

ESTTA Tracking number: **ESTTA331991**

Filing date: **02/12/2010**

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

Proceeding	92050296
Party	Plaintiff Altadis U.S.A. Inc.
Correspondence Address	Charles W. Grimes Grimes & Battersby, LLP 488 Main Avenue Norwalk, CT 06851 UNITED STATES schlesinger@gandb.com, grimes@gandb.com
Submission	Motion to Strike
Filer's Name	Susan M. Schlesinger
Filer's e-mail	schlesinger@gandb.com, grimes@gandb.com
Signature	/Susan M. Schlesinger/
Date	02/12/2010
Attachments	Motion to Strike Untimely Filed Brief 021210.pdf (3 pages)(206319 bytes)

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

In the Matter of Registration No. 3,233,835
Issued on April 24, 2007

-----X		
Altadis U.S.A. Inc.,	:	
	:	
Petitioner,	:	
v.	:	Cancellation No.: 92050296
	:	
Wentworth E. Miller,	:	
	:	
Registrant.	:	
-----X		

Motion to Strike Untimely Filed Brief of Registrant

Despite the Board’s Order of December 16, 2009, Petitioner has now attempted to circumvent such Order by filing and serving Registrant’s Memorandum of Law in Opposition to Petitioner’s Motion for Summary Judgment and in Support of Registrant’s Motion for Summary Judgment (“Memorandum of Law”). Such Memorandum of Law was filed and served on February 4, 2010.

In the Board’s Order of December 16, 2009, the Board made it clear that Registrant could not file additional material to supplement his response dated December 3, 2009. The Board clearly stated that “Respondent’s motion, filed December 3, 2009, to be allowed additional time to supplement his response and cross-motion, is hereby **DENIED**. The Board does not accept piecemeal filings, Trademark Rule 2.127(e)(1), and therefore respondent may not supplement his response and cross-motion.” (emphasis in the original). *See also* TBMP § 517.

The Board further ordered that “Respondent’s reply brief in support of his cross-motion is due in accordance with Trademark Rule 2.127(e)(1).” Trademark Rule 2.127(e)(1) provides that: “[a] reply brief, if filed, shall be filed within fifteen days from the date of service of the

brief in response to the motion. The time for filing a reply brief will not be extended. The Board will consider no further papers in support of or in opposition to a motion for summary judgment.” 37 C.F.R. §2.127(e)(1).

Petitioner’s response to Registrant’s motion was served on December 14, 2009 as shown on the Certificate of Service and Filing in Docket No. 19. Accordingly, if Registrant were to timely file a reply brief, such brief should have been filed no later than December 29, 2009. Registrant filed his Memorandum of Law on February 4, 2010, i.e., approximately **six weeks** after the deadline for Registrant to have timely filed his reply brief.

Registrant’s belated filing of his Memorandum of Law on February 4, 2010 flies in the face of the Board’s Order and the Trademark Rules of Practice. Accordingly, Petitioner respectfully submits that Registrant’s untimely filed Memorandum of Law should be stricken by the Board and given no consideration.

Dated: February 12, 2010

Respectfully submitted,

/Susan M. Schlesinger/
Charles W. Grimes
Russell D. Dize
Susan M. Schlesinger
GRIMES & BATTERSBY, LLP
488 Main Avenue
Norwalk, Connecticut 06851-1008
Telephone No.: (203) 849-8300
Facsimile No.: (203) 849-9300

Attorneys for Petitioner
Altadis U.S.A. Inc.

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a copy of the foregoing Motion to Strike Untimely Filed Brief of Registrant was served on the Registrant/Correspondent of record on the date indicated below by depositing the same with U.S. Postal Service, First Class Mail, postage prepaid to:

Wentworth E. Miller
823 Chestnut Street
Coraopolis, PA 15108

and further certifies that the aforementioned Motion to Strike Untimely Filed Brief of Registrant was filed with the Trademark Trial and Appeal Board on the date indicated below online through the ESTTA system of the United States Patent and Trademark Office.

Dated: February 12, 2010

/Susan M. Schlesinger/
Susan M. Schlesinger