

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

Mailed: January 8, 2018

Opposition No. 91209226

Opposition No. 91211213

*Premier Systems USA, Inc. and Olloclip,
LLC*

v.

DISH Network L.L.C.

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of Applicant's motion (filed September 18, 2017) to compel discovery. The motion has been fully briefed.

The Board finds, as an initial matter, that Applicant made a good faith effort, as required by Trademark Rule 2.120(f)(1), prior to seeking Board intervention. Nonetheless, the issues raised in the motion to compel should have been resolved between the parties without the need for a motion to compel.

After reviewing the parties' arguments and exhibits, the Board finds that, under the circumstances, Applicant is not entitled to the windfall of receiving discovery responses without objection. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). The record indicates that, on July 12, 2017, Applicant filed a consented motion to extend dates herein (67 TTABVUE); that, on July 19, 2017, Applicant served its third set of interrogatories, second set of document requests, and a second amended notice of deposition of Opposer with a cover letter that stated that, "[i]f the Board

grants the Motion, we can discuss the timing for responses” (69 TTABVUE 11); that, on July 20, 2017, the Board granted the motion to extend (68 TTABVUE). Although the parties subsequently failed to agree on a due date for discovery responses, Applicant’s July 19, 2017 cover letter indicated that Opposer had a willingness to extend the August 18, 2017 due date for discovery responses. In addition, the parties’ subsequent communications difficulties do not warrant a determination that Opposer has forfeited the right to object on the merits.

Nonetheless, the motion to compel is granted to the extent that Opposer is allowed until **thirty days** from the mailing date set forth to serve responses to Applicant’s third set of interrogatories and second set of document requests and to produce documents responsive to those requests. Those responses may include objections on the merits. The Board will allow sufficient time for Applicant to notice and take Opposer’s discovery deposition under Fed. R. Civ. P. 30(b)(6) after receiving such responses.

Proceedings herein are resumed. Remaining dates are reset as follows.

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| Expert Disclosures Due | 2/7/2018 |
| Discovery Closes | 3/9/2018 |
| Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim | 4/23/2018 |
| 30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim | 6/7/2018 |
| Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim | 6/22/2018 |
| 30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim | 8/6/2018 |
| Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim | 8/21/2018 |

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| 30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim | 10/5/2018 |
| Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim | 10/20/2018 |
| 15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim | 11/19/2018 |
| Opening Brief for Party in Position of Plaintiff in Original Claim Due | 1/18/2019 |
| Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due | 2/17/2019 |
| Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due | 3/19/2019 |
| Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due | 4/3/2019 |
| Request for Oral Hearing (optional) Due | 4/13/2019 |

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).