

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

nmt

Mailed: February 27, 2014

Opposition No. 91212472

Prosper Business
Development Corporation

v.

International Business
Machines, Corporation

Andrew P. Baxley, Interlocutory Attorney:

The Board's February 20, 2014 order was issued in error and is hereby vacated.

On January 17, 2014, opposer filed two different amended notices of opposition, neither of which was accompanied by either applicant's written consent or a motion for leave to amend. Because no answer is of record in this case, opposer's first amended notice of opposition is accepted as a matter of course and is the operative complaint herein. See Fed. R. Civ. P. 15(a)(1); TBMP Section 507.02.

Because opposer amended its complaint once as a matter of course by way of the first amended notice of opposition, opposer can only file the second amended notice of opposition with either applicant's written consent or leave

of the Board. See *id.* Because neither applicant's written consent nor a motion for leave file an amended complaint is of record, the second amended notice of opposition is not properly before the Board and will receive no consideration. See also Trademark Rule 2.107(b); TBMP Section 507.02 (an opposer to registration of a mark in a Trademark Act Section 66(a), 15 U.S.C. Section 1141f, application may not (1) amend the complaint to add an entirely new claim, (2) seek to rely on an additional registration in support of an existing Trademark Act Section 2(d), 15 U.S.C. Section 1052(d) claim, or, (3) after the time for filing an opposition has expired, add goods or services to the proceeding).

Accordingly, dates are reset as follows.

Answer to First Amended Notice of Opposition Due	3/28/2014
Deadline for Discovery Conference	4/27/2014
Discovery Opens	4/27/2014
Initial Disclosures Due	5/27/2014
Expert Disclosures Due	9/24/2014
Discovery Closes	10/24/2014
Plaintiff's Pretrial Disclosures	12/8/2014
Plaintiff's 30-day Trial Period Ends	1/22/2015
Defendant's Pretrial Disclosures	2/6/2015
Defendant's 30-day Trial Period Ends	3/23/2015
Plaintiff's Rebuttal Disclosures	4/7/2015
Plaintiff's 15-day Rebuttal Period Ends	5/7/2015

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

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on the adverse party within thirty days after completion of 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.