles of ... estoppel**, and acquiescence, where applicable may be considered and applied."

The BrightDec sets forth the facts establishing that Opposer should be equitably estopped, under controlling decisions of the Court of Appeals for the Federal Circuit, from prevailing on its SanctionsM. Specifically, the

BrightDec attests that Mr. Bright promptly did exactly what Opposer's counsel directed, to remediate all five events.

In Applicant's pending MSJ2, Applicant also elected to forego reliance upon the three digit number from Exhibit J, and upon Exhibit 1 to the Mah declaration.

Until Opposer filed its SanctionsM, Opposer had acquiesced in these remedies, and accepted the benefits of all of them. Applicant reasonably concluded that all these issues—now complained of a second time, in SanctionsM-- had been remedied to Opposer's satisfaction.

Opposer should be held to be estopped, pursuant to 15 USC §1069, from resurrecting these same issues, and from seeking additional remedies, merely because Opposer can see that, on the merits, Opposer's Opposition to Applicant's MSJ2 will not defeat MSJ2.

See, to this effect, *Scholle Corp. v. Blackhawk Molding Co., Inc.*, 133 F.3d 1469, 1471-1473 (Fed. Cir. 1998), sustaining the defense of equitable estoppel, and articulating the three elements of this defense: (1) misleading conduct of Opposer, including action, inaction, and silence; (2) Applicant's reliance on Opposer's conduct; and (3) material prejudice from that reliance.

In *Aspex Eyewear Inc. v. Clariti Eyewear, Inc.*, 605 F.3d 1305, 1310–14 (Fed. Cir. 2010), the Federal Circuit cites these same three elements of

equitable estoppel, and relies on *Scholle, supra*, to affirm a District Court's grant of summary judgment, which the District Court had granted based on equitable estoppel. Note that a later US Supreme Court case, *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 134 S. Ct. 1749 (2014), implicitly overruled *Aspex* on the second issue in *Aspex*, which was fee shifting, but in no way affects the equitable estoppel part of the *Aspex* decision.

Here, (1) Opposer directed Applicant to take specific remedial actions, to remedy all of Opposer's five complaints, and Applicant did all that Opposer directed; (2) Opposer thereupon accepted the benefits of Applicant's remedies, and dropped its complaints; and (3) Applicant relied on Opposer's conduct by taking no further remedial steps to address Opposer's complaints. These events establish estoppel against Opposer, and alone are sufficient to deny Opposer's SanctionsM, even if Opposer had proved up any of them.

But Opposer has failed to prove up any of its three complaints. Opposer's SanctionsM is unsupported by any declaration from anyone; presents no evidence of any harm to Opposer; and likewise presents no evidence that anyone, other than the parties to this Opposition, ever saw any confidential information.

These are more than sufficient reasons to deny Opposer's SanctionsM, and Applicant seeks denial of the Opposer's SanctionsM.

Sadly, Opposer's SanctionsM consists primarily of Opposer's unwarranted, venomous personal attacks on Applicant and Applicant's counsel. This misconduct is a third, independent reason for the Board to deny Opposer's SanctionsM.

6. The Details on How Applicant/Bright Promptly Remedied All Five Items, Exactly as Opposer Requested

Here are the facts showing how Applicant/Bright promptly remedied all five items Opposer complained about, exactly as Opposer requested:

A. Item 1: Following Applicant's Prompt, Complete Remediation, Opposer Dropped its First Issue, Resurrected Here Despite Applicant's Remediation

The BrightDec explains why Opposer should be estopped from resurrection/revival of the first event, a complaint that Applicant promptly remediated as Opposer's counsel directed. That complaint arose upon Applicant's filing of Applicant's first motion for summary judgment, denied in the Board's 6/6/2024 order. The SanctionsMotion brief, at page 5, section C, sets forth Opposer's allegations about this complaint. These allegations are inaccurate and misleading. As the BrightDec states:

"4. Paragon has brought two motions for summary judgment (MSJ), moving the Board to grant summary judgment in favor of Paragon, against Opposer, dismissing this Opposition. These two motions seek dismissal of Opposer's

Opposition to Paragon's application to register the trademark "Simply Smarter" ("SS") to Paragon, for dental implants. In an order dated 6/6/2024, the Board denied Paragon's first MSJ, pointing out certain gaps in Paragon's evidence. Paragon then filed Paragon's MSJ2, with additional declarations, that remedy these gaps.

5. Opposer has been served with the declarations to Paragon's MSJ2. Opposer realizes that Paragon is entitled to have Paragon's MSJ2 granted, because Paragon's evidence proves Opposer never used the phrase SS as a trademark, but only as a descriptor. Opposer dropped all use of the SS phrase in 2017. In its opposition to MSJ2, Opposer has presented insufficient evidence to raise a genuine issue of material fact.

6. With insufficient evidence to oppose MSJ2, Opposer has filed its blatantly invalid SanctionsM, alleging, in error, willful violations of the TTAB's standard Protective Order ("P.Order"). This SanctionsM cites to three issues (Opposer's motion inaccurately calls them five events). In part, these issues relate to the brief appearance on TTABVUE's public site of certain information, in alleged breach of the P.Order. Applicant promptly and completely removed all of this information from that site, exactly as Opposer directed, thus remediating Opposer's complaints.

7. Opposer's SanctionsM presents no evidence of any harm to Opposer from these matters, and no evidence that anyone, other than the parties hereto, ever saw any of this information on the TTAB public site.

8. Opposer's SanctionsM does not report that I, as Paragon's counsel, promptly and completely, removed from the TTAB public site everything that Opposer's counsel directed be removed...

11. The SanctionsM brief, at page 5, section C, sets forth Opposer's allegations about the first of these issues/events. These allegations are inaccurate and misleading.

12. Here is my report about this first event/issue. As part of Applicant's first MSJ, on Applicant's behalf, on 2/29/2024, I filed portions of the transcript of the deposition of Opposer declarant Kayla Christensen. This was my first experience with the ESTTA filing system, and I apparently made an inadvertent filing mistake.

13. Opposer promptly complained that some, but not all, of the Christensen deposition testimony should have been filed under seal, on grounds of alleged confidentiality. On March 1, 2024, just one day after this mistaken filing, the PTO's interlocutory attorney placed Applicant's entire first MSJ under seal, including all of the Christensen deposition testimony in that MSJ. Opposer's motion presents no evidence that anyone, other than the parties to this Opposition, saw the Christensen deposition on TTABVUE in the 24 hour period that elapsed after filing of Applicant's first MSJ, and before that filing was placed under seal.

14. Then, with Applicant's entire first MSJ under seal, Opposer's counsel reviewed Applicant's entire first MSJ, and identified all of the information in that motion that he deemed confidential. I redacted Applicant's first MSJ accordingly, and timely refiled the redacted first MSJ. Opposer's counsel told me he was satisfied with these promptly-taken steps, thus dropping his complaint about this issue.

14. Before filing the SanctionsM, Opposer had not resurrected/repeated its complaint about this first event/issue, showing that Applicant's remediation had commuted any further complaint from Opposer about this first event/issue. Nonetheless, the SanctionsM seeks, in bad faith, to renege on Opposer's dropping this complaint.

16. Opposer's SanctionsM brief, at page 5, in section C, misleadingly states that:

“Between the time of filing and the time the document link was disabled by the Interlocutory Attorney, Opposer's confidential information was publicly exposed for anyone to review or save.”

The time interval Opposer refers to was less than 24 hours. Opposer's SanctionsM presents no evidence that anyone, other than the parties to this Opposition, saw the allegedly confidential Christensen testimony on the TTABVUE site at any time. Opposer's motion presents no evidence of any actual harm from this event/issue."

The SanctionsM presents no evidence, newly discovered or otherwise, of any actual harm from the brief public disclosure, promptly cured, of a few sentences from Ms. Christensen's deposition. Neither Ms. Christensen nor anyone else from IDSI has filed a declaration saying otherwise.

On this first issue, indeed on all three issues in the SanctionsM, Opposer relies solely upon attorney argument, not evidence.

B. Items Two/Three: Inadvertent Disclosure of a Single Sales Figure, Sales Figure Removed in MSJ2

Opposer's SanctionsM brief, at pages 6-7, in sections D & E, sets forth provides Opposer's allegations about Opposer's second and third events.

There, Opposer alleges, in error, that Mr. Bright gave Dr. Niznick a copy of Exhibit J to the Christensen declaration. Bright did not do that, as the BrightDec, paragraph 17, attests.

As the BrightDec also states:

"18. Inadvertently, the following sentence in Dr. Niznick's declaration, originally filed in support of Applicant's second MSJ, mistakenly included a single three digit number that should have been omitted:

"Ms. Christensen's declaration claims that from 2017-2022, Implant Direct sold [here, there was a three digit number] InterActive Surgical trays with the words SIMPLY SMARTER."

19. Applicant had seen that such trays were not offered in Opposer's catalogs during the years 2019 to 2022. That information was apparent from Opposer's publicly available catalogs. Those publicly available catalogs appeared to impeach Ms. Christensen's inaccurate allegation about tray sales. The Niznick declaration sought only to challenge this inaccurate allegation. Therefore, only the three digit number in the foregoing sentence was allegedly confidential. Disclosure of the three digit number could not have caused any harm to Opposer because it was old, out of date data, and, according to Dr. Niznick's declaration, was false. It should not have been claimed to be "confidential".

20. The SanctionsM presents no evidence that anyone, other than the parties to this Opposition, saw the three digit number, referred to in paragraph 10 of the Niznick declaration, on the TTABVUE site. Opposer's motion presents no evidence of any actual harm from the second/third events/second issue.

21. When Opposer brought this three digit number complaint to my attention, I immediately deleted the entire sentence from a corrected Niznick declaration. And now, Applicant's MSJ2 does not rely upon this number at all."

C. Events Four/Five: Inadvertent Disclosure of a Few Pages from an Outdated Branding Brochure

Opposer's SanctionsM brief, at pages 8-9, in sections F & G, sets forth Opposer's allegations about the fourth/fifth events. These allegations relate to Exhibit 1 to the Mah declaration, a 22-page document Opposer asserts was marked confidential/AEO. Exhibit 1, as attached to the Mah declaration, consists of just 10 pages, none bearing confidential/AEO marking.

Nonetheless, Applicant promptly deleted Exhibit 1 from Applicant's second motion for summary judgment, and places no reliance on this exhibit in MSJ2, as the BrightDec explains:

"22. Opposer's SanctionsM brief, at pages 8-9, in sections F & G, provides Opposer's allegations about the fourth and fifth events. These events relate to Exhibit 1 to the Mah declaration. In error, Opposer asserts that this Exhibit 1 was part of a document Opposer asserts producing, marked confidential/AEO (the "OpposerDoc"). Mah declaration Exhibit 1, consisting of 10 pages, as attached to the Mah declaration, bears no such confidential/AEO marking, and is therefore not taken from the OpposerDoc. Nothing prohibited attaching a copy of Exhibit 1, which was not marked confidential, to the MahDec.

23. Moreover, the OpposerDoc, a long outdated 2017 document, should not have been marked as confidential.

24. I did not give Mr. Mah or Dr. Niznick the OpposerDoc.

25. My files contain a non-confidential copy of a multi-page document that includes the 10 pages of Mah Exhibit 1. This multi-page document bears no Opposer production number, and no Opposer AEO marking. Attached hereto as **Exhibit B** is the first page of this document, with no Opposer production number thereon, and with no Opposer AEO marking.

26. Nonetheless, when Opposer's counsel complained to me about Exhibit 1 to the Mah declaration, I immediately filed an amended Mah declaration, omitting Exhibit 1. And now, Applicant's second MSJ does not rely on Exhibit 1.

27. Opposer's SanctionsM presents no evidence of any actual harm from the fourth/fifth events, and no evidence that anyone, other than the parties to this Opposition, saw Exhibit 1 to the Mah declaration on the TTABVUE site."

7. CONCLSUION

The Board should deny Opposer's SanctionsM. Applicant promptly, and completely, remediated all of its inadvertent mistakes in compliance with Opposer's requirements. Opposer presents no evidence, by declaration or otherwise, of any actual harm from these events. In addition to fully remediating all mistakes at issue here, Applicant has elected to forego reliance on the three-digit number and on Mah declaration Exhibit 1 in the pending second MSJ.

Applicant opposes Opposer's requests for draconian sanctions of Applicant/Mr. Bright. These requests are unsupported by the two cases Opposer cites, where there was at least some wrongdoing, by the absence of any evidence of actual harm to Opposer, and by the absence of evidence anyone saw any allegedly confidential information, other than the parties to this Opposition.

Moreover, Opposer should be estopped from any further remedy because Opposer prescribed the remedies that Applicant promptly provided to Opposer, just as Opposer had requested. And Opposer has accepted the benefits of these remedies. Indeed, Applicant has gone even further by dropping reliance upon Mah Exhibit 1 and upon the three digit number from Exhibit J.

September 16, 2024

Respectfully,

s/Patrick F. Bright

Wagner, Anderson & Bright, PC

10524 West Pico Boulevard, #214

Los Angeles. CA 90064

(213) 700 6637

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing pleading has been served on Wood, Herron & Evans LLP by forwarding said copy on September 16, 2024, via email to: P. Andrew Blatt at dblatt@whe-law.com.

Signature /s/Patrick Bright

Date: September 16, 2024

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

In re Application Serial No. 97/438,358
Implant Direct Sybron International
LLC,

Opposer,

v.

Paragon Implant, LLC,

Applicant.

Opposition No. 91285714

Declaration of Patrick Bright, Esq.
Opposing Opposer's Motion for
Sanctions

Mark at Issue: Simply Smarter

I, Patrick Bright, declare:

1. I am the attorney for Applicant Paragon Implant LLC ("Applicant" or "Paragon" herein) in Paragon's Application to register the trademark "Simply Smarter" to Paragon for dental implants. I represent Paragon in Paragon's herein opposition to the Motion for Sanctions filed with the Board by Implant Direct Sybron International LLC ("Opposer").
2. I make this declaration in opposition to Opposer's Motion for Sanctions against Paragon, filed with TTAB on 9/3/2024 ("SanctionsM").
3. The TTAB should deny Opposer's SanctionsM. Opposer's SanctionsM is unmeritorious, and was filed as an improper tactic, to seek to defeat Paragon's pending second Motion for Summary Judgment ("MSJ2"). Opposer cannot defeat the MSJ2 on the merits.

4. Paragon has brought two motions for summary judgment (MSJ), moving the Board to grant summary judgment in favor of Paragon, against Opposer, dismissing this Opposition. These two motions seek dismissal of Opposer's Opposition to Paragon's application to register the trademark "Simply Smarter" ("SS") to Paragon, for dental implants. In an order dated 6/6/2024, the Board denied Paragon's first MSJ, pointing out certain gaps in Paragon's evidence. Paragon then filed Paragon's MSJ2, with additional declarations, that remedy these gaps.
5. Opposer has been served with the declarations to Paragon's MSJ2. Opposer realizes that Paragon is entitled to have Paragon's MSJ2 granted, because Paragon's evidence proves Opposer never used the phrase SS as a trademark, but only as a descriptor. Opposer dropped all use of the SS phrase in 2017. In its opposition to MSJ2, Opposer has presented insufficient evidence to raise a genuine issue of material fact.
6. With insufficient evidence to oppose MSJ2, Opposer has filed its blatantly invalid SanctionsM, alleging, in error, willful violations of the TTAB's standard Protective Order ("P.Order"). This SanctionsM cites to three issues (Opposer's motion inaccurately calls them five events). In part, these issues relate to the brief appearance on TTABVUE's public site of certain information, in alleged breach of the P. Order. Applicant

promptly and completely removed all of this information from that site, exactly as Opposer directed, thus remediating Opposer's complaints.

7. Opposer's SanctionsM presents no evidence of any harm to Opposer from these events, and no evidence that anyone, other than the parties hereto, ever saw any of this information on the TTAB public site.
8. Opposer's SanctionsM does not report that I, as Paragon's counsel, promptly and completely, removed from the TTAB public site everything that Opposer's counsel directed be removed.
9. Opposer's SanctionsM incorrectly alleges that I gave two documents that Opposer produced, marked AEO/confidential, to Dr. Niznick. I did not do so. See paragraphs 17 & 24 below.
10. Opposer's SanctionsM incorrectly alleges that I gave a document that Opposer produced, marked AEO/confidential, to Mr. Ken Mah. I did not do so. See paragraph 24 below.
11. The SanctionsM brief, at page 5, section C, sets forth Opposer's allegations about the first of these events/issues. These allegations are inaccurate and misleading.
12. Here is my report about this first event/issue. As part of Applicant's first MSJ, on Applicant's behalf, on 2/29/2024, I filed portions of the transcript of the deposition of Opposer declarant Kayla Christensen. This

was my first experience with the ESTTA filing system, and I apparently made an inadvertent filing mistake.

13. Opposer promptly complained that some, but not all, of the Christensen deposition testimony should have been filed under seal, on grounds of alleged confidentiality. On March 1, 2024, just one day after this mistaken filing, the PTO's interlocutory attorney placed Applicant's entire first MSJ under seal, including all of the Christensen deposition testimony in that MSJ. Opposer's motion presents no evidence that anyone, other than the parties to this Opposition, saw the Christensen deposition on TTABVUE in the 24 hour period that elapsed after filing of Applicant's first MSJ, and before that filing was placed under seal.
14. Then, with Applicant's entire first MSJ under seal, Opposer's counsel reviewed Applicant's entire first MSJ, and identified all of the information in that motion that he deemed confidential. I redacted Applicant's first MSJ accordingly, and timely refiled the redacted first MSJ. Opposer's counsel told me he was satisfied with these promptly-taken steps, thus dropping his complaint about this event/issue.
15. Before filing the SanctionsM, Opposer had not resurrected/repeated its complaint about this first event/issue, showing that Applicant's remediation had commuted any further complaint from Opposer about

this first event/issue. Nonetheless, the SanctionsM seeks, in bad faith, to renege on Opposer's dropping this first issue/event.

16. Opposer's SanctionsM brief, at page 5, in section C, misleadingly states that:

“Between the time of filing and the time the document link was disabled by the Interlocutory Attorney, Opposer's confidential information was publicly exposed for anyone to review or save.” The time interval Opposer refers to was less than 24 hours. Opposer's SanctionsM presents no evidence that anyone, other than the parties to this Opposition, saw the allegedly confidential Christensen testimony on the TTABVUE site at any time. Opposer's motion presents no evidence of any actual harm from this event/issue.

17. Opposer's SanctionsM brief, at pages 6-7, in sections D & E, sets forth Opposer's allegations about the second and third events/second issue.

There, Opposer alleges, in error, that I gave Dr. Niznick a copy of Exhibit J to the Christensen declaration. I did not do so.

18. Inadvertently, the following sentence in Dr. Niznick's declaration, originally filed in support of Applicant's second MSJ, mistakenly included a single three digit number that should have been omitted:

“Ms. Christensen's declaration claims that from 2017-2022, Implant Direct sold [here, there was a three digit number] InterActive Surgical trays with the words SIMPLY SMARTER.”

19. Applicant had seen that such trays were not offered in Opposer's catalogs during the years 2019 to 2022. That information was apparent from Opposer's publicly available catalogs. Those publicly available catalogs appeared to impeach Ms. Christensen's inaccurate allegation about tray sales. The Niznick declaration sought only to challenge this inaccurate allegation. Therefore, only the three digit number in the foregoing sentence was allegedly confidential. Disclosure of the three digit number could not have caused any harm to Opposer because it was old, out of date data, and, according to Dr. Niznick's declaration, false. Therefore, it should not have been claimed to be "confidential".
20. The SanctionsM presents no evidence that anyone, other than the parties to this Opposition, saw the three digit number, referred to in paragraph 10 of the Niznick declaration, on the TTABVUE site. Opposer's motion presents no evidence of any actual harm from the second/third events/second issue.
21. When Opposer brought this three digit number complaint to my attention, I immediately deleted the entire sentence from a corrected Niznick declaration. And now, Applicant's MSJ2 does not rely upon this number at all.

22. Opposer's SanctionsM brief, at pages 8-9, in sections F & G, provides Opposer's allegations about the fourth and fifth events/third issue. These events relate to Exhibit 1 to the Mah declaration. In error, Opposer asserts that this Exhibit 1 was part of a document Opposer asserts producing, marked confidential/AEO (the "OpposerDoc"). Mah declaration Exhibit 1, consisting of 10 pages, as attached to the Mah declaration, bears no such confidential/AEO marking, and is therefore not taken from the OpposerDoc. Nothing prohibited attaching a copy of Exhibit 1, which was not marked confidential, to the MahDec.
23. Moreover, the OpposerDoc, a long outdated 2017 document, should not have been marked as confidential.
24. I did not give Mr. Mah or Dr. Niznick the OpposerDoc.
25. My files contain a non-confidential copy of a multi-page document that includes the 10 pages of Mah Exhibit 1. This multi-page document bears no Opposer production number, and no Opposer AEO marking. Attached hereto as **Exhibit B** is the first page of this document, with no Opposer production number thereon, and with no Opposer AEO marking.
26. Nonetheless, when Opposer's counsel complained to me about Exhibit 1 to the Mah declaration, I immediately filed an amended Mah declaration,

omitting Exhibit 1. And now, Applicant's second MSJ does not rely on Exhibit 1.

27. Opposer's SanctionsM presents no evidence of any actual harm from the fourth/fifth events/third issue, and no evidence that anyone, other than the parties to this Opposition, saw Exhibit 1 to the Mah declaration on the TTABVUE site.

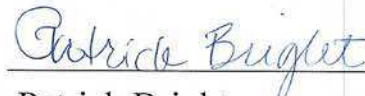
28. The absence of any evidence of any harm to Opposer from any of these events/issues, and the absence of any evidence that anyone, other than the parties hereto, saw any of the allegedly confidential information, is, in part, likely the result of Applicant's/my prompt action to remediate each of Opposer's concerns in accordance with his wishes, and without complaint, and to preclude any recurrence.

29. In summary, Opposer's SanctionsM presents no evidence of any actual harm. There was no actual harm. My prompt action to remediate each of Opposer's concerns in accordance with his wishes, and without complaint, precluded any harm to Opposer from any of the events complained of.

30. Attached as **Exhibit A** hereto are copies of my email correspondence with Opposer's counsel, reflecting these facts.

31. In Opposer's brief section D, Opposer's counsel inappropriately proposes draconian punishments of Applicant and the undersigned. These proposals are out of all proportion to the de minimus nature of Opposer's complaints, properly seen.

Executed under penalty of perjury under the laws of the United States in Los Angeles, CA, on September 16, 2024.


Patrick Bright

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing declaration has been served on Wood, Herron & Evans LLP by forwarding said copy on September 16, 2024, via email to: P. Andrew Blatt at dblatt@whe-law.com.

Signature /s/Patrick Bright

Date: September 16, 2024

Pat Bright

From: Pat Bright
Sent: Friday, March 1, 2024 10:00 AM
To: Drew Blatt
Cc: Gerald Niznick
Subject: Paragon's Motion for Summary Judgment

Dear Mr. Blatt: I have read your message about Paragon's motion for summary judgment, and disagree that there is any confidentiality issue here.

Paragon's motion for summary judgment is based primarily on Dr. Niznick's declaration, on publicly-available IDSI documents, on IDSI's publicly-available opposition pleadings, and on IDSI's non-confidential interrogatory responses, certified, non-confidentially, by Ms. Christensen. In deposition, Ms. Christensen testified that she is an expert in the issues of this proceeding, that she is the only IDSI person knowledgeable about this opposition, that IDSI's decision to file and pursue this opposition is hers alone, and that IDSI's decision to use, and to expand its use of the Simply Smarter phrase while this opposition is ongoing, is also hers alone. These are hardly confidential facts. In fact, the portions of her deposition testimony in our motion otherwise simply test her basis for the foregoing decisions, and the accuracy and soundness of the non-confidential reasons behind her public verification of public IDSI assertions about this proceeding that are, at a minimum, mistaken. Our motion includes her testimony on these non-confidential, but publicly contested matters. None of that testimony was called privileged on the deposition record. As for the exhibits we filed with our motion, we did not file the emails you produced, only IDSI publications. Ms. Christensen's testimony on these non-confidential matters, made non-confidential in IDSI pleadings, cannot be confidential. These documents, and related testimony, are not confidential. As you know, all courts and other tribunals increasingly insist upon minimum confidentiality in litigated matters, and this proceeding is no exception to that principle.

That said, the TTAB has marked Paragon's entire motion confidential, including Ms. Christensen's deposition testimony. The PTO wants me to file a redacted version of the motion papers that would be available to everyone. Please email me the pages of the motion papers marked for redaction, and I'll follow up. Please refrain from marking Dr. Niznick's declaration for redaction, or anything else, other than the objectively confidential testimony of Ms. Christensen.

Paragon remains interested in early resolution. IDSI's continued, expanded, aggressive use of Simply Smarter while this proceeding goes forward exposes IDSI to damages for unfair competition, at a minimum.

Please confirm receipt. Thank you.

Very truly yours, Patrick Bright for Paragon Implant LLC

Pat Bright

From: Pat Bright
Sent: Monday, March 4, 2024 8:41 AM
To: Drew Blatt
Cc: Gerald Niznick
Subject: FW: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 91285714

Dear Mr. Blatt: Please send me, by COB on March 6, 2024, your proposed redactions in Paragon's pending motion for summary judgement. I must file the redacted motion by 3/14/2024. Thank you. Very truly yours, Patrick Bright for Paragon Implant LLC -----Original Message-----

From: Estta_autoreply@uspto.gov [mailto:Estta_autoreply@uspto.gov]
Sent: Monday, March 4, 2024 6:00 AM
To: Pat Bright <pbright@patentattorney.us>
Subject: TTAB Order - Do Not Reply By E-mail. Mail Box Not Monitored - proceeding 91285714

UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board

Proceeding No. 91285714

03/04/2024

IMPORTANT NOTICE

The Trademark Trial and Appeal Board (TTAB) has issued an order in this proceeding. To view the order in TTABVUE, click on the link below or paste the URL into the address box of your browser.

<http://ttabvue.uspto.gov/ttabvue/v?pno=91285714&pty=OPP&eno=10>

This order contains important information which you should review immediately. A response may be required and trial dates may have changed. In some cases, this will be the only notification of this order you will receive. An email copy of the order itself will not be sent.

If you are unable to view the order, call the TTAB for technical assistance at 571-272-8500. The TTAB Assistance Center is available Monday to Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (ET). Do not use the reply button to respond to this message by email.

The entire public file of this proceeding may be viewed at <http://ttabvue.uspto.gov>.

All submissions in Board proceedings must be filed electronically with ESTTA at <https://estta.uspto.gov>.

View important information about ESTTA at <http://www-cms.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board/estta-help>.

Further information is available at the TTAB s web page at <http://www.uspto.gov/ttab>.

Pat Bright

From: Pat Bright
Sent: Friday, March 8, 2024 4:20 PM
To: Drew Blatt
Cc: Gerald Niznick
Subject: Paragon Implant LLC's MSJ
Attachments: 02292024PFBDecandExhibits part 3 of 5.pdf; 02292024PFBDecandExhibits part 5 of 5.pdf; 02292024PFBDecandExhibits part 4 of 5.pdf; 02292024PFBDecandExhibits part 2 of 5 redacted pages removed.pdf; 02292024PFBDecandExhibits part 1 of 5 redacted pages removed.pdf; 382024PFBDrNiznickSSDeclaration.pdf; 382024PFBParagonMSJ.pdf

Dear Mr. Blatt: Thanks for providing the redaction instructions for the captioned motion. Today, I filed the redacted papers, attached. Kind regards, Patrick Bright for Paragon Implant LLC

Pat Bright

From: Pat Bright
Sent: Monday, August 12, 2024 11:59 AM
To: Drew Blatt
Cc: Gerald Niznick
Subject: RE: Simply Smarter Opposition -- Protective Order Violations

Dear Drew: Sorry for any mix up that may have occurred. Please mark up the MSJ pleadings to redact everything you think should be redacted. The TTAB deadline for filing the redacted papers is August 22, 2024. I did not give Dr. Niznick Exhibit 1, or, to my knowledge, any other document that you marked AEO. As far as I know, neither Dr. Niznick nor I gave any document to Mr. Mah or to Mr. Painter that you marked AEO. Kind regards, Patrick Bright for Paragon Implant LLC.

Pat Bright

From: Pat Bright
Sent: Wednesday, August 14, 2024 3:16 PM
To: Drew Blatt
Subject: RE: Simply Smarter Opposition -- Protective Order Violations

Dear Drew: Thank you for your prompt attention to this matter. I have lodged redacted copies of the pleadings as the TTAB required. Kind regards, Pat Bright

From: Drew Blatt <dblatt@whe-law.com>
Sent: Monday, August 12, 2024 1:09 PM
To: Pat Bright <pbright@patentattorney.us>
Subject: RE: Simply Smarter Opposition -- Protective Order Violations

Yes.

From: Pat Bright <pbright@patentattorney.us>
Sent: Monday, August 12, 2024 3:29 PM
To: Drew Blatt <dblatt@whe-law.com>
Cc: Gerald Niznick <niznick@paragon-implant.com>
Subject: RE: Simply Smarter Opposition -- Protective Order Violations

Dear Drew: Is this everything you want? Please confirm. Thank you. Yours truly, Patrick Bright for Paragon Implant LLC

From: Drew Blatt <dblatt@whe-law.com>
Sent: Monday, August 12, 2024 12:27 PM
To: Pat Bright <pbright@patentattorney.us>
Subject: RE: Simply Smarter Opposition -- Protective Order Violations

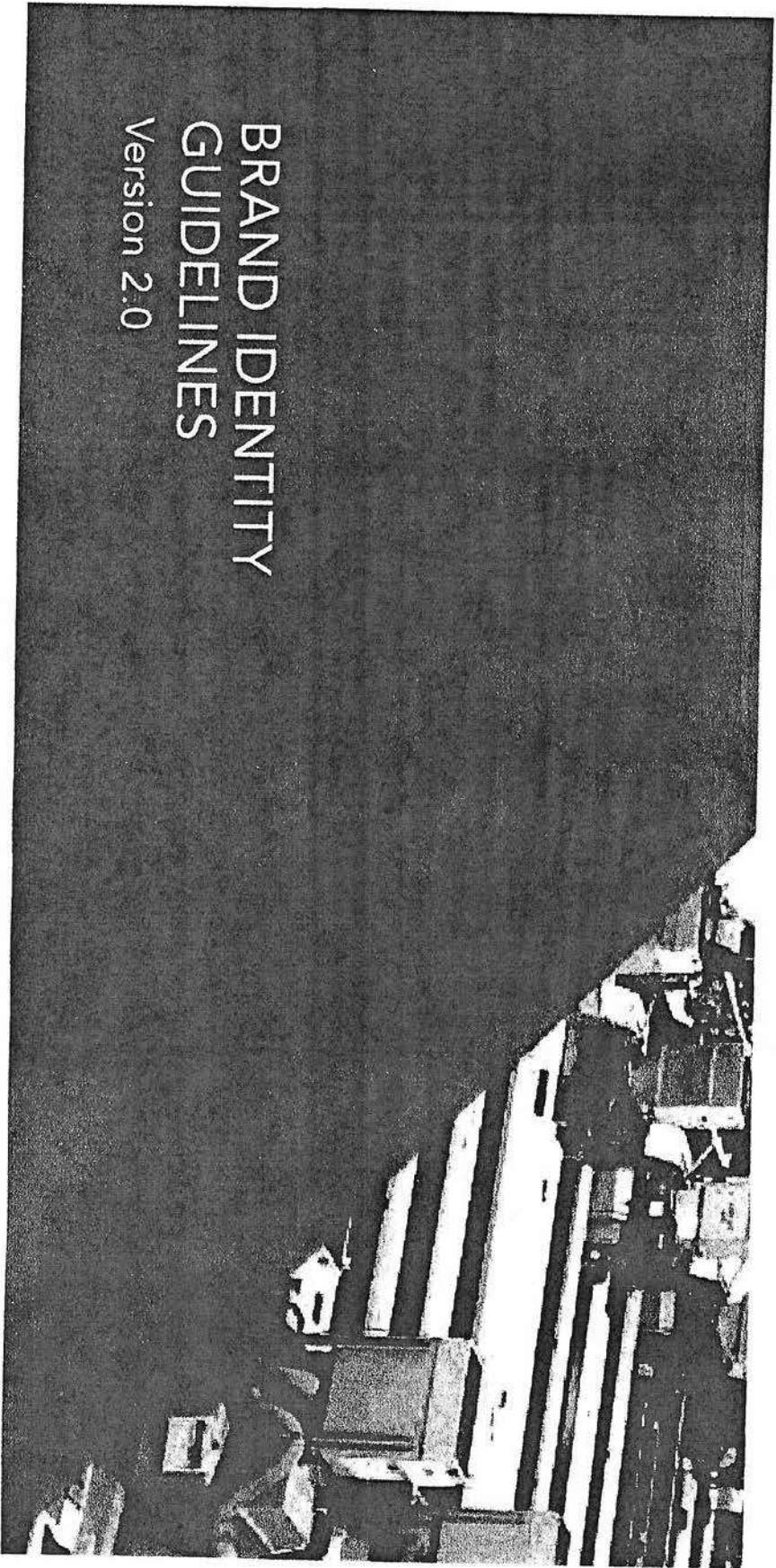
You should redact Paragraph 20 to Niznick's Declaration dated August 1, 2024.

You should redact all of Exhibit 1 to the Mah Declaration dated June 15, 2024.

Drew

From: Pat Bright <pbright@patentattorney.us>
Sent: Monday, August 12, 2024 2:59 PM
To: Drew Blatt <dblatt@whe-law.com>
Cc: Gerald Niznick <niznick@paragon-implant.com>
Subject: RE: Simply Smarter Opposition -- Protective Order Violations

Dear Drew: Sorry for any mix up that may have occurred. Please mark up the MSJ pleadings to redact everything you think should be redacted. The TTAB deadline for filing the redacted papers is August 22, 2024. I did not give Dr. Niznick Exhibit 1, or, to my knowledge, any other document that you marked AEO. As far as I know, neither Dr. Niznick nor I gave any document to Mr. Mah or to Mr. Painter that you marked AEO. Kind regards, Patrick Bright for Paragon Implant LLC.



EX. B