

11/10/03 10:57 AM

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

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_____)
Schering-Plough HealthCare Products, Inc.,)
)
Opposer)
)
v.)
)
Mitchell R. Swartz,)
)
Applicant)
_____)

Opposition No.: 155,965
U. S. Appln. Serial No.: 76/388,837
Mark: BUG-SUN TECHNOLOGIES

OPPOSER’S MOTION TO EXTEND DISCOVERY AND
RESET THE TESTIMONY PERIODS

Opposer moves for an Order resetting discovery to close on March 26, 2004 and resetting the testimony periods accordingly.

The original Trial Order scheduled the close of discovery on November 1, 2003.

The Trial Order was mailed on April 15, 2003. Since that date, the following events have transpired:

- 1 An answer was due on May 25, 2003.
- 2 Opposer moved for a Notice of Default on June 19, 2003 because Applicant had not served any response to the Notice of Opposition.
- 3 Applicant responded to the Motion for Default on June 29, 2003 and moved to enter opposition late.
- 4 Applicant filed a preliminary response to opposition on June 29, 2003.

5 Opposer replied to Applicant's response to motion for default, motion to enter opposition late, and preliminary response to opposition on July 17, 2003.

6 TTAB entered an order denying Opposer's motion for default and allowing Applicant thirty days to file an answer. The Board's Order stated, "There is no question that applicant's response to the notice of opposition is late.... Even if the Board was [sic] to find good cause, the Board is unable to accept Applicant's 'answer' because, as pointed out by Opposer, it is insufficient." The Order allowed Applicant thirty days from August 28, 2003 to file an answer that complied with Fed. R. Civ. P. 8.

7 Applicant served his response to the Opposition on September 24, 2003.

It would have been wasteful for Opposer to initiate discovery before it was certain that Applicant would file a proper answer to the Notice of Opposition. Accordingly, Opposer was unable to serve any discovery requests on Applicant prior to receiving the response to the notice of opposition. That response was received on September 26, 2003. Opposer is equitably entitled to a restoration of the discovery period so that Opposer will not be penalized by the delay caused by Applicant's failure to serve a proper response to the Notice of Opposition before September 26, 2003.

Accordingly, Opposer moves for the entry of the following discovery and trial schedule:

Discovery to Close:	March 26, 2004
30-day testimony period for party in position of Plaintiff to close:	June 24, 2004
30-day testimony period for party in position of Defendant to close:	August 23, 2004

4015/2003T1A9

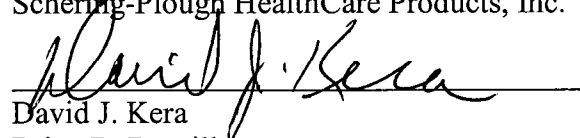
15-day rebuttal testimony period
for Plaintiff to close:

October 7, 2004

Respectfully submitted,

Schering-Plough HealthCare Products, Inc.

By:


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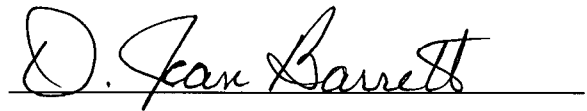
Date: October 8, 2003

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S MOTION TO EXTEND DISCOVERY AND RESET THE TESTIMONY PERIODS** was served on counsel for Petitioner, this 8th day of October, 2003, by sending same via First Class mail, postage prepaid, to:

Dr. Mitchell Swartz
16 Pembroke Road
Weston, Massachusetts 02493-2247

A handwritten signature in cursive script, reading "D. Jean Barrett", is written over a horizontal line.