

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

Lykos

Mailed: July 15, 2004

Cancellation No. 92020442

Fred Wisniewski, a/k/a  
Captain Rat

v.

Captain Rat and the Blind  
Rivets

Angela Lykos, Interlocutory Attorney

On January 9, 2004, the parties were allowed time to inform the Board of the status of the civil action which occasioned the suspension of this proceeding. Both parties filed responses thereto. According to the papers filed, the civil action was dismissed without prejudice pursuant to plaintiff's motion for involuntary dismissal. In view thereof, the suspension is lifted and proceedings herein are resumed.

The Board will now consider respondent's "Request Concerning Resetting of Testimony Periods" (filed September 4, 2003). Petitioner filed a brief in opposition thereto.

In its request regarding the resetting of the testimony periods, respondent has asked that when the suspension

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period is lifted and proceedings resumed, that the Board, consistent with its previous order dated November 5, 1997, reset trial dates commencing with the balance of petitioner's testimony period with only one week remaining.

In opposition thereto, petitioner argues that respondent's request that it be given only a one-week testimony period is contrary to the parties' previous agreement, when, at respondent's request, the parties postponed the taking of petitioner's testimony depositions which had been timely served, and instead agreed to suspend proceedings to pursue settlement discussions. Petitioner asserts that it should not be penalized for having agreed to a suspension of proceedings and lieu of an extension of its testimony period. Petitioner has therefore requested that it be given the full balance of its testimony period.

For the reasons set forth below, respondent's request to limit petitioner's testimony period to one week is denied. Given the length of time which has lapsed since the November 5, 1997 order, as well as the need to re-notice and schedule petitioner's previously noticed testimony depositions, it is in the interest of equity that petitioner be given the full balance of its testimony period. To give petitioner only one week to introduce evidence to establish its case at trial would place an undue burden on petitioner, especially in light of the amount of time which has lapsed

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since this case has been suspended. Moreover, petitioner should not be penalized for its agreement to suspend proceedings instead of an extending its testimony period.

In view of the foregoing, trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	September 25, 2004
30-day testimony period for party in position of defendant to close:	November 24, 2004
15-day rebuttal testimony period for plaintiff to close:	January 8, 2005

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 Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**New Developments at the Trademark Trial and Appeal Board**

- Files of TTAB proceedings can now be examined using TTAB Vue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. Papers filed prior to January 2003 may not have been scanned. Unscanned papers remain available for public access at the TTAB. For further information on file access, call the TTAB at (703) 308-9330.
- Parties should also be aware of recent changes in the rules affecting trademark matters, including the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) ([www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf](http://www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf)); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003) ([www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf](http://www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf)).
- The second edition (June 2003) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/).