

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

EJW

Mailed: July 7, 2015

Cancellation No. 92060018

*Todd Sean White*

*v.*

*Gary L. Pifer*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

On February 2, 2015, the Board allowed Respondent Pifer time to show cause why judgment should not be entered against him for his failure to participate in the parties' mandatory discovery conference. Respondent promptly responded to the Board's order on February 13, 2015, wherein he explained that for various medical reasons, he is unable to participate in a telephone conference.

In view of the reasons provided by Respondent, the requirement under Trademark Rule 2.120(a) to conduct a discovery conference is hereby WAIVED. The parties are therefore directed to serve on each other their respective initial disclosures within **THIRTY DAYS** from the mailing date of this order.<sup>1</sup> Trial dates are reset as shown in the schedule shown below:

<b>Discovery Opens</b>	<b>7/7/2015</b>
<b>Initial Disclosures Due</b>	<b>8/6/2015</b>

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<sup>1</sup> Information regarding initial disclosures is provided at the conclusion of this order.

<b>Expert Disclosures Due</b>	<b>12/4/2015</b>
<b>Discovery Closes</b>	<b>1/3/2016</b>
<b>Plaintiff's Pretrial Disclosures Due</b>	<b>2/17/2016</b>
<b>Plaintiff's 30-day Trial Period Ends</b>	<b>4/2/2016</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>4/17/2016</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>6/1/2016</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>6/16/2016</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>7/16/2016</b>

**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. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.



*The following information is provided to Respondent as a courtesy:*

**Nature of a Cancellation Proceeding**

Respondent is advised that an *inter partes* proceeding before the Board is similar to a civil action in a United States Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs,

followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.**

**Legal Representation Is Strongly Encouraged**

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent him or him/herself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition or cancellation proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that Respondent review Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the following URL: <http://www.uspto.gov/trademarks/law/tmlaw.pdf>. The Board's main webpage, <http://www.uspto.gov/trademarks/process/appeal/index.jsp>, includes information on the Trademark Rules applicable to Board proceedings, on the Board's Accelerated Case Resolution (ACR) procedure, Frequently Asked Questions about Board proceedings, and a web link to The Trademark Trial and Appeal Board Manual of Procedure (the TBMP):

[http://www.uspto.gov/trademarks/process/appeal/Preface\\_TBMP.jsp](http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp).

Further, all Board proceedings and other information regarding the Trademark Trial

and Appeal Board may be accessed at the following URLs:

<http://ttabvue.uspto.gov/ttabvue/> and

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

Requirement for Service on Adverse Party of All Papers Filed

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which Respondent may file in this proceeding must be accompanied by “proof of service” of a copy on Petitioner’s counsel.

"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., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service. This written statement should take the form of a “certificate of service” which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

*The certificate of service must be signed and dated.*

All Parties Must Comply with Board Deadlines

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991).

**Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.**

**Respondent's Correspondence Address**

Respondent is reminded that it is his responsibility to ensure that the Board<sup>2</sup> has his current correspondence address. See TBMP § 117.07 (2015) (If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party).

**Mailed Submissions to the Board; Using ESTTA is Encouraged**

Correspondence required to be filed in the Office within a set period of time will be considered as being timely filed on the date of deposit in the mail if accompanied by a certificate of mailing (see sample in footnote<sup>3</sup>). The actual date of receipt by the Office will be used for all other purposes, *including electronically filed documents*.

The Board encourages the use of Electronic System for Trademark Trials and Appeals (ESTTA), available through the USPTO website, for the filing of all documents

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<sup>2</sup> When an *inter partes* proceeding is not pending before the Board, the registrant must maintain a current address with the Trademark Office.

<sup>3</sup> **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

P.O. Box 1451

Alexandria, VA 22313-1451

on \_\_\_\_\_ (Date)

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Typed or printed name)

with the Board. See the following URL: <http://estta.uspto.gov/>. Any submissions by email will NOT be accepted.

**Information on Initial Disclosures**

Respondent is referred to the following web addresses to obtain information regarding initial disclosures:

[http://www.uspto.gov/trademarks/process/appeal/RULES08\\_01\\_07.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf) and to

<http://edocket.access.gpo.gov/2006/pdf/06-197.pdf> or to

[http://www.uspto.gov/trademarks/process/appeal/RULES01\\_17\\_06.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES01_17_06.pdf). See Notice of Final Rulemaking (“Miscellaneous Changes to Trademark Trial and Appeal Board Rules”) in the Federal Register, 72 Fed. Reg. 147 (August 1, 2007) and 71 Fed. Reg. 10, 2501 (January 17, 2006).

