

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

RK

Mailed: July 8, 2015

Opposition Nos. **91217941 (parent)**  
**91217992**  
**91218267**

*Robert Kirkman, LLC<sup>1</sup>*

*v.*

*Phillip Theodorou and  
Anna Theodorou*

Opposition No. **91218669**

*Robert Kirkman, LLC*

*v.*

*Steven Theodorou and  
Jeffrey Heller*

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

This consolidated matter concerns two sets of applicants: Phillip Theodorou and Anna Theodorou (Applicants-A) in Opposition Nos. 91217941, 91217992 and 91218267, and Steven Theodorou and Jeffrey Heller (Applicants-B) in Opposition No. 91218669. Robert Kirkman, LLC (Opposer) filed a motion to consolidate these matters on October 30, 2014. As no

---

<sup>1</sup> The change of correspondence filed on April 6, 2015, by Opposer's counsel to correct the spelling of his name and to add a phone number has been noted and entered.

Opposition Nos. 91217941 (parent), 91217992 and 91218267  
Opposition No. 91218669

response was filed by either set of applicants, the motion to consolidate was granted as conceded on January 14, 2015.

Upon further consideration, the Board's order granting consolidation is **VACATED IN PART** as to Opposition No. 91218669. Notwithstanding the identity of plaintiff and similarity of claims across the four opposition proceedings, the Board does not find consolidation appropriate for the '669 proceeding in view of the distinct sets of applicants, all of whom are individuals and currently *pro se*. While any individual may appear in a trademark matter on his or her own behalf, *see* 37 CFR § 11.14(e), an individual who is not entitled to practice before the Office in trademark cases pursuant to 37 CFR §§ 11.14(a), (b) and (c) is not permitted to represent a party in a proceeding before the Board or to file submissions on behalf of another party. As such, consolidating the '669 proceeding with the '941, '992 and '267 proceedings will neither save time nor promote efficiency as each set of applicants must respond and otherwise act separately from the other. Therefore, **while Opposition No. 91217941 will remain as the parent proceeding to Opposition Nos. 91217992 and 91218267, Opposition No. 91218669 will proceed separately.**

As to the putative "motion to dismiss" filed on March 16, 2015, by Applicants-B, it will be given no consideration as the motion was not properly

Opposition Nos. 91217941 (parent), 91217992 and 91218267  
Opposition No. 91218669

served on Opposer at its correspondence address of record, i.e., that of counsel who filed the oppositions on behalf of Opposer.<sup>2</sup>

Dates in the consolidated proceedings and the unconsolidated proceeding are **RESET** as follows:

Initial Disclosures Due	7/24/2015
Expert Disclosures Due	11/21/2015
Discovery Closes	12/21/2015
Plaintiff's Pretrial Disclosures Due	2/4/2016
Plaintiff's 30-day Trial Period Ends	3/20/2016
Defendant's Pretrial Disclosures Due	4/4/2016
Defendant's 30-day Trial Period Ends	5/19/2016
Plaintiff's Rebuttal Disclosures Due	6/3/2016
Plaintiff's 15-day Rebuttal Period Ends	7/3/2016

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 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.

*Pro Se Information*

While Patent and Trademark Rule 11.14(e) 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 an

---

<sup>2</sup> Instead, the motion was served on the attorney that prosecuted Opposer's pleaded Application Serial No. 86145914 but who has otherwise made no appearance in any of these proceedings.

opposition proceeding 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.

The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this proceeding. The Trademark Act, the Trademark Rules of Practice, and the Trademark Trial and Appeal Board Manual of Procedure (TBMP) are all available on the TTAB page of the USPTO website at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. This web page also includes information on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and other relevant topics.

Applicants are reminded that 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 upon the attorney for the other party (or adversary), and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers that the parties may subsequently file in this proceeding must be accompanied by “proof of service” of a copy on the other party or the other party’s counsel.

“Proof of service” usually consists of a signed, dated statement stating: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and

(4) the date of service. For future reference, a suggested format for the certificate of service is provided below:

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)***

---

Signature

See TBMP § 113.

Applicants should further note that any paper they are required to file with the Board should not take the form of a letter; proper format should be utilized. The form of submissions is governed by Trademark Rule 2.126. See also TBMP § 106.03. In particular, “[a] paper submission must be printed in at least 11-point type and double-spaced, with the text on one side only of each sheet” and text “in an electronic submission must be in at least 11-point type and double-spaced.” Trademark Rule 2.126(a)(1) and 2.126(b).

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). In that regard, the parties should note that any paper they are required to file herein must be received by the Board by the due

Opposition Nos. 91217941 (parent), 91217992 and 91218267  
Opposition No. 91218669

date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized.

Files of TTAB proceedings can be examined using TTABVue, accessible at <http://ttabvue.uspto.gov/ttabvue>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

\* \* \*