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

Proceeding no.	92071596
Party	Plaintiff Schiebel Industries AG
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Submission	Motion to Strike
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Signature	/Peter J. Phillips/
Date	12/14/2022
Attachments	Petitioners Objection to Respondents Certificates of Service.pdf(156994 bytes )

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

In the matter of

US Trademark Reg. No.        5,440,864  
Mark:                                CAMERA COPTERS (& Design)  
Registered:                        April 10, 2018  
Serial No.:                         86774278  
Filed:                                September 30, 2015  
Int. Classes:                       9 and 12 only

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SCHIEBEL INDUSTRIES AG,

Petitioner,

v.

Cancellation No. 92071596

Camera Copters, Inc.,

Defendant.

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Trademark Trial and Appeal Board

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-1451

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**PETITIONER’S OBJECTION TO RESPONDENT’S CERTIFICATES OF SERVICE AS  
NONCOMPLIANT AND MOTION TO STRIKE PLEADINGS**

Petitioner hereby objects to Respondent’s Certificate of Service filed November 26, 2022 as false and non-compliant, and moves to strike the filed papers associated therewith.

On September 27, 2022, Respondent filed “Defendant’s Confidential Motion For Leave Re Submission of Evidence, and Protective Order (“Rule 6(b) Motion”). That Rule 6(b) Motion filed with the Board was filed in Confidence, and Petitioner never received a copy. Petitioner received only a “Redacted” copy, a copy of which is attached to Defendant’s filing on November 26, 2022 as TTAB Docket 54. That Redacted copy fails to inform Petitioner of the full reasons Defendant relies on its Rule 6(b) Motion. The Board received a full unredacted copy, but Petitioner did not.

The rules of practice before the Board are clear. Each party must provide to its adversary a complete copy of every motion or other pleading filed before the Board and provide a Certificate of Service to inform the Board that the adverse party was served with the motion or other pleading filed with the Board. Such Certificate of Service should be filed with the motion or other pleading so that the Board knows immediately if the filing party has complied with the rules. See Notice and Trial Dates sent on June 26, 2019 (“June 26, 2019 Notice”) which states in relevant part:

The answer, and all other submissions, **must** include proof of service. As noted in the TBMP §113.03, proof of service may be in the following certificate of service from:

*I hereby certify that a true and correct copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name and address or email address of opposing counsel or party).*

*Signature: \_\_\_\_\_*

*Date: \_\_\_\_\_*

See also 37 C.F.R. §2.119, service and signing of papers, which states:

“(a) Except for the notice of opposition or the petition to cancel, every submission filed in the Office in inter partes cases, including notices of appeal to the courts, must be served upon the other party or parties.” (emphasis added)

Defendant has failed to comply with TMMP §113.03, June 26, 2019 Notice and 37 C.F.R. §2.119 by failing to serve on Petitioner a copy of Defendant's "Rule 6(b) Motion," in an unredacted form. Petitioner hereby moves to Strike Defendant's Rule 6(b) Motion for failure to comply with TBMP §113.03, the June 26, 2019 Notice, and 37 C.F.R. §2.119.

Petitioner also advises the Board that Defendant also failed to properly serve a copy of its "Reply to Response to Motion for Rule 6(b) Relief" ("Rule 6(b) Reply") which was filed on October 21, 2022. The Certificate of Service which was filed on November 26, 2022 (Docker #53) lists as the last item "CertificateofServiceCameraCoptersRply2CC6Mn.pdf" and the last page contains a purported Certificate of Service page, but it does not provide the correct email address for Petitioner's counsel. It lists PJPHILLOPS@LMIPLAW.COM, misspelling "PHILLIPS." Petitioner's counsel did not receive a copy on September 27, 2022. Petitioner's counsel learned on its own of this Rule 6(b) Reply by looking at the filings made on the TTAB website.

Upon recent review of the Rule 6(b) Reply, Petitioner sees that Defendant improperly attempts to present arguments and cite caselaw which were missing from its original Rule 6(b) Motion. A motion should contain all arguments and authority relied upon to support the relief requested, so that the appropriate court or administrative body will be put on notice, and adversary parties will have the opportunity to respond to the arguments and authority relied upon in the leading motion. Here the Defendant has argued medical conditions and caselaw, but Defendant has failed to disclose the full facts on which Defendant relied because Defendant's original Rule 6(b) Motion was not served on Petitioner.

Also, Defendant introduces new authority in its Rule 6(b) Reply which should have been presented in Defendant's original Rule 6(b) Motion if Defendant wanted to rely on such authority. Petitioner is unfairly prejudiced by not being able to address these arguments and caselaw presented for the first time in Defendant's Rule 6(b) Reply.

**CONCLUSION**

For the above reasons, Petitioner respectfully requests that Defendant's original Rule 6(b) Motion and its Rule 6(b) Reply be stricken, or in the alternative, Defendant's Rule 6(b) Motion be denied.

Respectfully submitted,

*/s/ Peter J. Phillips*  
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Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by email on attorney for Registrant as follows, this day of December 14, 2022.

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Date: December 14, 2022

By: /Cheri Phillips/  
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