

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: November 22, 2010

Cancellation No. 92052698

Internet Employment Linkage,
Inc. d/b/a HigherEdJobs

v.

AmeriCareers, LLC

**Robert H. Coggins,
Interlocutory Attorney:**

This case now comes up on petitioner's motion (filed October 1, 2010) to dismiss the counterclaim for failure to state a claim on which relief can be granted under Fed. R. Civ. P. 12(b)(6).¹ In response to the motion to dismiss, respondent filed (on October 18, 2010) a motion to amend the counterclaim under Fed. R. Civ. P. 15(a).

Motions to Dismiss and Amend

Counterclaim plaintiffs to proceedings before the Board ordinarily can, and often do, respond to a motion to dismiss by filing, *inter alia*, an amended counterclaim. See TBMP Section 503.03 (2d ed. rev. 2004). Inasmuch as Fed. R. Civ.

¹ Although petitioner included matters outside the pleadings with its motion to dismiss, petitioner titled the motion as one to dismiss and the Board has treated it as such. See, e.g., *Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251, 1255 (TTAB 2009).

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P. 15(a)(1)(B) allows respondent to amend the counterclaim as a matter of course within twenty-one days after service of a motion under Rule 12(b), the amended counterclaim is accepted as a matter of course and petitioner's motion to dismiss is moot.

The first amended counterclaim is respondent's operative counterclaim pleading herein, and petitioner is allowed until December 20, 2010, to file an answer thereto.

Appearance

The appearance and change of correspondence address (filed October 5, 2010) of counsel for respondent is noted and entered.

Schedule

The schedule is reset as follows.

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| Answer to Counterclaim Due | December 20, 2010 |
| Deadline for Discovery Conference | January 19, 2011 |
| Discovery Opens | January 19, 2011 |
| Initial Disclosures Due | February 18, 2011 |
| Expert Disclosures Due | June 18, 2011 |
| Discovery Closes | July 18, 2011 |
| Plaintiff's Pretrial Disclosures | September 1, 2011 |
| 30-day testimony period for plaintiff's testimony to close | October 16, 2011 |
| Defendant/Counterclaim Plaintiff's Pretrial Disclosures | October 31, 2011 |
| 30-day testimony period for defendant and plaintiff in the counterclaim to close | December 15, 2011 |
| Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due | December 30, 2011 |

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| 30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close | February 13, 2012 |
| Counterclaim Plaintiff's Rebuttal Disclosures Due | February 28, 2012 |
| 15-day rebuttal period for plaintiff in the counterclaim to close | March 29, 2012 |
| Brief for plaintiff due | May 28, 2012 |
| Brief for defendant and plaintiff in the counterclaim due | June 27, 2012 |
| Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due | July 27, 2012 |
| Reply brief, if any, for plaintiff in the counterclaim due | August 11, 2012 |

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.