

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

Mailed: September 2, 2009

Opposition No. 91177036

Nationstar Mortgage LLC

v.

Mujahid Ahmad

**Robert H. Coggins,
Interlocutory Attorney:**

On August 28, 2009, opposer filed a motion for summary judgment on the ground of fraud.¹ The motion, which was filed four days prior to the opening of opposer's testimony period, includes a single-page table of contents, a single-page table of authorities, and a twenty-five page body incorporating opposer's introduction, facts, legal standard, argument, and conclusion.

Trademark Rule 2.127(a)(1) provides in relevant part:

Neither the brief in support of a motion nor the brief in response to a motion shall exceed twenty-five pages in length in its entirety, including table of contents, index of cases, description of the record, statement of the issues, recitation of the facts, argument, and summary.

¹ This is opposer's second motion for summary judgment on the ground of fraud. The first motion, filed February 29, 2008, was denied by the Board on June 17, 2008.

This rule, which was amended on August 31, 2007, and made applicable to all cases pending or commenced on or after that date, was amended to add clarifying language regarding page limits on briefs for motions to conform to existing practice. *Cooper Technologies Company v. Denier Electric Co., Inc.*, 89 USPQ2d 1478 (TTAB 2008). Specifically, the amendment codified the Board's policy stated in *Saint-Gobain v. Minnesota Mining and Manufacturing Company*, 66 USPQ2d 1220 (TTAB 2005) concerning page limitations for briefs on motions. See *Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 72 Fed. Reg. 42242 (August 1, 2007).

Trademark Rule 2.127(a) does not require briefs on motions to include a table of contents, index of cases, description of record, statement of the issues, recitation of the facts, argument, and summary. However, if any of the above are included, they are counted as part of the stated page limit. See *Id.* at 42256 (comments on briefing of motions), and *Cooper Technologies, supra*, at fn. 1.

Opposer's motion, which, as noted above, contains a table of contents, a table of authorities, and a twenty-five page body, is at least twenty-seven pages in length. Opposer's motion is therefore overlength and does not comply with Trademark Rule 2.127(a). In view thereof, the motion is denied without prejudice on procedural grounds.

Inasmuch as the motion is denied, the Board does not herein suspend proceedings. In view thereof, and because proceedings were not previously suspended by the Board, opposer's testimony period opened September 1, 2009.

Trademark Rule 2.127(e)(1) provides in relevant part:

A motion for summary judgment, if filed, should be filed prior to the commencement of the first testimony period, as originally set or as reset, and the Board, in its discretion, may deny as untimely any motion for summary judgment filed thereafter.

In view thereof, and because the first testimony period is open, opposer may not file an amended (i.e., shortened) motion for summary judgment.² However, the Board herein resets the trial schedule to allow opposer thirty days of testimony from the date of this order. Accordingly, dates are reset as follows.

30-day testimony period for party in position of plaintiff to close:	10/1/09
30-day testimony period for party in position of defendant to close:	11/30/09
15-day rebuttal testimony period to close:	1/14/10

² Without addressing the merits of opposer's motion, opposer is advised that three days after the motion for summary judgment on the ground of fraud was filed, the United States Court of Appeals for the Federal Circuit issued new guidance on determining the ground of fraud. See *In re Bose Corporation*, ___ USPQ2d ___ (Fed. Cir. 2009).

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.