

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

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Red Bull GmbH,	)	Opposition No. 91264945
	)	
Opposer/Counter-Defendant,	)	
	)	
-v-	)	FINAL PRETRIAL CONFERENCE
	)	ASSIGNMENT ORDER
	)	
Jason Lentzke,	)	
	)	
Applicant/Counter-Plaintiff	)	
-----	)	

To streamline trial and conserve the parties’ and the Board’s resources, this case has been identified as suitable for participation in a Final Pretrial Conference. The goal of the Final Pretrial Conference program is to lessen the cost of trial by reducing the number of claims and defenses to be tried where possible; focusing the presentation of each party’s case on critical witnesses, documents, and other evidence; avoiding the creation of unnecessarily large, redundant or unfocused records; eliminating, reducing, or resolving evidentiary issues; encouraging the use of stipulations where possible; and aiding the parties in their cost-efficient compliance with applicable rules.

By no later than **June 22, 2023**, the parties must promptly confer with one another to identify at least two mutually agreeable dates, within twenty days of this Order, for them to participate in a mandatory orientation telephone conference (“**Orientation Conference**”) with an Administrative Trademark Judge and an Interlocutory Attorney. The purpose of the Orientation Conference is to review the Final Pretrial Conference process, convey the Board’s expectations, and answer the

parties' questions. The parties will contact the assigned Interlocutory Attorney for the case and inform her of the proposed dates. The Board will then schedule the Orientation Conference. A primary goal of the Final Pretrial Conference program is to review and refine the parties' outstanding claims and defenses, in order to focus their testimony and other evidence on those matters that are truly at issue. In this regard, during the Orientation Conference the Board will review the pleadings and may offer observations as to some of the asserted claims or defenses.

In this case, the nature of the pleadings (including the claims and counterclaim asserted), the nature and extent of motion and discovery practice, and the potential volume of trial exhibits and evidentiary objections thereto, signal that trial on the merits can be more focused, simplified and streamlined, and the resources of the parties and the Board can be conserved, through a Final Pretrial Conference with a Board Interlocutory Attorney and Administrative Trademark Judge. *See* Trademark Rule 2.120(j)(2), 37 C.F.R. § 2.120(j)(2) (“[T]he Board may, upon its own initiative, direct that the parties and/or their attorneys meet with the Board for a disclosure, discovery or pretrial conference on such terms as the Board may order.”).

This Final Pretrial Conference Assignment Order (the “Assignment Order”) supersedes all prior discovery and trial schedules. It also relieves the parties of the need to prepare and serve Pretrial or Rebuttal Disclosures. This proceeding is otherwise suspended pending the Board’s issuance of an approved Final Pretrial Conference Order, which will reset the trial schedule.

In the Final Pretrial Conference program, the parties will draft and submit to the Board a **Joint Proposed Final Pretrial Order** and participate in a Final Pretrial Conference with a Board Interlocutory Attorney and Administrative Trademark Judge. The parties' participation in the Final Pretrial Conference will culminate in the Board's entry of a **Final Pretrial Order** substantially in the form of the template (the "**Template**") attached hereto as Exhibit 1. The parties and their counsel are ordered to promptly familiarize themselves with the form and content of the Template. The Final Pretrial Order entered by the Board shall govern all subsequent proceedings and the trial of the case.

The efficacy of the Final Pretrial Order depends on the cooperation of the parties and their counsel in negotiating and formulating the draft **Joint Proposed Final Pretrial Order**. To that end, the Board expects strict compliance with this Assignment Order. No extensions of the dates governing the preparation of the **Joint Proposed Final Pretrial Conference Order** provided herein shall be granted absent consent of the parties with the approval of the Board or a showing of extraordinary circumstances.<sup>1</sup> If any party encounters difficulty complying with the

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<sup>1</sup> To the extent that the parties would like to suspend the proceeding for legitimate settlement negotiations prior to their participation in the Final Pretrial Conference program, the parties must submit, within 30 days of this order, a consent motion for such a suspension, with a detailed explanation of the status of the parties' settlement efforts to date, including at a minimum, 1) all dates on which the parties communicated, and the method of each communication (e.g. telephone conferences, emails, in-person meetings), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for resolution of the remaining issues. Appropriately designated confidential information or materials may be filed under seal pursuant to Trademark Rule 2.126(c), 36 C.F.R. § 2.126(c). See Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 605.02.

directives of this Assignment Order, the party or parties encountering such difficulty are invited to call the assigned Interlocutory Attorney for clarification, with all adverse parties joining the call.

If either party fails to comply with the requirements set forth in this Assignment Order, the remedy may lie in a motion for sanctions, or the issuance of a sanctions order by the Board *sua sponte*. *Cf. SFM, LLC v. Corcamore, LLC*, 129 USPQ2d 1072, 1074–75 (TTAB 2018), *aff'd Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at \*5 (Fed. Cir. 2020), *cert. denied*, 141 S. Ct. 2671 (2021) (“When misconduct does not squarely fall within the reach of Fed. R. Civ. P. 11, Fed. R. Civ. P. 37(b)(2) or Trademark Rule 2.120(h), the Board may invoke its inherent authority to enter sanctions.”); *HighBeam Mktg. LLC v. HighBeam Research LLC*, 85 USPQ2d 1902, 1905 (TTAB 2008) (same); *Carrini Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067, 1071 (TTAB 2000) (same).

**Within 45 days after the date of the Orientation Conference, no later than August 16, 2023**, the party in the position of plaintiff (“Plaintiff”) shall serve on the party in the position of defendant (“Defendant”) a draft Proposed Final Pretrial Order, substantially in the form of the template attached hereto, which shall set forth the following:

- Plaintiff’s proposed neutral statement of the case and the list of Plaintiff’s pleaded claims, including specification of any pleaded claims that Plaintiff does not intend to pursue at trial, under Section III of the Template;

- Plaintiff’s draft agreed statement of the issues to be tried, under Section IV of the Template;
- Any stipulations proposed by Plaintiff, under Section V of the Template;
- A list of any pending motions, including any such motions that Plaintiff contends no longer need be resolved, under Section VI of the Template;
- Plaintiff’s position as to whether additional time is required for settlement discussions, or a statement that Plaintiff believes that settlement prospects have been exhausted, under Section VII of the Template;
- Plaintiff’s position on the possible use of Accelerated Case Resolution (“ACR”), under Section VIII of the Template;<sup>2</sup>
- Plaintiff’s Fact Witness List with a brief summary of each witness’s expected testimony and its relevance and a specification of the way the witness’s testimony will be presented (i.e., deposition, deposition on written questions, declaration or affidavit), or a statement that Plaintiff does not intend to call any fact witnesses in its case-in-chief, under Section IX of the Template;
- Plaintiff’s Trial Exhibits by Testimony with copies of each exhibit and an identification of the witness(es) through whom the exhibit will be offered, or a statement that Plaintiff does not intend to offer any exhibits by testimony in its case-in-chief, under Section XI of the Template;

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<sup>2</sup> See TBMP §§ 528.05(a)(2), 702.04 and 705 (Accelerated Case Resolution). If the parties find themselves in agreement on the use of ACR, they should contact the assigned Interlocutory Attorney immediately to discuss a plan for trial by ACR.

- Plaintiff's Trial Exhibits by Notice(s) of Reliance with a brief statement of the relevance of each exhibit, or a statement that Plaintiff does not intend to file any Notices of Reliance in its case-in-chief, under Section XIII of the Template;
- Plaintiff's proposed stipulations regarding the authenticity and admissibility of exhibits, under Section XIV of the Template; and
- Plaintiff's Expert Witness List with a statement of the date on which each expert witness's report was served, when the expert was deposed (if applicable), a very short summary of the expert witness's testimony and its relevance, and a specification of how the expert witness's testimony will be presented (i.e., deposition, deposition on written questions, declaration or affidavit), or a statement that Plaintiff does not intend to call any expert witnesses in its case-in-chief, under Section XV of the Template.

**Within 45 days of Plaintiff's service of the draft Proposed Final Pretrial Order, no later than September 30, 2023,** Defendant shall serve on Plaintiff a draft Proposed Final Pretrial Order, substantially in the form attached hereto, which shall set forth the following:

- Defendant's (1) proposed revisions to Plaintiff's proposed neutral statement of the case, including any additions thereto, or a statement that Plaintiff's proposed statement is acceptable, (2) a statement regarding whether Defendant agrees with Plaintiff's list of pleaded claims, and (3) a list of Defendant's pleaded counterclaims and pleaded affirmative defenses,

including specification of any counterclaims or defenses that Defendant does not intend to pursue at trial, under Section III of the Template;

- Defendant's (1) proposed revisions to Plaintiff's proposed statement of issues to be tried, including any additions thereto, or (2) a statement that Plaintiff's proposed statement is acceptable, under Section IV of the Template;
- Any stipulations proposed by Defendant, Defendant's proposed revisions to any stipulations proposed by Plaintiff, or a statement that any stipulations proposed by Plaintiff are acceptable, under Section V of the Template;
- A list of any pending motions, including any motions that Defendant contends no longer need be resolved, Defendant's proposed revisions to Plaintiff's list of pending motions, or a statement that Plaintiff's list is acceptable, under Section VI of the Template;
- Defendant's position as to whether additional time is required for settlement discussions, or a statement that Defendant believes that settlement prospects have been exhausted, under Section VII of the Template;
- Defendant's position on the possible use of ACR, under Section VIII of the Template;
- Defendant's (1) Fact Witness List with a brief summary of each witness's expected testimony and its relevance, and a specification of the way the witness's testimony will be presented (i.e., deposition, deposition on written

questions, declaration or affidavit), or a statement that Defendant does not intend to call any fact witnesses in response to Plaintiff's case-in-chief or in support of any counterclaims or affirmative defenses, and (2) any objections to the testimony of witnesses on Plaintiff's Fact Witness List, under Section X of the Template;

- Defendant's Trial Exhibits by Testimony, with copies of each exhibit and an identification of the witness(es) through whom the exhibit will be offered, or a statement that Defendant does not intend to offer any exhibits by testimony in response to Plaintiff's case-in-chief or in support of any counterclaims and/or affirmative defenses, under Section XII of the Template;
- Defendant's Trial Exhibits by Notice(s) of Reliance with a brief statement of the relevance of each exhibit, or a statement that Defendant does not intend to file any Notices of Reliance in response to Plaintiff's case-in-chief or in support of any counterclaims and/or affirmative defenses, under Section XIII of the Template;
- Defendant's proposed stipulations regarding the authenticity and admissibility of exhibits, and its objections to any of Plaintiff's listed Trial Exhibits including the grounds therefor, under Section XIV of the Template; and
- Defendant's (1) Expert Witness List, including a statement of the date on which each expert witness's report was served, when the expert was



deposed (if applicable), a very short summary of the expert witness's testimony and its relevance, and a specification of the way the expert witness's testimony will be presented, or a statement that Defendant does not intend to call any expert witnesses in response to Plaintiff's case-in-chief or in support of any counterclaims and/or affirmative defenses, and (2) any objections to expert witnesses listed by Plaintiff and the basis therefor, under Section XVI of the Template.

**Within 30 days of Defendant's service of its draft Proposed Final Pretrial Order, no later than October 30, 2023,** Plaintiff shall serve on Defendant a revised draft Proposed Final Pretrial Order, which shall set forth the following:

- If applicable, Plaintiff's response to Defendant's proposed revisions to Plaintiff's proposed neutral statement, and Plaintiff's response to Defendant's list of pleaded counterclaims and/or affirmative defenses, under Section III of the Template;
- If applicable, Plaintiff's response to Defendant's proposed revisions to Plaintiff's proposed statement of the issues to be tried, under Section IV;
- If applicable, Plaintiff's response to any stipulations proposed by Defendant, or Defendant's proposed revisions to Plaintiff's proposed stipulations, including any revisions to Plaintiff's previously proposed stipulations or statements that stipulations proposed by Defendant are acceptable, under Section V of the Template;

- If applicable, Plaintiff's response to Defendant's list of any pending motions, or Defendant's proposed revisions to Plaintiff's list of pending motions, under Section VI of the Template; and
- Plaintiff's (1) response to any stipulations proposed by Defendant, (2) any objections to any of Defendant's Fact Witnesses, and any objections by Defendant to the testimony of witnesses on Plaintiff's Fact Witness List, (3) any objections to Defendant's listed Trial Exhibits with the grounds therefor, and (4) any objections to expert witnesses listed by Defendant and the grounds therefor, under Section XIV of the Template.

**Within 15 days of Plaintiff's service of its revised draft Proposed Final Pretrial Order, no later than November 14, 2023**, Defendant, if applicable, shall serve on Plaintiff Defendant's responses to (1) Plaintiff's revised proposed stipulations regarding the authenticity and admissibility of exhibits and (2) Plaintiff's objections to Defendant's proposed stipulations.

The parties shall meet and confer, as contemplated by Section I of the Template, **within 15 days of Defendant's service of its responses to Plaintiff's proposed revised stipulations or objections to Defendant's proposed stipulations regarding the authenticity and admissibility of exhibits, no later than November 29, 2023**, to negotiate any disputed portions of their respective draft proposed Final Pretrial Orders. The parties are jointly responsible for scheduling the parties' conference. The parties must file with the Board, **within 15 days of their conference**, a **Joint Proposed Final Pretrial Order** signed by each party or its

counsel of record, addressing the matters discussed in Sections I-XVI, including **joint** statements as to the matters discussed in Sections III, IV, V, VI, and XIV of the Template. Any disputed portions of the Joint Proposed Final Pretrial Order that are not resolved at the parties' conference should be noted in the Joint Proposed Final Pretrial Order so that they can be discussed at the Final Pretrial Conference described below.

Following receipt of the parties' Joint Proposed Final Pretrial Order, the Board will schedule the Final Pretrial Conference. During the Conference, the parties or their counsel will confer with an Administrative Trademark Judge and the Interlocutory Attorney assigned to the case. The parties' Joint Final Pretrial Order will be discussed, modified as appropriate, and entered following the Conference. The Board will set new dates for the trial and rebuttal periods when it issues the Final Pretrial Order. Briefing deadlines and the time to request an oral hearing are governed by Trademark Rule 2.128. The Board may order conferences with the parties prior to the Final Pretrial Conference.<sup>3</sup>

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<sup>3</sup> More information about the Final Pretrial Conference is available at <https://www.uspto.gov/trademarks/trademark-trial-and-appeal-board/final-pretrial-conference-pilot>.

**Exhibit 1**

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

Red Bull GmbH,	)	
	)	Opposition No. 91264945
Opposer/Counter-Defendant,	)	
	)	
-v-	)	[PROPOSED] FINAL
	)	JOINT PRETRIAL ORDER
Jason Lentzke,	)	
	)	
Applicant/Counter-Plaintiff.	)	

The parties having conferred among themselves and with the Board pursuant to Fed. R. Civ. P. 16, and Trademark Rules 2.116(a) and 2.121, 37 C.F.R. §§ 2.116(a) and 2.121, the following statements, directions, agreements and stipulations are adopted as the Final Pretrial Order herein.

**I. CERTIFICATION OF MEETING**

[State the date and time of the meeting held before the final pretrial conference to prepare the Proposed Final Joint Pretrial Order and identify the persons who attended.]

The parties herein certify that the persons who attended this meeting specifically discussed **limiting** their claims and defenses, disputed issues for trial, stipulations as to facts and evidence, and the possible trial of the proceeding by Accelerated Case Resolution (“ACR”).

**II. PARTIES AND COUNSEL**

[State the names of all parties, and the names, addresses, telephone numbers and e-mail addresses of counsel, and *pro se* parties, on whose behalf the Proposed Final Joint Pretrial Order is filed.]

**III. NATURE OF THE PROCEEDING; STATUS OF PLEADINGS**

[Set forth here a **short** (i.e., no more than two paragraphs) mutually agreed upon, non-argumentative, **neutral** statement of the general nature of the proceeding, plaintiff’s claims, defendant’s defenses, and counterclaims, if any.]

[The parties shall also include here an agreed list of pleaded claims and defenses, including any amended claims and defenses. If either party believes certain claims or defenses are not properly pleaded, a list of the purported improperly pleaded claims or defenses shall be identified. If either party fails to list a claim or defense in this Final Pretrial Order, it will be deemed waived absent a subsequent showing of extraordinary circumstances. If either party intends not to pursue at trial certain claims or defenses, a list of the claims or defenses that will not be pursued shall be identified.]

**IV. ISSUES TO BE TRIED**

[Set forth a **short** and agreed statement of the issues to be tried.]

**V. STIPULATIONS**

[Set forth any stipulated facts.]

**VI. PENDING MOTIONS**

[List, by title, movant, filing date and TTABVUE docket number(s), all pending motions. Any motion not listed will be considered withdrawn. Any pending motions that the parties no longer need resolved should be identified.]

**VII. SETTLEMENT**

[State whether additional time (of no more than 30 days, which will not be extended) is required for settlement discussions. If settlement prospects have been exhausted, so state. Also, state whether the parties have considered referral of this matter to private mediation.]

**VIII. ACCELERATED CASE RESOLUTION**

[State whether, as a result of their discussions certified above, the parties desire to have the trial of this proceeding conducted by ACR. If ACR is desired, identify any agreed limits upon, or exceptions to the Trademark Rules of Practice regarding, the presentation of evidence. A brief description of ACR is provided in **Exhibit A.**]

**IX. PLAINTIFF'S FACT WITNESS LIST** (see description below)

**X. DEFENDANT'S FACT WITNESS LIST** (see description below)

The fact witnesses listed in this Section are those from whom the parties intend to take testimony, or may take testimony if the need arises, during the parties' trial

periods. Only witnesses identified herein shall be permitted to testify in either party's case in chief. Good cause must be shown in support of testimony offered by any witness not identified, and such a showing must be made to, and approved by, the Board before taking the testimony. If a party does not plan to present testimony from any witnesses, whether by deposition, declaration or affidavit, it shall so state.

[Each party shall list the witnesses it may call in its case in chief, and provide a brief summary of each witness's expected testimony – including how the testimony will be relevant to the disputed issues remaining in the proceeding. The party will specify whether the witness's testimony will be offered by testimony deposition (in person or on written questions), or by testimony declaration or affidavit. For any testimony offered at trial by declaration or affidavit, any adverse party may elect, within the time permitted by the Trademark Rules of Practice, oral cross-examination. If a witness's testimony will occur outside the United States by deposition on written questions, the parties shall provide a schedule for the exchange of direct, cross and rebuttal questions, and for the taking of the witness's testimony overseas. Each party shall set forth here any objections it has to expected testimony designated by the other(s) and the basis therefor – except for objections that reasonably cannot be anticipated prior to the presentation of testimony. Objections that reasonably cannot be anticipated prior to the presentation of testimony shall be preserved: (a) during oral deposition or deposition on written questions, if the testimony is presented in either of these formats, or (b) by separately filed written objections if the testimony is presented by declaration or affidavit – and in either case renewed by the objecting party in its Trial Brief or an Appendix submitted therewith. Pretrial objections to fact witness testimony raised in this Final Pretrial Order shall have the effect of preserving the objection, but the objection must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

**XI. PLAINTIFF'S TRIAL EXHIBITS BY TESTIMONY**  
(see description below)

**XII. DEFENDANT'S TRIAL EXHIBITS BY TESTIMONY**  
(see description below)

[Each party shall list all trial exhibits it intends to offer in its case in chief, or may offer if the need arises, whether by deposition (in person or on written questions), or by testimony declaration or affidavit. The list shall include a description of each exhibit, and the witness(es) through whom the exhibit(s) will be offered. No exhibit may be used during the parties' testimony periods, nor will it be considered by the Board, unless it is listed above, is pre-marked, and is served on all other parties five (5) business days before the opening of Plaintiff's testimony period, except when used (a) for cross-examination purposes, or (b) for rebuttal, or (c) on consent of the parties or approval of the Board for good cause shown as to its omission from this Final Pretrial Order. In Section XV below, each party shall set forth any objections it has

to the trial exhibits designated by the other party(ies) and the basis therefor – except objections that cannot reasonably be anticipated prior to the introduction of exhibits by testimony. Objections that reasonably cannot be anticipated prior to the presentation of exhibits shall be preserved: (a) during oral deposition or deposition on written questions, if the exhibits are presented in either of these formats, or (b) by separately filed written objections if the exhibits are presented by declaration or affidavit – and in either case renewed by the objecting party in its Trial Brief or an Appendix submitted therewith. Pretrial objections to exhibits raised in this Final Pretrial Order shall have the effect of preserving the objection, but the objection must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

[In cases likely to involve substantial numbers of trial exhibits, the parties are encouraged to agree within fifteen (15) days after the close of discovery to assign a unique trial exhibit number or letter to each exhibit marked at any discovery deposition so that the trial exhibit designations can be used in trial testimony deposition transcripts or trial testimony declarations or affidavits, without change at trial. Absent use of such a system, plaintiff's trial exhibits shall be identified as OPP-1 or PET-1, and defendant's trial exhibits shall be identified as APP-1 or RESP-1.]

### **XIII. PLAINTIFF'S TRIAL EXHIBITS BY NOTICE(S) OF RELIANCE**

(see description below)

### **DEFENDANT'S TRIAL EXHIBITS BY NOTICE(S) OF RELIANCE**

(see description below)

If allowed by the Trademark Rules of Practice, the parties' trial exhibits may be offered through Notice(s) of Reliance during the parties' testimony periods, **and need not be made of record through witness testimony** – with such Notice(s) including explanations of the relevance of each exhibit to the disputed issues remaining in the proceeding. This paragraph shall not be interpreted to preclude a witness from testifying with respect to a document that has been made of record by way of a Notice of Reliance.

[Each party shall list all trial exhibits it may offer in its case in chief by Notice of Reliance, and brief descriptions of their relevance. **To be clear, the Board requires the brief statements of relevance in this Final Pretrial Order and in the Notice(s) of Reliance when filed.** No Notice of Reliance exhibit may be filed during the parties' trial periods, nor will it be considered by the Board, unless it is listed above, except (a) when used in a party's rebuttal period, or (b) upon a showing of good cause. In Section XV. below, each party shall set forth any objections it has to Notice of Reliance materials designated by the other party(ies) and the basis therefor.]

#### **XIV. STIPULATIONS AND OBJECTIONS WITH RESPECT TO WITNESSES AND EXHIBITS**

Objections not set forth herein to the witnesses and exhibits identified above will be considered waived absent good cause shown.

[The parties shall set forth any stipulations with respect to the authenticity and admissibility of exhibits and indicate their respective objections to exhibits and the grounds therefor. The parties are deemed to have stipulated to the foundation and authenticity of all exhibits and testimony unless a party's objections are set forth in this Final Pretrial Order, all subject to the parties' right to argue lack of relevance, probity and weight of the exhibits – except objections that cannot reasonably be anticipated prior to the introduction of testimony or exhibits by testimony. Objections that reasonably cannot be anticipated prior to the presentation of exhibits or testimony shall be preserved: (a) during oral deposition or deposition on written questions, if the exhibits or testimony are presented in either of these formats, or (b) by separately filed written objections if the exhibits or testimony are presented by declaration or affidavit – and in either case renewed by the objecting party in its Trial Brief or an Appendix submitted therewith. Pretrial objections to exhibits raised in this Final Pretrial Order shall have the effect of preserving the objections, but the objections must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

#### **XV. PLAINTIFF'S EXPERT WITNESS LIST**

#### **XVI. DEFENDANT'S EXPERT WITNESS LIST**

The expert witnesses listed in this Section are those from whom the parties intend to take testimony, or may take testimony if the need arises, during the parties' trial periods. Only expert witnesses identified herein shall be permitted to testify in either party's case in chief. During trial, good cause must be shown in support of testimony offered by any expert witness not identified and listed in this Final Pretrial Order, and such a showing must be made to, and approved by, the Board before taking the testimony. If a party does not plan to present testimony from any expert witnesses, whether by deposition, declaration or affidavit, it shall so state.

[Each party shall list the experts it intends to call in its case in chief, the date on which the witness's expert report was served, the date on which the expert was deposed during discovery (if applicable), and a very short summary of the expected expert's testimony – including how the expert's testimony will be relevant to the disputed issues remaining in the proceeding. The party will specify whether the expert's testimony will be offered by testimony deposition (in person or on written questions), or by testimony declaration or affidavit. For any expert testimony offered at trial by declaration or affidavit, any adverse party may elect, within the time



permitted by the Trademark Rules of Practice, oral cross-examination. Each party shall set forth any objections it has to expert testimony designated by the other(s) and the basis therefor. The parties are deemed to have stipulated to the qualification of each identified witness to offer opinion testimony as an expert unless objections to the expert's qualifications are specified in this Final Pretrial Order. Pretrial objections to expert testimony raised in this Final Pretrial Order shall have the effect of preserving the objection, but the objection must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

## Exhibit A

### Accelerated Case Resolution

The Board's Accelerated Case Resolution ("ACR") process is an alternative to a typical inter partes Board trial.<sup>4</sup> Under ACR, parties can obtain a determination of their claims and defenses using simplified methods of introducing evidence and in a shorter time period than contemplated by the standard Trademark Rules. The form of ACR can vary. The process can, but does not need to, approximate a motion (or cross-motions) for summary judgment and accompanying evidentiary submissions that the parties agree to submit in lieu of creating a traditional trial record and traditional briefs at final hearing.

The Board allows the parties to stipulate to a variety of deviations from the Board's rules in order to streamline discovery and testimony. If the parties stipulate to ACR they can avoid a formal trial altogether. Although the Board may not decide disputed issues of material fact when considering a motion for summary judgment, the parties may stipulate to the submission of such briefs and evidence in lieu of trial and agree that the Board may make any factual determinations based on such a record.

The standards of proof in an ACR proceeding are the same as the standards of proof in a traditional Board proceeding – the burden of proof remains with Opposer or Petitioner to prove its case by a preponderance of the evidence. *See* TBMP §§ 528.05(a)(2) and 702.04(a). A final decision rendered under ACR may be appealed in the same manner and under the same time frames as non-ACR decisions by the Board. *Id.*

In order to realize fully the expedited handling of their ACR case, parties should submit only relevant, non-cumulative evidence. *See* TBMP § 702.05 (Overly Large Records). Additionally, while the summary judgment model of ACR does not require parties to utilize notices of reliance when submitting documentary evidence that would be admissible at trial by means of a notice of reliance, they are encouraged to submit all documentary evidence under a cover sheet analogous to a notice of reliance, and to (1) separately identify each exhibit being submitted as evidence; (2) indicate the general relevance of the evidence; and (3) associate each evidentiary submission with one or more issues in the case. *See generally* TBMP § 704.02 regarding notices of reliance. A compact and well-organized ACR record will facilitate the efficient and expedited determination of the case.

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<sup>4</sup> *See, e.g., Chanel Inc. v. Makarczyk*, 110 USPQ2d 2013, 2016–17 (TTAB 2014) (Board's final decision on ACR); *Chanel Inc. v. Makarczyk*, 106 USPQ2d 1774 (TTAB 2013) (ACR stipulation approved by Board); *see also Bond v. Taylor*, 119 USPQ2d 1049, 1050-51 (TTAB 2016); *Swiss Grill Ltd. v. Wolf Steel Ltd.*, 115 USPQ2d 2001, 2002 (TTAB 2015).

More information about ACR can be found on the Board’s website<sup>5</sup> under the heading “Alternate resolution options” and in TBMP Sections 528.05(a)(2), 702.04, and 705. If the parties have any questions about ACR, they are encouraged to jointly contact the assigned Interlocutory Attorney via email to schedule an ACR conference.

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<sup>5</sup> <https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board>