

UNITED STATES PATENT AND TRADEMARK OFFICE
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February 28, 2025

Opposition No. 91285714

Implant Direct Sybron International LLC

v.

Paragon Implant LLC

Charles H. Hiser IV, Interlocutory Attorney:

Although timely, Applicant's motion to compel discovery does not comply with Trademark Rules 2.120(f)(1), 2.127(a); 37 C.F.R. §§ 2.120(f)(1), 2.127(a). Specifically, Rule 2.120(f)(1) requires a copy of the discovery request at issue and the answer and/or objection that was made with regards to said request. It appears all the requests, answers, and argument thereto are compiled into the briefing instead of the requests and answers attached as exhibits. Such construction of the motion and the briefing puts Applicant's motion well over the twenty-five-page limit found in Trademark Rule 2.127. *See generally* TBMP § 523.

In addition, the motion to compel disclosures or discovery must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach

agreement. The statement should contain a recitation of the communications conducted including dates, a summary of telephone conversations, and where applicable, copies of any correspondence exchanged such as email and letters, or notes to the file. TBMP §523.02. The filing of the motion itself cannot stand in the place of the parties' requirements to meet and confer with one another regarding the discovery issues prior to filing the motion.

Finally, the motion to compel discovery responses appears to contain arguments regarding request for admissions. The motion to compel procedure is not applicable to requests for admission. The procedure to be followed in the case of requests for admission is as set forth in 37 C.F.R. § 2.120(i)(1) and Fed. R. Civ. P. 36(a). *See also* TBMP § 411.03 (Requests for Admission) and TBMP § 524 (Motion to Test Sufficiency of Response to Requests for Admission).¹

In view of the above, Applicant's motion is **DENIED without prejudice** to Applicant's ability to refile the motion to compel in a manner that complies with Trademark Rules 2.120 and 2.127.

¹ The parties are reminded, with regards to requests for admission, an answer must admit the matter of which an admission is requested, deny the matter, or state in detail the reasons why the responding party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify as much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. Fed. R. Civ. P. 36(a); TBMP § 407.03.