

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: September 17, 2014

Opposition No. 91217006

Kind LLC

v.

Herbert D. Flores

Jennifer Krisp, Interlocutory Attorney:

The Board notes applicant's September 11, 2014 request for the participation of a Board attorney in the parties' required discovery conference.

In all proceedings, the required conference must take place no later than the opening of the discovery period, and a party must request the participation of a Board attorney no later than ten days prior to the deadline for the conference. *See* Trademark Rule 2.120(a)(2); TBMP § 401.01 (2014).

The Board set September 1, 2014 as the deadline for the conference. Inasmuch as applicant's request was made after the deadline to request the Board's participation, as well as after the deadline for the conference, applicant's request is denied. Discovery and trial dates remain as set in the June 23, 2014 order.

Applicant's answer

Applicant's answer, filed July 30, 2014, is construed as a general denial of the allegations in the notice of opposition. TBMP § 311.02(a) (2014).

Applicant's answer does not include proof of service (*e.g.* "Certificate of Service," more fully explained below) of a copy thereof on counsel for opposer, as strictly required by Trademark Rules 2.119(a) and (b). All filings in Board proceedings must include proof of service. The Board may decline to read or consider any filing that does not comply with this requirement.

Information for pro se party

A party may represent itself in this *inter partes* proceeding. However, while Patent and Trademark Rule 11.14 permits any entity to represent itself, it is strongly advisable for persons who are 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, and as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to purely procedure matters.

Any party who does not retain counsel should be familiar with the rules governing this proceeding, and may access useful legal resources, such as the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, from the Board's web page at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Also available are links to TTABVUE, where one can view filings, proceeding history and status at <http://ttabvue.uspto.gov/ttabvue>, and to ESTTA, the Board's

electronic filing system at <http://estta.uspto.gov>. All parties are encouraged to use ESTTA to submit filings. Furthermore, many Federal Rules of Civil Procedure govern the conduct of this proceeding.

Trademark Rules 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 on 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. The statement should take the form of a certificate of service which must be signed and dated, and should read as follows (*see* TBMP § 113.03):

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party).

The manner of service is provided for in Trademark Rule 2.119. The parties may agree to use electronic transmission (*e.g.* e-mail) to meet their service obligations; when such an agreement is made, the parties should reduce it to writing.

An *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. The parties file pleadings and may file a wide range of possible motions, as appropriate. The process of discovery (serving of interrogatories, requests for production of documents and things and requests for admission, as well as depositions) is followed by a testimony

(trial) period, after which final briefs on the case are filed. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the parties' assigned testimony (trial) periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

The Board's June 23, 2014 order instituting this proceeding also contains a vast amount of information regarding the parties' obligations and the manner in which this proceeding shall be conducted.