

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

Baxley

Mailed: January 8, 2014

Cancellation No. 92054201

Dan Foam ApS

v.

Sleep Innovations, Inc.

Andrew P. Baxley, Interlocutory Attorney:

The parties' stipulation (filed November 18, 2013) to allow use of the discovery depositions of Dan Setlak, Dave Hochwalt, Sharon Miller, Lisa Thorstenson, and Michael Loomis, or any parts thereof, as trial evidence herein and to the authenticity of documents produced by the parties in discovery is approved.

On January 3, 2014, petitioner filed a motion for leave to supplement pretrial disclosures to add Jane Martin as a trial witness and to take Ms. Martin's testimony deposition, which has been noticed for January 10, 2014, by telephone. In view of the time-sensitive nature of such motion, petitioner requested, and the Board agreed, that the motion be decided by telephone. On the afternoon of January 8, 2014, the Board convened a telephone conference between petitioner's attorney Mari-Elise Taube, respondent's

attorney Irene Hurtado, and Board interlocutory attorney Andrew P. Baxley.¹

As an initial matter, the parties' stipulation (filed December 16, 2013) to extend testimony periods is approved to the extent that petitioner's testimony period was extended and was ongoing at the time of such conference. In view of the suspension of this case by this order, petitioner will be allowed a testimony period of **ten days** upon resolution of the following.²

During the conference, respondent indicated that it has filed motion to quash the notice of deposition of Ms. Martin and for a protective order. However, while petitioner indicated that it had received a service copy of respondent's motion, that motion had not appeared in the Board's TTABIS database at the time of the conference and thus could not be reviewed in advance of that conference. Accordingly, proceedings herein are **suspended** to allow the parties to complete, and the Board to review, briefing in connection with the pending motions.

During the conference, the parties agreed that petitioner's combined brief in response to respondent's

¹ Cheryl S. Goodman, the Board attorney assigned to this case, is away from the Office.

² Under the schedule set forth in that stipulation, petitioner's testimony period would have been reset to close on January 17, 2014.

motion and reply brief in support of its motion is due by **Monday, January 13, 2014,**³ and that respondent's reply brief in support of its motion is due by **Friday, January 17, 2014.**⁴ Such briefs shall be served by e-mail or other means of electronic transmission agreed upon by the parties. See Trademark Rule 2.119(b)(6).

³ That brief shall not exceed twenty-five pages. See Trademark Rule 2.127(a).

⁴ That brief shall not exceed ten pages. See Trademark Rule 2.127(a).