

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MBA/mc

Mailed: January 21, 2009

Cancellation No. 92050296

Altadis U.S.A. Inc.

v.

Wentworth E. Miller

Michael B. Adlin, Interlocutory Attorney:

Respondent's motion for summary judgment, filed January 13, 2009, is premature and will be given no consideration. Trademark Rule 2.127(e)(1) ("A party may not file a motion for summary judgment until the party has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Trademark Trial and Appeal Board.").¹ Dates remain as previously set.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain

¹ While respondent's motion could conceivably be interpreted in places as an attempt to invoke claim or issue preclusion, a review of the motion itself and the purported evidence upon which it is based reveals that neither claim nor issue preclusion apply, as the motion is based on earlier *ex parte*, rather than *inter partes*, issues. See e.g., Jet Inc .v. Sewage Aeration Systems, 223 F.3d 1360, 55 USPQ2d 1854 (Fed. Cir. 2000); Flowers Industries Inc. v. Interstate Brands Corp., 5 USPQ2d 1580, 1583 (TTAB 1987).

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amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>