

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

DUNN

Mailed: June 5, 2015

Cancellation No. 92060464

*Safeside Tactical, LLC*

*v.*

*CheyTac USA LLC*

**Elizabeth A. Dunn, Attorney (571-272-4267):**

Inasmuch as Respondent chose not to meet the statutory requirements and its burden of proof for amendment of the subject registration to claim an earlier date of first use, no further consideration will be given to Respondent's January 13, 2015 unconsented proposed amendment.

In a cancellation where Respondent alleges use prior to the date that it listed in its registration application as its date of first use, Respondent has the burden of establishing that use by clear and convincing evidence instead of mere preponderance of the evidence *Martahus v. Video Duplication Services, Inc.*, 3 F.3d 417, n.7, 27 USPQ2d 1846 (Fed. Cir. 1993). The reason for such an increased evidentiary burden is that a change of position from one considered to have been made against interest at the time of filing of the application requires enhanced

substantiation. *Hydro-Dynamics, Inc. v. George Putnam & Co.*, 811 F.2d 1470, 1 USPQ2D 1772, 1773 (Fed. Cir. 1987).

Proceedings herein are resumed, and dates are reset below:

Deadline for Discovery Conference	<b>7/6/2015</b>
Discovery Opens	<b>7/6/2015</b>
Initial Disclosures Due	<b>8/5/2015</b>
Expert Disclosures Due	<b>12/3/2015</b>
Discovery Closes	<b>1/2/2016</b>
Plaintiff's Pretrial Disclosures	<b>2/16/2016</b>
Plaintiff's 30-day Trial Period Ends	<b>4/1/2016</b>
Defendant's Pretrial Disclosures	<b>4/16/2016</b>
Defendant's 30-day Trial Period Ends	<b>5/31/2016</b>
Plaintiff's Rebuttal Disclosures	<b>6/15/2016</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>7/15/2016</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. 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.