

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MOM Enterprises, LLC,
Petitioner,

v.

ELAINE AND REINHOLD W. VIETH,
Patent Owners,

Case IPR 2023-00726
Patent 9,066,958

PATENT OWNERS' LIST OF PROPOSED MOTIONS

The Patent Trial and Appeal Board (“Board”) issued a decision on September 15, 2023, instituting *inter partes* review of U.S. Patent No. 9,066,958, assigned as Case IPR2023-00726. An initial conference call is requested. Pursuant to the Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019), Petitioner MOM Enterprises, LLC submits the following list of proposed motions it is currently considering requesting authorization to file that have not been authorized in the Board’s Scheduling Order or other prior Order or Notice. This list is provided without prejudice to Patent Owners’ right to seek authorization to file additional motions or to decide not to file motions listed.

1. Motion to Compel Routine Discovery under 37 C.F.R. § 42.51(b)(1)(iii) (i.e. Motion to Disclose Inconsistent Information), or alternatively, a Motion for Additional Discovery under 37 C.F.R. § 42.51(b)(2)(i) to compel production of:
 - a. All non-identical translations of non-English references relied on in the Petition (Harder and Wolf) and all communications relating to or from non-attorney translators regarding the references.
 - b. Complete copies of references for which complete copies have not previously been produced and English language translations of any such references that are not in English, See Consolidated Trial Practice Guide, November 2019, page 24. Specifically:

- i. Harder: *Wochenbettbetreuung in der Klinik und zu Hause*, *Hippokrates Verlag*, by Ulrike Harder, ISBN 3-8304-5216-0, 12 pages front matter and 282 pages of main text.
 - ii. European Pharmacopoeia 4th Edition and European Pharmacopoeia Supplement 4.3.
- c. Evidence relating to objective indicia of non-obviousness, specifically, if Petitioner denies that objective indicia of non-obviousness established that Petitioner has not established invalidity of the claims at issue, namely:
 - i. Periodic Sales data and market share information for Mommy's Bliss, Vitamin D Organic Drops for the period beginning 2 years prior to changing the ingredients from "Organic sunflower oil, Vitamin D3" to "Vitamin D and Organic MCT Oil".
 - ii. Documents relating to copying the Baby Ddrops vitamin D product, instructions for use, namely documents showing the basis for the instructions for use and formulation for Mommy's Bliss, Vitamin D Organic Drops, the decision to change the formulation of Baby Vitamin D Organic Drops from "Organic sunflower oil, Vitamin D3" to "Vitamin D and Organic MCT Oil", and

commercial success of products withing the scope of the patent claims.

2. Motion to Compel Deposition Testimony of Yasmin Kaderali, Petitioner's CEO, Stephanie Medina on the design and development of Mommy's Bliss, Vitamin D Organic Drops, and Carolyn Lloyd on sales and marketing, on factual matters relating to objective indicia of non-obviousness.
3. Motion to set schedule for Petitioner to serve Supplement Information under 37 C.F.R. § 42.123, schedule depositions, and comply with discovery requests.
4. Motion to enter a Protective Order.
5. Motion for pro hac admission of Alan M. Anderson, Matthew Palen, and L. Reagan Florence as additional backup counsel.

Dated: October 16, 2023,

Respectfully submitted,

/Mark E Ungerman/

Mark E. Ungerman (32,070)

UNGERMAN IP PLLC

2305 Calvert Street, N.W.

Washington, DC 20008

Attorney for Patent Owner

Tele: (202) 461-3200

Fax: (202) 350-2547

Email: mungerman@ungermanip.com

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that the foregoing Patent Owners' **LIST OF PROPOSED MOTIONS** is being served on October 16, 2023, by electronic mail as directed by Petitioner upon the following counsel of record for Petitioners:

David B. Conrad
Lance E. Wyatt
Sarika Patel
Fish and Richards LLP
To: IPR53953-0001IP1@fr.com

/Mark E Ungerman/
Mark E. Ungerman
(Reg. No. 32,070)