

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

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Mailed: November 6, 2009

Opposition No. 91182197

Jason Chall

v.

Shelley Bailey

Ann Linnehan, Interlocutory Attorney

As last reset, opposer's 30-day trial period was set to expire on November 5, 2009. On November 4, 2009, opposer filed a motion for summary judgment. The purpose of a motion for summary judgment is to eliminate the need for a trial when a party is able to demonstrate the absence of any genuine issue of material fact and entitlement to judgment as a matter of law prior to trial. A motion for summary judgment, therefore, should be made within such time as not to delay the trial. See *Peterson's Ltd., Inc. v. Consolidated Cigar Corporation*, 183 USPQ 559 (TTAB 1974); and *The Coach House Restaurant, Inc. v. The Coach and Six Restaurants, Inc.*, 223 USPQ 176 (TTAB 1984). A motion for summary judgment made after the commencement of the trial is untimely. See *Cities Service Oil Company v. Perfection American, Inc.*, 157 USPQ 209 (TTAB 1968). In this case

where opposer filed the motion well after the commencement of its testimony period the motion is clearly untimely.

Accordingly, opposer's motion for summary judgment is untimely and will receive no further consideration.

It is noted that both parties intend to represent themselves in this proceeding. While Patent and Trademark Rule 11.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

In addition, both parties should note that Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which the parties may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It is recommended that the parties obtain a copy of the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and is available for a fee from U.S. Government Printing Office on the World Wide Web at <http://bookstore.gpo.gov>.

Strict compliance with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.¹

Dates are reset as follows:

Plaintiff's one-day Trial Period Ends	11/6/2009
Defendant's Pretrial Disclosures	11/21/2009
Defendant's 30-day Trial Period Ends	1/5/2010
Plaintiff's Rebuttal Disclosures	1/20/2010
Plaintiff's 15-day Rebuttal Period Ends	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 of completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

¹ The Trademark Trial and Appeal Board Manual of Procedure (TBMP) is also available on the World Wide Web at <http://www.uspto.gov>.