

ESTTA Tracking number: **ESTTA707479**

Filing date: **11/09/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92060018
Party	Plaintiff Todd Sean White
Correspondence Address	JACKSON MACDONALD BREANLAW LLC PO BOX 4120, ECM #72065 PORTLAND, OR 97208 UNITED STATES tmsupport@breanlaw.com, luke@breanlaw.com, jackson@breanlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Jackson MacDonald
Filer's e-mail	tmsupport@breanlaw.com
Signature	/JMD/
Date	11/09/2015
Attachments	Response to Motion to Dismiss.pdf(90637 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

Todd Sean White)	
Petitioner,)	Cancellation No.: 92060018
)	
v.)	Mark: Ripper
)	
Gary L. Pifer and Joe Faustine)	Mark Serial No.: 78687136
Respondents.)	
)	

**PETITIONER’S RESPONSE AND OBJECTION TO
RESPONDENT’S MOTION TO DISMISS**

Petitioner Todd Sean White, through his undersigned counsel, hereby responds and objects to Respondent Gary L. Pifer’s Motion to Dismiss. On October 31, 2015, Respondent Pifer filed a Motion to Dismiss (the “Motion”). This Motion was submitted as a Fed. R. Civ. P. (“FRCP”) 12(b) motion but only vaguely alleges violations of FRCP Rule 11.

To the extent Respondent’s Motion is taken as an FRCP 12(b) motion, Petitioner objects to the Motion as untimely. Any motion filed pursuant to FRCP 12(b) must be filed before, or concurrently with, the movant’s answer. *See* Fed. R. Civ. P. 12(b); *TBMP* § 503.01. Here, Respondent Pifer filed an answer in the proceeding on November 1, 2014. Respondent Pifer’s Motion to Dismiss, filed on October 31, 2015, was filed nearly a year after the movant’s answer. The Motion is thus untimely and must be denied.

To the extent the Board considers the Motion as an FRCP Rule 11 Motion for Sanctions, Petitioner contends that Respondent's Motion does not demonstrate any basis for the issuance of sanctions and respectfully requests that the Motion be denied. A motion for sanctions under Rule 11 must describe specific conduct that violates Rule 11(b). *See* Fed. R. Civ. P. 11(c)(2). Respondent Pifer has wholly failed to identify any specific conduct that would constitute a violation of FRCP 11(b) or that would support any imposition of sanctions. Petitioner thus respectfully requests that the Board deny Respondent Pifer's Motion to Dismiss.

Respondent Pifer also includes in his Motion a request that the Board again reopen and extend Respondent Pifer's time for serving initial disclosures, despite the Board's order on September 30, 2015 that Respondent Pifer serve his initial disclosures no later than October 30, 2015, and despite the Board's statement that "***No further extension of time for serving initial disclosures will be granted.***" *See Board's decision denying Respondent's Motion to Substitute and Resetting Dates, 9/30/15, Page 4.* Petitioner objects to Respondent Pifer's request to reopen as Respondent has already been allowed ample time in which to prepare and serve his initial disclosures and Respondent has made no attempt to contact Petitioner to request an extension.

CONCLUSION

In view of the foregoing, Petitioner hereby objects to Respondent Pifer's 12(b) Motion and respectfully requests that the Motion be denied in whole.

Dated: November 9, 2015

Respectfully submitted,

/JMD/

Jackson MacDonald
Attorney for Petitioner

BreanLaw LLC
P.O. Box 4120 ECM #72065

Portland, OR 97208
United States
800-451-5815
jackson@breanlaw.com
tmsupport@breanlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above PETITIONER'S RESPONSE AND OBJECTION TO RESPONDENT'S MOTION TO DISMISS is being deposited with the U.S. Postal Service on November 9, 2015 via First Class Mail, postage prepaid, to Respondent Pifer at the following address:

Gary L. Pifer
2356 Caddie Court
Oceanside, CA 92056
United States

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above PETITIONER'S RESPONSE AND OBJECTION TO RESPONDENT'S MOTION TO DISMISS is being deposited with the U.S. Postal Service on November 9, 2015 via First Class Mail, postage prepaid, to Respondent Faustine's Attorney of Record at the following address:

William G. Meyer, III
Settle Meyer Law, A Limited Liability Law Company
900 Fort Street Mall, Suite 1800
Honolulu, Hawaii 96813

Dated: November 9, 2015

/JMD/

Jackson MacDonald
Attorney for Petitioner
BreanLaw LLC
P.O. Box 4120 ECM #72065
Portland, OR 97208
United States
800-451-5815
jackson@breanlaw.com