

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

Mailed: September 9, 2009

Opposition No. 91177036

Nationstar Mortgage LLC

v.

Mujahid Ahmad

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

This case now comes up on opposer's motion (filed September 4, 2009) for reconsideration and to suspend.<sup>1</sup> The Board exercises its discretion to determine the motion prior to the time allowed for applicant to file a brief in opposition thereto.

Reconsideration

Opposer seeks reconsideration of the Board's decision denying opposer's (second) motion for summary judgment on procedural grounds (as overlength) and noting that proceedings were not suspended pending determination of the defective motion. Specifically, on August 28, 2009, opposer filed a motion for summary judgment on the ground of fraud.

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<sup>1</sup> Concurrently with the motion for reconsideration and suspension opposer filed a motion for summary judgment. It is the Board's treatment of the previous motion for summary judgment which forms the basis of opposer's motion for reconsideration.

The motion, which was filed four days prior to the opening of opposer's testimony period, was twenty-seven pages long. In the Board's September 2, 2009 order refusing to consider the motion because it was over the twenty-five page limit provided in Trademark Rule 2.127(a), the Board noted that inasmuch as opposer's motion had been denied on procedural grounds, the Board would not suspend proceedings, and, therefore, the first testimony period had opened.

In support of its motion for reconsideration, opposer argues that (1) the Board should have suspended proceedings when opposer filed its motion for summary judgment, (2) the suspension should have been effective as of the date the motion for summary judgment was filed, (3) the Board erroneously narrowed by four days the sixty-day period between the close of discovery and commencement of testimony, and (4) opposer could have easily amended its brief in support of the motion to shorten the length thereof.

A request for reconsideration under Trademark Rule 2.127(b) provides an opportunity for a party to point out any error the Board may have made in considering the matter initially. The motion should be limited to a demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change. See TBMP § 518 (2d. ed. rev. 2004).

Opposer argues that Trademark Rule 2.127(d) compels the Board to suspend proceedings when a motion for summary judgment is filed, and that according to *Cooper Technologies Company v. Denier Electric Co., Inc.*, 89 USPQ2d 1478 (TTAB 2008) (which was cited by the Board in the September 2, 2009 order), and to TBMP § 510.03(a), when issuing a suspension order on a potentially dispositive motion the Board should treat proceedings as having been suspended as of the filing date of the motion.

The cite by the Board to *Cooper Technologies* in the Board's September 2, 2009 order denying opposer's August 28, 2009 motion for summary judgment on procedural grounds was in support of the Board's policy on overlength briefs. *Cooper Technologies* was not cited for its individual treatment of the schedule therein, which schedule the Board had discretion to reset. In fact, there is no discussion in *Cooper Technologies* of the trail schedule therein or of the effect an overlength, potentially dispositive motion would have thereon; the Board merely reset dates in that order using the Board's discretion.

Opposer correctly points out that Trademark Rule 2.127(d) provides that the Board will suspend proceedings when a party files a potentially dispositive motion (including a motion for summary judgment). However, opposer fails to take into account any other Trademark Rule or the

interplay between the Trademark Rules. Opposer implies that the Board must always suspend proceedings for a dispositive motion regardless of the length of that motion, and, if the motion is overlength, must provide the movant with a chance to amend its motion without penalty. Such implication, if true, would in effect render the page limitations of Trademark Rule 2.127(a)<sup>2</sup> virtually ineffective and eviscerate the holding of *Cooper Technologies*. When Trademark Rule 2.127(a) was amended effective August 31, 2007, and made applicable to all cases pending or commenced on or after that date (*See Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 72 Fed. Reg. 42242 (August 1, 2007)), opposer was put on notice that any overlength motion or brief would not be considered by the Board; moreover, when the precedential decision in *Cooper Technologies* issued on December 17, 2008, opposer was further put on notice that any overlength motion or brief would not be considered by the Board.<sup>3</sup>

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<sup>2</sup> 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....

<sup>3</sup> The Board notes that, as a practical matter, *Cooper Technologies* was the Board's first precedential decision on the issue of overlength briefs since Trademark Rule 2.127(a) was amended to incorporate 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.

Opposer cites TBMP § 510.03(a) to support its argument that the Board's failure to suspend proceedings was "contrary to established Board preceding and procedure." (Motion, p. 2.) Specifically, opposer appears to rely on the wording in § 510.03(a) that "... when issuing its suspension order, the Board ordinarily treats the proceeding as if it had been suspended as of the filing date of the potentially dispositive motion."<sup>4</sup> However, opposer ignores the immediately preceding sentence of § 510.03(a) which states that "[t]he filing of such a potentially dispositive motion does not, in and of itself, operate to suspend a case; until the Board issues its suspension order, all times continue to run."

The filing of a summary judgment motion does not, in and of itself, automatically suspend proceedings in a case. Rather, proceedings are suspended when the Board issues an order to that effect. In the instant case, no suspension order issued. Because opposer's motion for summary judgment failed to comply with the page limits of Trademark Rule 2.127(a), the motion was denied on procedural grounds and it was not necessary for the Board to issue an order suspending proceedings for determination of the motion because that

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<sup>4</sup> It is noted that the wording of the TBMP section cited by opposer uses the word "ordinarily" which should alert the reader that the Board has discretion in its treatment of suspension under that section.

motion was procedurally defective and would not be considered. Inasmuch as no suspension order issued, the Board would not treat the proceeding as if it had been suspended as of the date opposer filed the motion for summary judgment. Opposer's argument (at Mot. p. 3) that *Cooper Technologies* and the Trademark Rules support suspension of proceedings "while a motion for summary judgment is considered" misses the point. In the instant situation, the motion for summary was not considered on its merits because it was procedurally defective.

Opposer also argues that, by failing to suspend proceedings as of the date opposer's motion for summary judgment was filed, the Board erroneously narrowed by four days the sixty-day period between the close of discovery and commencement of testimony. Opposer is incorrect. The parties were afforded the full sixty-day period. It was opposer's failure to comply with Board rules --specifically that portion of Trademark Rule 2.127(a) which limits the page length of briefs-- that cost opposer time. Moreover, as a courtesy to opposer, the Board exercised its discretion in the September 2, 2009 order and *sua sponte* extend opposer's testimony period to give opposer a full thirty-day testimony period from the date of the Board's order denying the motion for summary judgment.

As to opposer's claim that its overlength motion for summary judgment "could have easily been amended to the correct page length" (Mot. p. 3), such argument is irrelevant. What matters is that opposer's motion failed to comply with the page limits of Trademark Rule 2.127(a) when the motion was filed.<sup>5</sup> The Board is under no obligation to provide a movant time in which to shorten a defectively long motion. Indeed, opposer has provided no authority to the contrary. Trademark Trial & App. Board Prac. & Proc. § 3:18 (2009) states that:

...the Board limits briefs in support of and in opposition to a motion to 25 pages while a reply brief in support of a motion is limited to 10 pages. The Board is relatively strict in enforcing these page limitations and will not consider briefs filed in excess of these limitations. Moreover, the parties may not stipulate to exceed the page limitation and the Board will, on its own, exclude briefs in excess of the page limitation.

(Emphasis added.) The parties are presumed to know the rules and how they operate. Opposer should have known that the Board would not consider its overlength motion for summary judgment and that the Board would not suspend proceedings pending any order on such a defective motion.

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<sup>5</sup> The overlength motion was filed four days prior to the opening of testimony. Opposer had time to realize its mistake and resubmit a shorter motion prior to the opening of its testimony period.

The Board has carefully reviewed this matter and finds no error in the September 2, 2009 order. For the reasons explained herein, opposer's motion for reconsideration is denied.<sup>6</sup>

Suspension

Opposer's motion to suspend proceedings pending disposition of the motion for reconsideration is granted to the extent modified herein. The Board resets all trial dates beginning with opposer's testimony period. That is, the Board closes testimony and resets opposer's testimony period to open October 8, 2009. Such rescheduling allows opposer to prepare for testimony and removes any prejudice to opposer caused by opposer's own failure to understand and comply with the Trademark Rules. Dates are reset as follows.

30-day testimony period for party  
in position of plaintiff to close: 11/6/2009

30-day testimony period for party  
in position of defendant to close: 1/5/2010

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<sup>6</sup> In view thereof, the concurrently filed motion for summary judgment is untimely and will be given no consideration. See Trademark Rule 2.127(e)(1). Notwithstanding, the Board notes that opposer has previously been heard on the ground of fraud in its first motion for summary judgment, which was denied by the Board on June 17, 2008. It is further noted that opposer's concurrently filed (third) motion for summary judgment on the ground of fraud does not contemplate the changes to the analysis of the ground of fraud as dictated in *In re Bose Corporation*, \_\_\_ USPQ2d \_\_\_ (Fed. Cir. 2009). Even though the Board alerted opposer in the Board's September 2, 2009 order that the United States Court of Appeals for the Federal Circuit provided new guidance on the standard of a fraud analysis, opposer simply resubmitted the body of its motion for summary judgment without any change.

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15-day rebuttal testimony period to close: 2/19/2010

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.