

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

EJW

Mailed: March 13, 2009

Opposition No. 91177319

Opposition No. 91177321

Cherokee Nation, a federally
recognized Indian Tribe

v.

Georgia Tribe of Eastern
Cherokee

Cherokee Nation Enterprises,
L.L.C.

v.

Georgia Tribe of Eastern
Cherokee

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Opposers' motion (filed October 10, 2008¹ by Cherokee Nation and Cherokee Nation Enterprises [hereinafter "CNE"]) to compel applicant's responses to opposers' discovery requests and to reset the discovery period and trial dates

¹ The delay in acting upon this matter is regretted.

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is hereby granted as uncontested.² See Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a).

Moreover, by failing to timely respond to the discovery requests, applicant has forfeited its right to object to opposers' discovery requests, viz.: Cherokee Nation's first set of interrogatories, Cherokee Nation's first set of requests for production of documents, CNE's first set of interrogatories, and CNE's first set of requests for production of document, on their merits.³ See *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000); *Envirotech Corp. v. Compagnie De Lampes*, 219 USPQ 448, 449 (TTAB 1979).

Applicant is allowed until **THIRTY DAYS** from the mailing date of this order to respond to opposers' outstanding discovery, as listed hereinabove, without objection. See *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718 (TTAB 1987).

Should applicant not comply with this order, opposers may seek appropriate sanctions. See Trademark Rule

² This proceeding has been suspended since November 6, 2008; therefore, opposers' motion to suspend pending resolution of this motion is moot.

³ Applicant is not required to produce privileged documents or to provide privileged information, as its right to claim privilege has not been waived. See, e.g., *American Standard, Inc. v. Pfizer*, 3 USPQ2d 1817 (Fed. Cir. 1987). However, where a claim of privilege is invoked, a party must make the claim expressly and provide a description of the privileged documents and explain the bases for its objections to production, unless the parties otherwise agree. See *No Fear Inc.*, 54 USPQ2d at 1555. See also TBMP, §406.04(b) (2d ed. rev. 2004).

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2.120(g), 37 C.F.R. § 2.120(g), and TBMP §§ 411.04 and 527.01 (2d ed. rev. 2004).

Proceeding Resumed; Dates Reset

This proceeding is resumed. The Board notes that the discovery requests which are the subject of this order were served on November 30, 2007, and that opposers filed the motion to compel on October 10, 2008, the day before the discovery period closed. In view thereof, discovery is closed. Trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	CLOSED
Thirty-day testimony period for party in position of plaintiff to close:	June 15, 2009
Thirty-day testimony period for party in position of defendant to close:	August 14, 2009
Fifteen-day rebuttal testimony period to close:	September 28, 2009

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.

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NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>