

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

DUNN

Mailed: October 21, 2015

Opposition No. 91218363

New Wave Innovations, Inc.

v.

Mr. Foamer, Inc.

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

On October 16, 2015 Applicant filed a stipulation which lacks proof of service. Applicant is ordered to serve a copy of the stipulation on Opposer within TEN DAYS of the mailing date of this order.

Inasmuch as the Board's April 3, 2015 order¹ required the parties to cooperate in resolution of service issues, the parties now are advised that any subsequent failure to show proof of service which complies with Trademark Rule 2.119 on EVERY PAPER filed with the Board will result in the paper being given no consideration and may result in sanctions.

The parties' stipulation provides that "the entire record" in the district and appellate court actions between the parties shall be "used as evidence by

¹ Inasmuch as the Board's April 3, 2015 order required Applicant to file its answer, Applicant's answer filed July 10, 2015 is acknowledged.

Opposition No. 91218363

the Parties in this Opposition.” Because the stipulation is overly broad and vague, it is not approved.

The stipulation is overly broad inasmuch as it refers to the “entire record” when the parties presumably mean only the trial record, supplemented by the pleadings and court orders. The Board will not approve a stipulation to treat the legal argument contained in every motion and brief filed in the two proceedings as evidence.

The stipulation is vague inasmuch as it refers to the record being “used as evidence by the Parties in this Opposition” with no indication of what is meant. For example, the stipulation should indicate if testimony is to be treated as if taken in this proceeding, if documents will not be challenged for lack of authentication, or if hearsay objections are waived.

Dates remain as set by the Board’s June 15, 2015 order.