

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

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Mailed: July 13, 2015

Opposition No. 91218118

SUCCESS Partners Holding Co.

v.

*Eleanor Anne Sweet DBA The Remington
Group, LLC*

Elizabeth A. Dunn, Attorney (571-272-4267):

On June 8, 2015, Opposer notified the Board of its timely disclosure to Applicant of plans to use expert testimony. Accordingly, proceedings herein are suspended (retroactive to the date of the notice) for SIXTY DAYS from the mailing date of this order, pending the parties' compliance with Fed. R. Civ. P. 26(a)(2) and the exchange of discovery limited to the expert report which accompanied the disclosure to Applicant and the planned expert testimony, including that of any rebuttal expert. See Trademark Rule 2.120(a)(2)¹ and *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1495, (TTAB 2013) (One whose expert testimony arises from her position as an expert (not from any knowledge gained

¹ Trademark Rule 2.120(a)(2) states, in part:

Upon disclosure by any party of plans to use expert testimony, whether before or after the deadline for disclosing expert testimony, the Board may issue an order regarding expert discovery and/or set a deadline for any other party to disclose plans to use a rebuttal expert.

from on-the scene involvement in an incident giving rise to the controversy—such as a treating physician) is “retained” for purposes of Fed. Rule Civ. Proc. 26(a)(2)(B) and must supply a written report.).

To the extent that the use of experts did not form part of the parties’ discovery conference discussions, the parties shall promptly confer on the arrangements for the completion of disclosures relating to planned expert testimony, including any testimony by a rebuttal expert, and for exchanging and responding to discovery requests, if any, related to the identified experts. Such discussions should also encompass stipulations regarding the introduction into evidence of the testimony of expert witnesses, for example, whether in lieu of testimony, the parties introduce the expert report(s), whether the expert testimony may be provided by affidavit or declaration , or whether the witnesses will present testimony and discuss exhibits in testimony depositions.

To the extent the parties require an extension of the suspension period to complete the discovery permitted above, such party may file a motion to extend the suspension period.

The Board notes that Applicant’s June 29, 2015 communication lacks proof of service. Pursuant to Trademark Rule 2.119, “Proof of such service must be made

before the paper will be considered by the Office.” Shown below is a suggested format for a certificate of service:

I hereby certify that a true and complete copy of the foregoing (insert title of submission, such as motion to extend) has been served on Opposer by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid to:

GEORGE R SCHULTZ
SCHULTZ & ASSOCIATES PC
5400 LBJ FREEWAY, STE 1200
DALLAS, TX 75240

(insert signature and printed name of person serving)

The Board also notes that Applicant is acting pro se. Applicant is advised that an inter partes proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party’s use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or 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 in the case unless it has been introduced in evidence in accordance with the applicable rules.

The Board strongly encourages all parties to retain experienced US trademark counsel to protect their interests in the opposition.² 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. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 (TTAB 2006).

Following the period of discovery dedicated to the disclosed expert, proceedings will resume on the following schedule:

Discovery Closes	10/5/2015
Plaintiff's Pretrial Disclosures	11/19/2015
Plaintiff's 30-day Trial Period Ends	1/3/2016
Defendant's Pretrial Disclosures	1/18/2016
Defendant's 30-day Trial Period Ends	3/3/2016
Plaintiff's Rebuttal Disclosures	3/18/2016
Plaintiff's 15-day Rebuttal Period Ends	4/17/2016

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 the taking of testimony. Trademark Rule 2.125.

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

² During the ex parte trademark examination process, USPTO employees, including the Trademark examining attorney, may assist an Applicant in putting its trademark application in condition so that it is approved for publication. In contrast, if an opposition is filed against the application with the Trademark Trial and Appeal Board, the nature of the adversarial, or inter partes, proceeding bars Board employees, including the assigned Board interlocutory attorney, from offering legal advice to either party.

