

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: August 22, 2014

Opposition No. 91216806

Ecowater Systems LLC

v.

HongKong Ecoaqua Co., Limited.

Jennifer Krisp, Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties held their required discovery and settlement conference on August 18, 2014. *See* TBMP § 401.01 (2014). Pursuant to applicant's request, the Board attorney assigned to this proceeding participated in the conference. Participating were opposer's counsel Monica L. Thompson, applicant's counsel Anthony M. Verna, III, and the Board interlocutory attorney.

The Board apprised the parties of some general procedural rules and guidelines that govern *inter partes* proceedings, including the Board's liberal granting of motions to suspend for settlement efforts, and the requirement that initial disclosures be served prior to or concurrently with the service of discovery requests absent modification of this requirement (*see* Fed. R. Civ. P. 26(a)(1); Trademark Rule 2.120(a)(3)). Furthermore, the Board's Standard Protective Order is automatically applicable in this proceeding, and the

parties must file for approval any modification(s) thereto. See Trademark Rule 2.116(g). It is not necessary for the parties to sign a copy of the protective order, although it is advisable that they do so. The parties do not at this point in time anticipate proposing any modification(s) to the protective order.¹

To assist in focusing discovery and narrowing the issues, the Board reviewed the pleadings. The Board acknowledged that the notice of opposition sets forth opposer's standing, as well as the ground of priority and likelihood of confusion pursuant to Trademark Act Section 2(d).

With respect to applicant's answer, the Board noted that paragraphs 1 through 6, and 8 are construed as denials. Paragraphs 11 through 13 are amplifications of denials elsewhere in the answer, and merely serve to place opposer on notice of applicant's position with respect to certain issues of fact that are relevant to factors in the likelihood of confusion analysis. See *Humana Inc. v. Humanomics Inc.*, 3 USPQ2d 1696, 1697 n.5 (TTAB 1987) (allegations set forth as defenses were in the nature of arguments in support of denial of claim, rather than true affirmative defenses, and were treated as such).

¹ Once this proceeding has been finally determined, the Board has no further jurisdiction over the parties. Thus, according to the terms of the protective order, within 30 days following termination, the parties and their attorneys must return to each disclosing party any protected information and documents disclosed or produced during the proceeding. In the alternative, the disclosing party or its attorney may provide a written request that such materials be destroyed rather than returned.

Counsel for the parties verified that they have accurate email addresses for each other. The parties did not stipulate to the exchange of service copies of motions, papers and other Board filings by electronic mail pursuant to Trademark Rule 2.119(b)(6), but did stipulate to serve courtesy copies of all such materials by email in order to facilitate communication. In the event that the parties do stipulate at a later date to exchange service copies by email, they are directed to file this so as to notify the Board.

Mr. Verna indicated that inasmuch as his client is located outside of the United States, additional time may be required to respond to discovery requests and/or to give a deposition upon written questions. Counsel will address this on an as-needed basis.

Inasmuch as the parties are interested in focusing discovery, the Board noted examples of stipulations regarding the taking and introduction of testimony that might streamline discovery and/or trial, and noted that any procedural or substantive stipulation into which the parties enter should be filed. The parties were referred to TBMP § 414 (2014), which sets forth certain selected discovery guidelines, as well as examples regarding the discoverability of various matters.

At such time as counsel can investigate further the manner and format in which documents and things that may be discoverable have been kept, they will, in a separate conference, discuss the preferred means of exchanging documents and things.

The Board explained the availability and features of the “accelerated case resolution” (“ACR”) process. Neither counsel has previously litigated a Board proceeding under the ACR process. The Board noted that this opposition is suitable for expedited determination inasmuch as it involves one statutory ground, and the overall record is not likely to be extensive.

The Board directed counsel to its web page, and specifically to the “ACR & ADR” links, as well as TBMP §§ 528.05(a) and 702.04 (2014), for a collection of detailed information regarding ACR, as well as references to proceedings which the Board has determined on the merits using the ACR process.

Disclosure, discovery and trial dates remain as set in the June 11, 2014 order instituting this opposition.