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

Proceeding no.	91285714
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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 Applicant's Motion to Compel Discovery Mark at issue: Simply Smarter

I. Overview of This Motion to Compel Discovery

Applicant here moves for an order compelling discovery from Opposer in this opposition proceeding. In particular, Applicant seeks complete, accurate responses to Applicant's Applicant's fourth set of interrogatories; to Applicant's first set of requests for admission; and to Applicant's fourth set of document requests, as explained below, in detail. Applicant's inadequate responses to these discovery requests, served on Opposer on January 31, 2025, are quoted below, where relevant. The discovery cutoff date is March 24, 2025.

Under TMBP rules, Applicant and Opposer are called upon to meet and confer, in an effort to resolve these disputes. For that reason, all of Opposer's inadequate responses appear in this single document, to facilitate meet and confer efforts. Applicant tried to resolve these disputes in good faith with Opposer's counsel, Mr. Blatt, but without success.

II. Background

Opposer filed this opposition in June, 2023, and applied, also in June, 2023, to register the same phrase as its trademark. Opposer took these unlawful steps more than a year after Applicant had applied to register the words SIMPLY SMARTER as a trademark for dental implants. Before

Applicant applied, Opposer had never used the words SIMPLY SMARTER as trademark on dental implants, or on any other dental product. Opposer's opposition is based solely on a baseless allegation that Opposer has/had common law trademark right in the words SIMPLY SMARTER. Opposer has, to date, evaded discovery, as its discovery responses below, amply show. Without an order from the Board compelling discovery, Opposer's plan and pattern of evasion and sophistry will go unremedied. Applicant seeks an appropriate order compelling discovery.

II. Opposer's Responses to Applicant's First Set of Requests for Admission are Inadequate

Here, Applicant explains why Opposer's responses to Applicant's first set of requests for admission are inadequate.

Request For Admission 1: Admit that, up to 6/1/2022, which is the date Applicant filed Applicant's Application to Register the Trademark "SIMPLY SMARTER" for dental implants, in the US Patent and Trademark Office, that Opposer had never placed a "TM" or "SM" after the words "SIMPLY SMARTER", on Opposer's packaging for dental implants, or on Opposer's dental implants themselves.

Response: Opposer objects to this Request for Admission because whether Opposer placed a TM or SM after the SIMPLY SMARTER mark has no bearing on whether SIMPLY SMARTER serves as a trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants. Subject to this objection, Opposer has not placed TM or SM after the SIMPLY SMARTER mark on Opposer's packaging for dental implants or on Opposer's dental implants because such placement of TM or SM is not required to establish trademark rights.

Applicant's Argument for Better Response to Request For Admission 1: FRCP Rule 36 provides as follows regarding requests for admission:

" (1) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b)(1) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents…

(4) *Answer.* If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(5) *Objections.* The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial."

Here, Opposer has failed to admit or deny the request, as the rule requires. And, Opposer has not answered the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response,

admission response-by-admission-response, as called for in this interrogatory, which reads as follows:

" **Interrogatory:** If Opposer's Answer to any of Requests to Admit Numbers 1-20, supra, is anything but an unqualified "YES", then for each Answer of Opposer to any of Requests to Admit Numbers 1-18, that is other than an unqualified "YES", state, Answer by Answer, the following:

State each fact why is Opposer's Answer to the particular Request for Admission, is not an unqualified 'YES'.

1. Identify each DOCUMENT which supports Opposer's Answer to that Request for Admission, being other than an unqualified "YES".
2. Identify each person who has information regarding facts or DOCUMENTS supporting Opposer's Answer being other than an unqualified "YES" to that Request for Admission."

Notice that Opposer doesn't identify any document that support its response, or identify any person who can testify to the basis for its response other than Kayla Christensen.

Request For Admission 2: Admit that Opposer's Opposition to Paragon Implant, LLC's Application to PTAB, to register "SIMPLY SMARTER" as a trademark for Paragon's dental implants, is based solely upon Opposer's use of the phrase "SIMPLY SMARTER" on products other than Opposer's dental implants, and other than Opposer's abutments for use with Opposer's dental implants.

Response: Denied as Opposer has used the SIMPLY SMARTER mark in conjunction with Opposer's dental implants and Opposer's abutments.

Applicant's Argument for Better Response to Request For Admission

2: See the argument for a better response to request for admission number 1, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 3: Admit that Opposer's Application, filed in the US Patent and Trademark Office on 6/26/2023, applying to register "SIMPLY SMARTER" as Opposer's trademark for dental implants, asserted that Opposer intended, at a date on or after 6/26/23, to use "SIMPLY SMARTER" as a trademark for dental implants that Opposer offered for sale on or after 6/26/23.

RESPONSE: Opposer objects to this Request for Admission as Opposer's Application was not filed to register the SIMPLY SMARTER mark only for dental implants. Opposer objects to this Request for Admission as being improper to the extent it seeks a legal conclusion. Subject to these objections, Opposer's Application filed on June 26, 2023, speaks for itself.

Applicant's Argument for Better Response to Request For Admission 3: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has objected to the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below,

with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 4: Admit that Opposer's Application, filed in the US Patent and Trademark Office on 6/26/2023, applying to register "SIMPLY SMARTER" as Opposer's trademark for Opposer's dental implants, did not assert that, before 6/26/23, Opposer had used "SIMPLY SMARTER" as a trademark, for dental implants that Opposer had sold at any time before 6/26/23.

RESPONSE: Opposer objects to this Request for Admission as Opposer's Application was not filed to register the SIMPLY SMARTER mark only for dental implants. Opposer objects to this Request for Admission as being improper to the extent it seeks a legal conclusion. Subject to these objections, Opposer's Application filed on June 26, 2023, speaks for itself.

Applicant's Argument for Better Response to Request For Admission 4: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has objected to the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 5: Admit that up to 6/1/2022, which is the date Applicant filed Applicant's Application to Register the Trademark "Simply Smarter" for dental implants, in the US Patent and Trademark Office, that Opposer had never affixed the words "Simply Smarter" on any of Opposer's dental implants, or on any packaging for any of Opposer's dental implants.

RESPONSE: Opposer objects to this Request for Admission because whether Opposer placed the SIMPLY SMARTER mark on Opposer's dental implants or Opposer's dental implant packaging has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on Opposer's dental implants or on Opposer's dental implant packaging.

Applicant's Argument for Better Response to Request For Admission 5: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has objected to the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 6: Admit that up to 6/1/2022, which is the date Applicant filed Applicant's Application to Register the Trademark

"SIMPLY SMARTER" for Opposer's dental implants, in the US Patent and Trademark Office, that Opposer shipped implants Opposer was selling, packaged in vials that were large enough to bear the words "SIMPLY SMARTER."

Response: Opposer objects to this Request for Admission because whether Opposer placed the SIMPLY SMARTER mark on the vials has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Subject to that objection, Opposer denies this Request for Admission because it is not practical to place the SIMPLY SMARTER mark on the vials because of the small size of the vials.

Applicant's Argument for Better Response to Request For Admission 6: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 7: Admit that up to 6/1/2022, which is the date Applicant filed Applicant's Application in the US Patent and Trademark Office, to Register the Trademark "SIMPLY SMARTER" for Applicant's dental implants, that the vials in which Opposer packaged its dental implants for delivery to Opposer's customers never bore the words "SimplySmarter."

Response: Opposer objects to this Request for Admission because whether Opposer placed the SIMPLY SMARTER mark on the vials has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the vials because of the small size of the vials. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on vials for the Opposer's dental implants because it is not practical to place the SIMPLY SMARTER mark on the vials because of the small size of the vials.

Applicant's Argument for Better Response to Request For Admission 7: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has objected to the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 8: Admit that up to 6/1/2022, which is the date Applicant filed Applicant's Application in the US Patent and Trademark Office, to register the Trademark "SIMPLY SMARTER" for use on Applicant's dental implants, that the only product of Opposer bearing the words "SIMPLY SMARTER", which Opposer had ever shipped to Opposer's dental implant customers, was trays.

Response: Denied as Opposer also put the SIMPLY SMARTER mark on the packaging for Opposer's biomaterials.

Applicant's Argument for Better Response to Request For Admission 8: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 9: Admit that up to 6/1/2022, which is the date Applicant filed Applicant's Application in the US Patent and Trademark Office, to Register the Trademark "SIMPLY SMARTER" for use on Applicant's dental implants, that trays bearing the words "SIMPLY SMARTER", which Opposer shipped to Opposer's dental implant customers, had products in addition to Opposer's dental implants on such trays.

Response: Opposer objects to this Request for Admission as being vague and ambiguous as the phrase "that none of the items, shipped on these trays, had the words "SIMPLY SMARTER" on them" is unclear. Subject to this objection, Opposer denies this Request for Admission as stated because the trays having the SIMPLY SMARTER mark do not have dental implants on those trays.

Applicant's Argument for Better Response to Request For Admission 9: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 10: Admit that up to 6/1/2022, which is the date Applicant filed Applicant's Application to Register the Trademark "SIMPLY SMARTER" for dental implants, in the US Patent and Trademark Office, that with respect to the trays bearing the words "SIMPLY SMARTER" that Opposer shipped to customers, that none of the items, shipped on these trays, had the words "SIMPLY SMARTER" on them.

Response: Opposer objects to this Request for Admission because whether Opposer placed a TM or SM after the SIMPLY SMARTER mark has no bearing on whether SIMPLY SMARTER serves as a trademark for Opposer's goods or services. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials, for example. Subject to this objection, up to June 1, 2022, Opposer has not placed TM or SM after the SIMPLY SMARTER mark on Opposer's products, services, advertising, or website because

such placement of TM or SM is not required to establish trademark rights.

Applicant's Argument for Better Response to Request For Admission 10: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 11: Admit that up to 6/1/22, which is the date Applicant filed Applicant's Application to Register the Trademark "SIMPLY SMARTER" for dental implants, in the US Patent and Trademark Office, that Opposer had never placed the letters "TM" or "SM" after the words "SIMPLY SMARTER" on Opposer's products, services advertising or website.

Response: Opposer objects to this Request for Admission because whether Opposer placed a TM or SM after the SIMPLY SMARTER mark has no bearing on whether SIMPLY SMARTER serves as a trademark for Opposer's goods or services. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials, for example. Subject to this objection, up to June 1, 2022, Opposer has not placed TM or SM after the SIMPLY SMARTER mark on Opposer's products, services, advertising or website because

such placement of TM or SM is not required to establish trademark rights.

Applicant's Argument for Better Response to Request For Admission 11: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 12: Admit that up to 6/1/22, which is the date Applicant filed Applicant's Application to Register the Trademark "SIMPLY SMARTER" for dental implants, in the US Patent and Trademark Office, that Opposer had never used the words "SIMPLY SMARTER" as a trademark for any product.

Response: Denied because Opposer has used the SIMPLY SMARTER mark in conjunction with at least dental implants, surgical trays, biomaterials, and educational services.

Applicant's Argument for Better Response to Request For Admission 12: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below,

with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 13: Admit that up to 6/1/22, which is the date Applicant filed Applicant's Application to Register the Trademark "SIMPLY SMARTER" for dental implants, in the US Patent and Trademark Office, that Opposer always used the words "SIMPLY SMARTER" as a descriptive phrase, not as a trademark.

Response: Denied because Opposer has used the SIMPLY SMARTER mark in conjunction with at least dental implants, surgical trays, biomaterials, and educational services.

Applicant's Argument for Better Response to Request For Admission 13: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 16: Admit that IDSI never used the phrase "SIMPLY SMARTER" as a trademark on IDSI's dental implants, or on IDSI's dental abutments, at any time before 1/1/2023.

Response: Denied as Opposer has used the SIMPLY SMARTER mark in conjunction with dental implants and dental abutments before January 1, 2023.

Applicant's Argument for Better Response to Request For Admission 16: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has denied the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 17: Admit that IDSI never used the phrase "SIMPLY SMARTER" as a trademark on IDSI's dental implants, or on IDSI's dental abutments, at any time during the year 2023.

Response: Opposer objects to this Request for Admission as not being relevant to any claim or defense of this Opposition. Subject to this objection, Opposer denies this Request for Admission as Opposer has used the SIMPLY SMARTER mark in conjunction with dental implants and dental abutments during the year 2023. Opposer admits that the SIMPLY SMARTER mark is not applied directly on Opposer's dental implants and on Opposer's dental abutments because they are too small and they are medical devices.

Applicant's Argument for Better Response to Request For Admission 17: See the argument for a better response to request for admission

number 2, incorporated here by reference. Here, Opposer has objected to the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't "overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Request For Admission 18: Admit that IDSI never used the phrase "SIMPLY SMARTER" as a trademark on IDSI's dental implants, or on IDSI's dental abutments, at any time during the year 2024.

Response: Opposer objects to this Request for Admission as not being relevant to any claim or defense of this Opposition. Subject to this objection, Opposer denies this Request for Admission as Opposer has used the SIMPLY SMARTER mark in conjunction with dental implants and dental abutments during the year 2024. Opposer admits that the SIMPLY SMARTER mark is not applied directly on Opposer's dental implants and on Opposer's dental abutments because they are too small and they are medical devices.

Applicant's Argument for Better Response to Request For Admission 18: See the argument for a better response to request for admission number 2, incorporated here by reference. Here, Opposer has objected to the request, but has failed to answer the interrogatory appended to, and applicable to, each request for admission to which Opposer responded with other than an unqualified YES. That interrogatory appears below, with Opposer's inadequate, global response. So, Opposer didn't

"overlook" this interrogatory. Instead, Opposer evaded providing a complete response, admission response-by-admission-response, as called for in this interrogatory.

Interrogatory: If Opposer's Answer to any of Requests to Admit Numbers 1-20, supra, is anything but an unqualified "YES", then for each Answer of Opposer to any of Requests to Admit Numbers 1-18, that is other than an unqualified "YES", state, Answer by Answer, the following:

State each fact why is Opposer's Answer to the particular Request for Admission, is not an unqualified "YES".

1. Identify each DOCUMENT which supports Opposer's Answer to that Request for Admission, being other than an unqualified "YES".
2. Identify each person who has information regarding facts or DOCUMENTS supporting Opposer's Answer being other than an unqualified "YES" to that Request for Admission.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding. Subject to this objection, Opposer has produced documents bearing production numbers ID-00001-ID02362.

Identify each person who has information regarding facts or DOCUMENTS supporting Opposer's Answer being other than an unqualified "YES" to that Request for Admission. **Response:** Subject to the Preliminary Statement, Kayla Christensen.

III. Opposer's Responses to Applicant's Fourth Set of Interrogatories Admission are Inadequate

Here, Applicant explains why Opposer's responses to Applicant's fourth set of interrogatories are inadequate.

23. With respect to Exhibit J to Ms. Christensen's declaration dated 4/15/2024, IDENTIFY all DOCUMENTS used, compiled, or otherwise relied upon in composing Exhibit J.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as it violates the Board's Order dated December 13, 2024, (Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen . . . to support any defense or oppose any claim."

Applicant's Argument for Better Response to Interrogatory 23: The 12/13/2024 Order does not bar discovery into the documents underlying Exhibit J, or to the introduction as evidence of any such document at trial, if relevant. Nor does the 12/13/2024 Order bar Opposer from relying at trail on Exhibit J. In that event, Applicant may use the documents sought here to impeach Opposer's position(s).

24. With respect to Exhibit J to Ms. Christensen's declaration dated 4/15/2024, IDENTIFY each person who found, and every person who compiled the information stated on Exhibit J.

Response: Subject to the Preliminary Statement, objects to this Interrogatory as it violates the Board's Order dated December 13, 2024, (Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen . . . to support any defense or oppose any claim."

Applicant's Argument for Better Response to Interrogatory 24: The 12/13/2024 Order does not bar discovery into the persons at issue here, or

to the deposition and testimony of any such person at trial, if relevant. Nor does the 12/13/2024 Order bar Opposer from relying at trial on Exhibit J. In that event, Applicant may use the testimony of the persons at issue here to impeach Opposer's position(s).

25. For each of the years 2017 to 2023, and for each of the 7 trays listed on Exhibit J, state how many units of each of these trays IDSI had at the beginning of each year 2017-2023, how many new units of each of these trays IDSI added to its inventory during each year 2017-2023, how many units of each of these trays IDSI delivered to customers in each year 2017-2023, and how many units of each of these trays IDSI had in inventory at the end of each year 2017-2023.

Response: Subject to the Preliminary Statement, objects to this Interrogatory as it violates the Board's Order dated December 13, 2024, (Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen . . . to support any defense or oppose any claim." Opposer further objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks the following information:

a. how many units of each of these trays IDSI had at the beginning of each year 2017-2023,
b. how many new units of each of these trays IDSI added to its inventory during each year 2017-2023, and
c. how many units of each of these trays IDSI had in

inventory at the end of each year 2017- 2023.

Regarding how many units of each of these trays IDSI delivered to customers in each year 2017- 2023, see Exhibit J.

Applicant's Argument for Better Response to Interrogatory 25: The 12/13/2024 Order does not bar discovery into the information at issue here, or to the introduction into evidence at trial of any such information, if relevant. Nor does the 12/13/2024 Order bar Opposer from relying at trial on Exhibit J. In that event, Applicant may use the information at issue here to impeach Opposer's position(s).

26. For each of the years 2017 to 2023, state how many trays, that IDSI delivered to its customers during each of years 2017 to 2023, that did not bear the words "SIMPLY SMARTER".

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks "how many trays, that IDSI delivered to its customers during each of years 2107 to 2023, that did not bear the words 'SIMPLY SMARTER'".

Applicant's Argument for Better Response to Interrogatory 26: Opposer has asserted, in error, that their delivery of trays to their customers at issue here is some proof of their alleged common law use of the words SIMPLY SMARTER. The interrogatory simply seeks the data Opposer underlying these bogus allegations. Opposer placed these trays in issue here, making them relevant, not Applicant.

27. For each of the years 2017-2023, state how many IDSI dental implants, which did not bear the words "SIMPLY SMARTER" on the IDSI

dental implants themselves, or on the packages or vials the IDSI implants were shipped to IDSI customers in, that IDSI delivered to its customers in each of years 2017-2023.

Response: Opposer objects to this Interrogatory because whether Opposer placed the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging. Opposer has used the SIMPLY SMARTER mark on at least its catalogs for dental implants. *See, e.g.*, ID-00184—ID000232; ID00268—ID00291; ID00873—ID00904; ID-01658—ID01809; ID-01838—ID02013.

Applicant's Argument for Better Response to Interrogatory 27: Opposer has asserted, in error, that their use of the words SIMPLY SMARTER on some of their dental products gives rise to common law trademark rights. The data sought here should put the lie to these bogus allegations, and is relevant to disproving Opposer's alleged common law trademark rights.

28. **F**or each of the years 2017-2023, for each of the 11 biomaterials listed on Exhibit J, state how many units of each of these biomaterials IDSI had at the beginning of each year 2017-2023, how many new units of each of these biomaterials IDSI added to its inventory during each of years 2017-2023, how many units of each of these biomaterials IDSI delivered to customers

in each year 2017-2023, and how many units of each of these biomaterials IDSI had in inventory at the end of each year 2017-2023.

Subject to the Preliminary Statement, objects to this Interrogatory as it violates the Board's Order dated December 13, 2024, (Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen . . . to support any defense or oppose any claim." Opposer further objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks the following information:

a. how many units of each of these biomaterials IDSI had at the beginning of each year 2017-2023,
b. how many new units of each of these biomaterials IDSI added to its inventory during each of years 2017-2023, and
c. how many units of each of these biomaterials IDSI had in inventory at the end of each year 2017-2023.

Regarding how many units of each of these biomaterials IDSI delivered to customers in each year 2017-2023 see Exhibit J.

Applicant's Argument for Better Response to Interrogatory 28:
Opposer has asserted, in error, that their use of the words SIMPLY SMARTER on some of their biomaterials gives rise to common law trademark rights. The data sought here should put the lie to these bogus allegations, and is relevant to disproving Opposer's alleged common law trademark rights. Moreover, the 12/13/2024 Order does not bar discovery into the information at issue here, or to the introduction into evidence at trial of any such information, if relevant. Nor does the 12/13/2024 Order

bar Opposer from relying at trial on Exhibit J. In that event, Applicant may use the information at issue here to impeach Opposer's position(s).

29. State every fact and identify every DOCUMENT showing that IDSI used the phrase "CONFIDENCE YOU CAN AFFORD" as a trademark on IDSI dental implants, or on packaging for IDSI dental implants, during each of the years 2017 to 2023, and IDENTIFY every person who has knowledge regarding these facts.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks information regarding the phrase "CONFIDENCE YOU CAN AFFORD."

Applicant's Argument for Better Response to Interrogatory 29: Opposer has asserted, in error, that Opposer did not abandon use of the words SIMPLY SMARTER as a trademark at any relevant time. But Opposer's advertising during the relevant time period shows Opposer using the words "CONFIDENCE YOU CAN AFFORD" on their dental products *instead of* the words SIMPLY SMARTER, proving that Opposer abandoned the words SIMPLY SMARTER. This interrogatory seeks the facts and witnesses who can prove that Opposer dropped using SIMPLY SMARTER and instead used the words "CONFIDENCE YOU CAN AFFORD" on their dental products.

30. State every fact showing that IDSI did not fully abandon use of the phrase "SIMPLY SMARTER" before the year 2023.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being vague and ambiguous regarding the term "not fully

abandon." Opposer further objects to this Interrogatory to the extent it seeks Opposer to provide a legal opinion as to the term "abandon." Subject to these objections, Opposer never abandoned, in part or in whole, the trademark SIMPLY SMARTER at any time, including before the year 2023. For example, Opposer produced product catalogs upon which SIMPLY SMARTER is used. *See, e.g.*, ID00268— ID00291; ID01658—ID02053; ID00829—ID00872. Opposer also produced Procurement Specifications for surgical trays and biomaterials showing SIMPLY SMARTER used directly on the surgical tray or the packaging of the biomaterial. *See, e.g.*, ID00659—ID00904; ID-01486— ID01630; and ID-02103—ID02241. Opposer also produced photographs of actual surgical trays and packaging for biomaterials upon which SIMPLY SMARTER is used. *See, e.g.*, ID-2264— ID02277. *See also*, Exhibit J.

Applicant's Argument for Better Response to Interrogatory 30: The Board used the phrase **"**fully abandoned" in its decision denying summary judgment to Applicant**.** This interrogatory simply adopts that phrase in seeking the facts that Opposer has to prove up that Opposer didn't "fully abandon" use of the words SIMPLY SMARTER after 2015. Opposer's response doesn't state any of these facts, but should do so.

32. For each of the years 2017-2023, IDENTIFY each IDSI purchase order submitted by IDSI to any supplier, to purchase trays, and each invoice sent to IDSI by any supplier supplying trays to IDSI, for each transaction that provided IDSI with trays listed on Exhibit J, where the trays purchased had the words "SIMPLY SMARTER" on them.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as it violates the Board's Order dated December 13, 2024,

(Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen .. . to support any defense or oppose any claim." Opposer further objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it requests Opposer to "IDENTIFY each IDSI purchase order submitted by IDSI to any supplier, to purchase trays, and each invoice sent to IDSI by any supplier supplying trays to IDSI, for each transaction that provided IDSI with trays listed on Exhibit J, where the trays purchased had the words 'SIMPLY SMARTER' on them."

Applicant's Argument for Better Response to Interrogatory 32: The 12/13/2024 Order does not bar discovery into the documents at issue here, or to the use of such documents at trial, if relevant. Nor does the 12/13/2024 Order bar Opposer from relying at trial on Exhibit J. In that event, Applicant may use the documents at issue here to impeach Opposer's position(s). Opposer's reliance on Exhibit J in opposing motions for summary judgment against Opposer makes the data underlying Exhibit J relevant.

33. For each of the years 2013-2023, IDENTIFY every DOCUMENT showing that IDSI used the phrase "SIMPLY SMARTER" as a trademark on IDSI dental implants, or on boxes/vials in which IDSI shipped IDSI dental implants to purchasers of these implants.

Response: Opposer objects to this Interrogatory because whether Opposer placed the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants.

Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging. Opposer has used the SIMPLY SMARTER mark on at least its catalogs for dental implants. *See, e.g.*, ID-00184—ID00232: ID00268—ID00291; ID00829—ID00872; ID-01658—ID01809; ID-01838—ID02013.

Applicant's Argument for Better Response to Interrogatory 33: Trademark rights, at common law, arise from use of the mark on a product and/or on its packaging. Opposer alleges common law trademark rights in the words SIMPLY SMARTER. This interrogatory seeks the identity of every document that Opposer alleges shows this use, and is therefore relevant.

34. State every fact showing that IDSI used the phrase "SIMPLY SMARTER" as a trademark on IDSI dental implants, or on packaging for IDSI dental implants, during each of the years 2013-2023, and IDENTIFY every person who can testify to these facts.

    Response: Opposer objects to this Interrogatory because whether Opposer placed the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging. Opposer has used the SIMPLY SMARTER mark on at least its

catalogs for dental implants. *See, e.g.*, ID-00184—ID000232; ID00268—ID00291; ID00873—ID00904; ID-01658—ID01809; ID-01838—ID02013.

Applicant's Argument for Better Response to Interrogatory 34: Trademark rights, at common law, arise from use of the mark on a product and/or on its packaging. Opposer alleges common law trademark rights in the words SIMPLY SMARTER. This interrogatory seeks the facts, if any, that Opposer alleges shows this use, and is therefore relevant.

35. IDENTIFY every person who possesses information showing that IDSI used the phrase "SIMPLY SMARTER" as a trademark on IDSI dental implants, or on boxes/vials bearing the words "SIMPLY SMARTER" in which IDSI shipped dental implants to customers, or on any packaging for IDSI dental implants, during each of the years 2013 to 2023.

Response: Opposer objects to this Interrogatory because whether Opposer placed the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging. Opposer has used the SIMPLY SMARTER mark on at least its catalogs for dental implants. *See, e.g.*, ID-00184—ID000232; ID00268—ID00291; ID00873—ID00904; ID-01658—ID01809; ID-01838—ID02013.

Applicant's Argument for Better Response to Interrogatory 35: Trademark rights, at common law, arise from use of the mark on a product and/or on its packaging. Opposer alleges common law trademark rights in

the words SIMPLY SMARTER. This interrogatory seeks the persons, if any, that can testify to this alleges use, and their identity is therefore relevant.

37. State every fact, showing that IDSI did not fully abandon use of the phrase "SIMPLY SMARTER" during the years 2017-2018.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being vague and ambiguous regarding the term “not fully abandon.” Opposer further objects to this Interrogatory to the extent is seeks Opposer to provide a legal opinion as to the term “abandon.” Subject to these objections, Opposer never abandoned, in part or in whole, the trademark SIMPLY SMARTER at any time, including during the years 2017-2018. For example, Opposer produced product catalogs upon which SIMPLY SMARTER is used. *See, e.g.*, ID01762— ID01809; ID01942—ID02013. Opposer also produced Procurement Specifications for surgical trays and biomaterials showing SIMPLY SMARTER used directly on the surgical tray or the packaging of the biomaterial. *See, e.g.*, ID00777—ID000788; ID-02141—ID02157. Opposer also produced photographs of actual surgical trays and packaging for biomaterials upon which SIMPLY SMARTER is used. *See, e.g.*, ID-2264—ID02277. *See also* Exhibit J.

Applicant’s Argument for Better Response to Interrogatory 37: The Board used the phrase **“**fully abandoned” in its decision denying summary judgment to Applicant**.** This interrogatory simply adopts that phrase in seeking the facts that Opposer has to prove up that Opposer didn’t “fully abandon” use of the words SIMPLY SMARTER during the years at issue. after 2015. Opposer’s response doesn’t state any of these facts, but should do so.

38. IDENTIFY every document showing that IDSI did not fully abandon use of the phrase "SIMPLY SMARTER" during the years 2017-2018.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being vague and ambiguous regarding the term “not fully abandon.” Opposer further objects to this Interrogatory to the extent is seeks Opposer to provide a legal opinion as to the term “abandon.” Subject to these objections, Opposer never abandoned, in part or in whole, the trademark SIMPLY SMARTER at any time, including during the years 2017-2018. For example, Opposer produced product catalogs upon which SIMPLY SMARTER is used. *See, e.g.*, ID01762— ID01809; ID01942—ID02013. Opposer also produced Procurement Specifications for surgical trays and biomaterials showing SIMPLY SMARTER used directly on the surgical tray or the packaging of the biomaterial. *See, e.g.*, ID00777—ID000788; ID-02141—ID02157. Opposer also produced photographs of actual surgical trays and packaging for biomaterials upon which SIMPLY SMARTER is used. *See, e.g.*, ID-2264—ID02277. *See also* Exhibit J.

39. **Applicant’s Argument for Better Response to Interrogatory 37:** The Board used the phrase **“**fully abandoned” in its decision denying summary judgment to Applicant**.** This interrogatory simply adopts that phrase in seeking the facts that Opposer has to prove up that Opposer didn’t “fully abandon” use of the words SIMPLY SMARTER during the years at issue. after 2015. Opposer’s response doesn’t state any of these facts, but should do so.

40. IDENTIFY every person who has information that IDSI did not fully abandon use of the phrase "SIMPLY SMARTER" during the years 2017-2018, or at any other time.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being vague and ambiguous regarding the term “not fully abandon.” Opposer further objects to this Interrogatory to the extent is seeks Opposer to provide a legal opinion as to the term “abandon.” Subject to these objections, Opposer never abandoned, in part or in whole, the trademark SIMPLY SMARTER at any time, including during the years 2017-2018 or at any other time. For example, Opposer produced product catalogs upon which SIMPLY SMARTER is used. *See, e.g.*, ID00184—ID000232; ID00268—ID00291; ID01658—ID02053; ID00829—ID00872. Opposer also produced Procurement Specifications for surgical trays and biomaterials showing SIMPLY SMARTER used directly on the surgical tray or the packaging of the biomaterial. *See, e.g.*, ID00659—ID00904; ID-01486—ID01630; and ID-02103—ID02241. Opposer also produced photographs of actual surgical trays and packaging for biomaterials upon which SIMPLY SMARTER is used. *See, e.g.*, ID-2264—ID02277. *See also*, Exhibit J.

Applicant’s Argument for Better Response to Interrogatory 40: The Board used the phrase **“**fully abandoned” in its decision denying summary judgment to Applicant**.** This interrogatory simply adopts that phrase in seeking the persons who can testify to the facts that Opposer has to prove up that Opposer didn’t “fully abandon” use of the words SIMPLY SMARTER during the years at issue. after 2015. Opposer’s response doesn’t name all of these persons, but should do so.

42. State every fact and identify every DOCUMENT showing that IDSI used the phrase "CONFIDENCE YOU CAN AFFORD" as a trademark on IDSI dental implants, or on packaging for IDSI dental implants, during each of the years 2017 to 2022, and IDENTIFY every person who can testify to these facts.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks information regarding the phrase "CONFIDENCE YOU CAN AFFORD."

Applicant's Argument for Better Response to Interrogatory 42: Opposer has asserted, in error, that Opposer did not abandon use of the words SIMPLY SMARTER as a trademark at any relevant time. But Opposer's advertising during the relevant time period shows Opposer using the words "CONFIDENCE YOU CAN AFFORD" on their dental products *instead of* the words SIMPLY SMARTER, proving that Opposer abandoned the words SIMPLY SMARTER. This interrogatory seeks the facts and documents that can prove that Opposer dropped using SIMPLY SMARTER and instead used the words CONFIDENCE YOU CAN AFFORD" on their dental products.

43. State the amount of money that IDSI spent promoting the phrase "CONFIDENCE YOU CAN AFFORD" as a trademark on IDSI dental implants during each of the years 2017 to 2022, and IDENTIFY every person who can testify to these facts.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to

any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks information regarding the phrase "CONFIDENCE YOU CAN AFFORD."

Applicant's Argument for Better Response to Interrogatory 43: Opposer has asserted, in error, that Opposer did not abandon use of the words SIMPLY SMARTER as a trademark at any relevant time. But Opposer's advertising during the relevant time period shows Opposer using the words "CONFIDENCE YOU CAN AFFORD" on their dental products *instead of* the words SIMPLY SMARTER, proving that Opposer abandoned the words SIMPLY SMARTER. This interrogatory seeks financial facts that can prove that Opposer dropped using SIMPLY SMARTER and instead used the words CONFIDENCE YOU CAN AFFORD" on their dental products.

44. State every fact and identify every DOCUMENT showing that IDSI used the phrase SIMPLY SMARTER as a trademark on IDSI dental implants, or on packaging for IDSI dental implants, during each of the years 2013-2017, and IDENTIFY every person who can testify to these facts.

Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome and not proportional to the needs of this opposition proceeding. Opposer objects to this Interrogatory because whether Opposer placed the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging has no bearing on whether SIMPLY SMARTER serves as trademark for Opposer's dental implants. Furthermore, it is not practical to place the SIMPLY SMARTER mark on the actual dental implants or vials. Subject to this objection, Opposer has not put the SIMPLY SMARTER mark on Opposer's dental implants, vials, or dental implant packaging. Opposer has used the SIMPLY

SMARTER mark on at least its catalogs for dental implants. *See, e.g.*, ID00268—ID00291; ID-00829—ID00872; ID01658— ID01785; ID-01838—ID01977.

Applicant's Argument for Better Response to Interrogatory 44: Trademark rights, at common law, arise from use of the mark on a product and/or on its packaging. Opposer alleges common law trademark rights in the words SIMPLY SMARTER. This interrogatory seeks the identity of every document that Opposer alleges shows this use, and is therefore relevant. The response doesn't state all of the facts requested, or identify all of the documents, as requested.

45. IDENTIFY every survey that IDSI has done at any time during the years 2013 to date these Interrogatories are served on IDSI, that relates to the phrase "CONFIDENCE YOU CAN AFFORD" on IDSI dental products, and IDENTIFY every person who can testify to these facts.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks information regarding the phrase "CONFIDENCE YOU CAN AFFORD."

Applicant's Argument for Better Response to Interrogatory 45: Opposer has asserted, in error, that Opposer did not abandon use of the words SIMPLY SMARTER as a trademark at any relevant time. But Opposer's advertising during the relevant time period shows Opposer using the words "CONFIDENCE YOU CAN AFFORD" on their dental products *instead of* the words SIMPLY SMARTER, proving that Opposer abandoned the words SIMPLY SMARTER. This interrogatory seeks surveys, if any, about

Opposer's use of the words "CONFIDENCE YOU CAN AFFORD" once Opposer abandoned using the words SIMPLY SMARTER on their dental products.

46. For each of the years 2023 and 2024, state the amount of money that IDSI spent promoting the phrase "CONFIDENCE YOU CAN AFFORD" on IDSI dental implants during each of these years, and IDENTIFY every person who can testify to these facts.

Response: Subject to the Preliminary Statement, Opposer objects to this Interrogatory as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks information regarding the phrase "CONFIDENCE YOU CAN AFFORD."

Applicant's Argument for Better Response to Interrogatory 46: Opposer has asserted, in error, that Opposer did not abandon use of the words SIMPLY SMARTER as a trademark at any relevant time. But Opposer's advertising during the relevant time period shows Opposer using the words "CONFIDENCE YOU CAN AFFORD" on their dental products *instead of* the words SIMPLY SMARTER, proving that Opposer abandoned the words SIMPLY SMARTER. This interrogatory seeks financial data showing Opposer's adoption, use and promotion of the words "CONFIDENCE YOU CAN AFFORD" once Opposer abandoned using the words SIMPLY SMARTER on their dental products.

IV. Opposer's Responses to Applicant's Fourth Set of Document Requests are Inadequate

Here, Applicant explains why Opposer's responses to Applicant's fourth set of interrogatories are inadequate.

29. For each year referred to in Exhibit J, namely, the years 2014-2023, produce DOCUMENTS adequate to show how many units of the trays and of the biomaterials referred to on Exhibit J were delivered to potential and actual customers for these trays and biomaterials, during each of these years 2014-2023.

Response: Subject to the Preliminary Statement, Opposer objects to this Document Request as it violates the Board's Order dated December 13, 2024, (Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen . . . to support any defense or oppose any claim." Subject to that objection, the data in Exhibit J show how many units of the trays and biomaterials sold under the SIMPLY SMARTER mark were delivered to customers during years 2014-2023.

Applicant's Argument for Better Response to Request 29: The 12/13/2024 Order does not bar discovery into the documents at issue here, or to the use of those documents at trial, if relevant. Nor does the 12/13/2024 Order bar Opposer from relying at trial on Exhibit J. In that event, Applicant may use the documents at issue here to impeach Opposer's position(s). Applicant need not merely accept, or credit, Opposer's representations in Exhibit J, or in any other summary prepared by Opposer for use in this opposition. Opposer should produce these documents, or drop reliance on Exhibit J, in part because Opposer's all-purpose witness, Kayla Christensen, has no personal knowledge about the data in Exhibit J.

30. For each year referred to in Exhibit J, namely, years 2014-2023,

produce all purchase orders from IDSI to suppliers, and produce all invoices from suppliers to IDSI, for trays listed on Exhibit J, plus produce one tray from each such order.

Response: Subject to the Preliminary Statement, Opposer objects to this Document Request as it violates the Board's Order dated December 13, 2024, (Dkt. No. 31) which states, in pertinent part, "Applicant is precluded from relying at trial on Exhibit J to the declaration of Kayla Christensen . . . to support any defense or oppose any claim." Opposer further objects to this Document Request as being overly broad and burdensome, and not relevant to any party's claim or defense and as not proportional to the needs of this opposition proceeding, to the extent it seeks "all purchase orders from IDSI to suppliers, and produce all invoices from suppliers to IDSI, for trays listed on Exhibit J, plus produce one tray from each such order." Moreover, Applicant has already produced representative photographs of the surgical trays listed on Exhibit J. *See, e.g.*, ID-02264—ID-02274.

Applicant's Argument for Better Response to Request 30: The 12/13/2024 Order does not bar discovery into the documents at issue here, or to the use of those documents at trial, if relevant. Nor does the 12/13/2024 Order bar Opposer from relying at trial on Exhibit J. In that event, Applicant may use the documents at issue here to impeach Opposer's position(s). Applicant need not merely accept, or credit, Opposer's representations in Exhibit J, or in any other summary prepared by Opposer for use in this opposition. Opposer should produce these documents, or drop reliance on Exhibit J, in part because Opposer's all-

purpose witness, Kayla Christensen, has no personal knowledge about the data in Exhibit J.

31. Produce all DOCUMENTS from which YOU derived the numbers of units called for in response to Interrogatory number 23.

Response: See the Response to Interrogatory No. 23.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

32. Produce all DOCUMENTS from which YOU derived the numbers of trays called for in response to Interrogatory number 24.

Response: See the Response to Interrogatory No. 24.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

33. Produce all DOCUMENTS that show accuracy of Opposer's response to Applicant's Interrogatory number 25.

Response: Opposer objects to this Document Request as the term "accuracy" is vague and ambiguous. Subject to this objection, see the Response to Interrogatory No. 25. The word *accuracy* takes its ordinary meaning here, namely: The fact of being exact or correct.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That

argument applies here with equal force for production of the requested documents.

34. Produce all DOCUMENTS that show accuracy of Opposer's response to Applicant's Interrogatory number 26.

Response: Opposer objects to this Document Request as the term "accuracy" is vague and ambiguous. Subject to this objection, see the Response to Interrogatory No. 26.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents. The word *accuracy* takes its ordinary meaning here, namely: The fact of being exact or correct.

35. Produce all DOCUMENTS whose identification is called for in response to Interrogatory number 27.

Response: See the Response to Interrogatory No. 27.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

36. Produce all DOCUMENTS that show accuracy of Opposer's response to Applicant's Interrogatory number 29.

Response: Opposer objects to this Document Request as the term "accuracy" is vague and ambiguous. Subject to this objection, see the Response to Interrogatory No. 29.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents. The word *accuracy* takes its ordinary meaning here, namely: The fact of being exact or correct.

37. Produce all DOCUMENTS that show accuracy of Opposer's response to Applicant's Interrogatory number 30.

Response: Opposer objects to this Document Request as the term "accuracy" is vague and ambiguous. Subject to this objection, see the Response to Interrogatory No. 30.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents. The word *accuracy* takes its ordinary meaning here, namely: The fact of being exact or correct.

38. Produce all DOCUMENTS that show accuracy of Opposer's response to Applicant's Interrogatory number 31.

Response: Opposer objects to this Document Request as the term "accuracy" is vague and ambiguous. Subject to this objection, see the Response to Interrogatory No. 31.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents. The word *accuracy* takes its ordinary meaning here, namely: The fact of being exact or correct.

39. Produce all DOCUMENTS called for in response to Applicant's Interrogatory number 32.

Response: See the Response to Interrogatory No. 32.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

40. Produce all DOCUMENTS called for in response to Applicant's Interrogatory number 36.

Response: See the Response to Interrogatory No. 36.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

41. Produce all DOCUMENTS that show accuracy of Opposer's response to Applicant's Interrogatory number 40.

Response: Opposer objects to this Document Request as the term "accuracy" is vague and ambiguous. Subject to this objection, see the Response to Interrogatory No. 40.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents. The word *accuracy* takes its ordinary meaning here, namely: The fact of being exact or correct.

42. Produce all DOCUMENTS called for in response to

Applicant's Interrogatory number 42.

Response: See the Response to Interrogatory No. 42.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

43. Produce all DOCUMENTS called for in response to Applicant's Interrogatory number 43.

Response: See the Response to Interrogatory No. 43.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

44. Produce all DOCUMENTS called for in response to Applicant's Interrogatory number 45.

Response: See the response to interrogatory number 45.

Applicant's Argument for Better Response to This Request: Please see Applicant's argument for a better response to the related interrogatory. That argument applies here with equal force for production of the requested documents.

February 13, 2025

Respectfully,

s/Patrick F. Bright
Wagner, Anderson & Bright, PC
10524 West Pico Boulevard, #214
Los Angeles. CA 90064

(213) 700 6637
pbright@patentattorney.us

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Applicant's Second Set of Document Requests has been served on Wood, Herron & Evans LLP by forwarding said copy on February 13, 2025, via email to: P. Andrew Blatt at dblatt@whe-law.com.

Signature /s/Patrick Bright

Date: February 13, 2025