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

MBA

Mailed: June 23, 2011

Cancellation No. 92052967
Cancellation No. 92053960

Ira Pazandeh d/b/a Episode Audio

v.

Wirepath Home Systems, LLC

Michael B. Adlin, Interlocutory Attorney:

On June 22, 2011, the Board participated in the parties' telephonic discovery conference mandated under Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (a)(2). Ira Pazandeh appeared pro se, Robert H. Cameron appeared on respondent's behalf and the interlocutory attorney responsible for this proceeding participated on the Board's behalf.

Petitioner indicated that he will continue to represent himself in this proceeding. The Board advised petitioner that it is generally recommended that parties retain experienced trademark practitioners to represent them in Board proceedings.[1] The Board also indicated that

[1] Information for parties representing themselves pro se included at the end of this order.

petitioner would be expected and required to comply with all applicable rules and procedures, whether or not he retains counsel, including those relating to service of papers, as set forth in 37 C.F.R. § 2.119.

The parties indicated that petitioner had initial settlement discussions directly with respondent's principal, prior to the filing of these proceedings, but that the parties were unable to reach a settlement agreement. The Board strongly suggested that the parties would likely benefit by at least further discussing the possibility of settlement. The parties agreed to consider settlement throughout this proceeding. The parties are not aware of any related proceedings, marks or third party disputes.

The parties discussed the pleadings, including petitioner's sole remaining claim of priority and likelihood of confusion. The Board pointed out that respondent, in its Answer at ¶ 10, appeared to admit that the parties' marks are confusingly similar. Respondent confirmed the point. Therefore, as explained during the teleconference, this case is exceedingly simple, as it appears to come down to which party has priority.

Given the extremely uncomplicated nature of this proceeding and the presumably limited facts at issue, the Board informed the parties of their option to stipulate to limits on discovery, abbreviated procedures for submission

of evidence and other ways to expedite resolution of this case. See, Target Brands Inc. v. Hughes, 85 USPQ2d 1676 (TTAB 2007). The Board also discussed the possibility of the parties making greater reciprocal disclosures than required by Fed. R. Civ. P. 26(a)(1), in lieu of formal discovery. See, Miscellaneous Changes to Trademark Trial and Appeal Board Rules, 71 Fed. Reg. 2498 (January 17, 2006). In fact, it may be that by simply providing evidence acceptable to respondent of its priority claims, petitioner may be able to persuade respondent to resolve this case, or, at the very least, limit the scope of discovery.

The Board also indicated that this case appears particularly appropriate for Accelerated Case Resolution ("ACR"), described here:

http://www.uspto.gov/trademarks/process/appeal/acrognoticerule.pdf
http://www.uspto.gov/trademarks/process/appeal/accelerated_case__resolution_acr_faq.doc
http://www.uspto.gov/trademarks/process/appeal/acrcase_list.doc

The parties are strongly encouraged to consider this possibility, and agreed to do so. As indicated during the discovery conference, a party would not necessarily waive its right to discovery or cross-examination (or any other right) by agreeing to ACR.

The Board's standard protective order is applicable herein by operation of Trademark Rule 2.116(g) and available here:

http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm

The parties are encouraged to acknowledge their obligations under the protective order in writing, and may utilize the following form:

http://www.uspto.gov/web/offices/dcom/ttab/tbmp/ackagrmnt.htm

The parties were reminded that neither discovery requests nor motions for summary judgment may be served until after initial disclosures are made. The deadline for initial disclosures, and remaining deadlines, remain as set in the Board's order of May 4, 2011.

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.

Pro Se Information

Petitioner is reminded that he will be expected to comply with all applicable rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this

cancellation proceeding. Petitioner should note that Patent and Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If petitioner does not retain counsel, then he will have to familiarize himself with the rules governing this proceeding. The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). The CFR and the Federal Rules of Civil Procedure are likely to be found at most law libraries, and may be available at some public libraries. Finally, the Board's manual of procedure will be helpful.

On the World Wide Web, respondent may access most of these materials by logging onto http://www.uspto.gov/ and making the connection to trademark materials.

Petitioner must pay particular attention to Trademark Rule 2.119. That rule requires a party filing any paper with the Board during the course of a proceeding to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to

the following matters: (1) the nature of the paper being served; (2) the method of service (e.g., e-mail, first class mail); (3) the person being served and the address used to effect service; and (4) the date of service. Also, petitioner should note that any paper he is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized. These rules are in part two of Title 37 of the previously discussed Code of Federal Regulations.

Files of TTAB proceedings can now be examined using TTABVue, accessible at http://ttabvue.uspto.gov/ttabvue/. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

The third edition of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at:
http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp.

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