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

85282926

Mailed: August 16, 2013

Opposition No. 91203399

iCourier Software Systems Ltd.

v.

E-filliate, Inc.

Andrew P. Baxley, Interlocutory Attorney:

In an April 5, 2013 order, the Board, among other things, declined to consider the motions for summary judgment that opposer filed on April 4 and 5, 2013, in view of opposer's failure to serve responses to applicant's discovery requests, and reset dates herein. In that order, the Board stated that it will not consider any "further" motions for summary judgment from opposer until opposer serves responses to applicant's discovery requests and files proof of such service with the Board.

On April 14, 2013, opposer filed proof of April 8, 2013 service of discovery responses and did not file another motion for summary judgment. Under the schedule set forth in the April 5, 2013 order, trial in this proceeding commenced on April 24, 2013 with the opening of opposer's testimony period. Opposer's testimony period closed on May



09-03-2013

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23, 2013.¹ See Trademark Rule 2.132; TBMP Section 534 (3d ed. rev. 2 2013).

On June 30, 2013, more than two months after the commencement of trial and after the commencement of applicant's testimony period, applicant filed a motion to compel discovery and for entry of discovery sanctions. The motion to compel was untimely filed after the commencement of opposer's testimony period and is therefore denied. See Trademark Rule 2.120(e)(1); TBMP Section 523.03. Further, because the Board has not granted a motion to compel in this case, and in view of the discovery responses that opposer served on April 8, 2013, the motion for sanctions is inappropriate and will receive no consideration.² See Trademark Rule 2.120(g); TBMP Section 527.01(a).

On July 15, 2013, opposer filed a motion to extend time to respond to applicant's motion to compel and for discovery sanctions. In view of the foregoing, opposer's motion is moot.

In that motion, opposer indicated that it was considering filing a motion to disqualify applicant's counsel herein. There are two general categories upon which to base petitions to disqualify an attorney from Board *inter*

¹ Opposer did not file any evidence, and does not appear to have taken any testimony, during its testimony period.

² The sufficiency of those responses should have been raised by way of a timely filed motion to compel.

partes proceedings: (1) the attorney's conflict of interest, and (2) the attorney's potential appearance as a witness. See TBMP Section 513.02. Regarding conflict of interest, see Patent and Trademark Rules 11.107-11.111. Regarding the attorney's potential appearance as a witness, see Patent and Trademark Rule 11.307. Because neither of the foregoing situations appears to be applicable in this case, there appears to be no basis for a petition to disqualify applicant's attorney. See Patent and Trademark Rule 11.18(b).

The Board deems the filing of the motion to compel to have tolled the running of dates herein. Proceedings herein are resumed, with applicant being allowed a testimony period of twenty-three days, the time remaining in the testimony period when it filed the motion to compel. Remaining dates are reset as follows.

| | |
|---|------------|
| Defendant's <u>23-day</u> Trial Period Ends | 9/15/2013 |
| Plaintiff's Rebuttal Disclosures Due | 9/30/2013 |
| Plaintiff's 15-day Rebuttal Period Ends | 10/30/2013 |

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.

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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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

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