

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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BUO

Mailed: December 19, 2014

Opposition No. 91202952

Atari Interactive, Inc.

v.

Andrew N. Greenberg

Benjamin U. Okeke, Interlocutory Attorney:

Now before the Board are Atari Interactive, Inc.'s ("Opposer") combined motions, filed December 9, 2014, to strike certain exhibits from the notice of reliance filed by Andrew N. Greenberg ("Applicant"), and to reset the dates of Opposer's rebuttal testimony period. This is Opposer's second motion to strike exhibits from Applicant's notice of reliance, and was filed in response to Applicant's attempt to cure certain deficiencies cited in the Board's November 19, 2014 order, which granted Opposer's initial motion to strike, but allowed Applicant fifteen days to cure those deficiencies.

The Board, in its discretion, suggested that the issues raised in the motions should be resolved by telephone conference as permitted by TBMP

§ 502.06 (2014).¹ The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a telephone conference at 2:00 p.m. ET, on Tuesday, December 16, 2014. The conference was held as scheduled and participating in the conference were Opposer's counsel Fara Sunderji and Susan Progoff, Applicant Andrew N. Greenberg, appearing *pro se*, and Board interlocutory attorney Benjamin U. Okeke.

The Board carefully considered the arguments raised by the parties during the telephone conference, as well as the briefs and the record of this case in coming to a determination regarding the issues presented in the motions.

During the telephone conference, the Board made the following findings and determinations:

Motion to Strike

Opposer's motion to strike Exhibits A08 and A09 from Applicant's notice of reliance is **GRANTED**. Applicant was previously informed that he should specify the particular *du Pont*² factors for which his submitted evidence is

¹ In lieu of filing a responsive brief to the motion and reply brief to such response, the parties were given the opportunity to present arguments during the telephone conference. Trademark Rule 1.2, which requires all business with the USPTO be transacted in writing, is waived to the extent that Board attorneys or judges may accept from parties, or direct parties to present, oral recitations of procedural facts and presentations of argument. In addition, Trademark Rule 2.119(b), which specifies the acceptable methods for forwarding service copies of papers filed with the Board, is waived to the extent necessary to facilitate telephone conferencing. See Official Gazette Notice entitled "Teleconferencing on Cases Before the TTAB" (June 20, 2000).

² *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973).

pertinent. In particular, with respect to Exhibit A08, Applicant failed to specify the relevance of any of the pages retrieved from the Wikipedia website. Therefore, Applicant failed to cure the deficiency cited in the prior order.

As to Exhibit A09, Applicant was instructed to submit a “plain copy” of any third-party applications or registrations he wished to make of record specifying the relevance of each application or registration submitted, in contrast to the search summary that was initially provided. Applicant’s assertions advanced in its response are unpersuasive. Simply put, Applicant failed to properly introduce into the record the evidence submitted as Exhibit A09 in his notice of reliance.

Accordingly, Opposer’s motion to strike is **GRANTED** with respect to Exhibits A08 and A09 in Applicant’s notice of reliance. Additionally, inasmuch as Applicant has previously been granted leave to cure the cited deficiencies, no further leave will be granted, and those exhibits will be given no further consideration.

Motion to Extend Dates

During the telephone conference, Opposer renewed its motion to extend the dates of its rebuttal testimony period, requesting that the Board open the period on January 26, 2015. Opposer, citing the time expended to dispose of the current motion, indicated concerns with a resetting of dates that would result in conducting its rebuttal testimony depositions during the holiday

season, requested this further delay of the opening of its rebuttal period. Applicant contested this renewed motion, citing the already lengthy history of this proceeding as sufficient cause to deny Opposer's motion.

As previously set, the rebuttal period was set to open on December 12, 2014, and close on December 27, 2014, indeed, during the holiday season. Therefore, Opposer would have had to work around the holiday season regardless of the current motion to strike. Moreover, the Board agrees with Applicant that this proceeding has seen its share of lengthy delays over its course. In view thereof, the Board is reluctant to grant another lengthy extension of time; and resetting the rebuttal testimony period as requested by Opposer would represent a delay that could not be considered insignificant.

However, to avoid surprise and hardship, the Board will reset the remaining trial and briefing dates as follows:

Plaintiff's 15-day Rebuttal Period Ends	1/30/2015
Plaintiff's Brief Due	3/31/2015
Defendant's Brief Due	4/30/2015
Plaintiff's Rebuttal Brief Due	5/15/2015

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 Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.