

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

RA

Mailed: November 3, 2014

Cancellation No. 92058638

*Lisa Alyn*

*v.*

*Southern Land Co., LLC*

**Benjamin U. Okeke, Interlocutory Attorney:**

**Motion to compel**

Proceedings are **SUSPENDED**, except as discussed below, pending disposition of Respondent's motion, filed October 6, 2014, to compel Petitioner's supplemental responses to its first set of written discovery requests, and to have Respondent's requests for admission deemed admitted. The parties should not file any paper which is not germane to the motion to compel. *See* Trademark Rule 2.120(e)(2).

Neither the filing of the motion to compel nor this suspension order tolls the time for parties to make required discovery disclosures, or to respond to any outstanding discovery requests which had been served prior to the filing of the motion to compel, nor does it excuse a party's appearance at any discovery deposition which had been duly noticed prior to the filing of the motion to compel.

**Expert Disclosure**

The suspension of proceedings for expert discovery is within the Board's discretion, and depends in large part on the circumstances presented by the case and at which stage of the proceeding expert disclosure is made. *See* Miscellaneous Changes To Trademark Trial And Appeal Board Rules, 72 Fed. Reg. 42242, 42246 (August 1, 2007); *General Council of the Assemblies of God v. Heritage Music Foundation*, 97 USPQ2d 1890, 1893 (TTAB 2011). In this case the Board has determined that resolution of the outstanding motion to compel prior to suspension for expert discovery is appropriate. Therefore, inasmuch as opposer, on September 15, 2014, disclosed plans to use expert testimony, proceedings will remain suspended following resolution of the outstanding motion to compel, pending the parties' compliance with Fed. R. Civ. P. 26(a)(2) and the exchange of discovery limited to planned expert testimony, including that of any rebuttal expert. Trademark Rule 2.120(a)(2).

To the extent that the use of experts did not form part of the parties' discovery conference discussions, the parties shall promptly confer on the arrangements for the completion of disclosures relating to planned expert testimony, including any testimony by a rebuttal expert, and for exchanging and responding to new discovery requests, if any, related to the identified expert(s).

Such discussions should also encompass stipulations regarding the introduction into evidence of the testimony of expert witnesses; for example, whether, in lieu of testimony, the parties introduce the expert report(s), whether the expert testimony

may be provided by affidavit or declaration, or whether the witnesses will present testimony and discuss exhibits in testimony depositions.

Federal Rule 26(a)(2) provides that a party planning to use an expert solely to contradict or rebut an adverse party's expert must disclose such plans within thirty days of the adverse party's prior disclosure. However, Trademark Rule 2.120(a)(2) provides that the Board may set a deadline for disclosing plans to use a rebuttal expert. Accordingly, if Respondent has not already complied with the requirements of the federal rule, it is allowed until **FIFTEEN DAYS** from the mailing date of the order resolving the motion to compel to disclose any planned rebuttal expert testimony. Federal Rule 26(a)(2) also details what information and material must be provided for a party to satisfy its disclosure obligation with respect to experts. *See* "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242, 42246 (Aug. 1, 2007).

The motion to compel will be decided in due course.