

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

mc/mbm/gcp

Mailed: October 20, 2016

Cancellation No. 92064598

Gary Michael Bell

v.

Vacumi, Inc.

George C. Pologeorgis,
Administrative Trademark Judge:

On October 10, 2016, Petitioner filed and served its petition to cancel. On October 14, 2016, Petitioner filed a motion for leave to amend its pleading, including a copy of its amended petition to cancel.

Pursuant to Fed. R. Civ. P. 15(a)(1), made applicable to Board proceedings by Trademark Rule 2.116(a), a party may amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Fed. R. Civ. P. 12(b), (e) or (f), whichever is earlier. *See* Trademark Rule 2.107/2.115; TBMP § 507.01.

Inasmuch as Petitioner filed its motion for leave to amend its pleading within 21 days from serving its initial pleading, Petitioner's motion for leave is **GRANTED** and Petitioner's amended petition to cancel is accepted as a matter of course, and now

constitutes Petitioner's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Respondent is allowed until **November 24, 2016** in which to file an answer or otherwise respond to Petitioner's amended petition to cancel filed on October 14, 2016.

Remaining trial dates are reset as follows:

Deadline for Discovery Conference	12/24/2016
Discovery Opens	12/24/2016
Initial Disclosures Due	1/23/2017
Expert Disclosures Due	5/23/2017
Discovery Closes	6/22/2017
Plaintiff's Pretrial Disclosures Due	8/6/2017
Plaintiff's 30-day Trial Period Ends	9/20/2017
Defendant's Pretrial Disclosures Due	10/5/2017
Defendant's 30-day Trial Period Ends	11/19/2017
Plaintiff's Rebuttal Disclosures Due	12/4/2017
Plaintiff's 15-day Rebuttal Period Ends	1/3/2018

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.

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE WILL BE EFFECTIVE JANUARY 14, 2017.

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7, 2016, at 81 F.R. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and *ex parte* appeal proceedings.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website
- The final rule
- A chart summarizing the affected rules and changes.

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by mail. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.

- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.101 and 2.111.

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.