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

BUO

Mailed: January 21, 2014

Opposition No. 91208297
(Parent)
Opposition No. 91209777
Opposition No. 91209778
Opposition No. 91209779
Opposition No. 91209780

Shipcom Wireless, Inc.

v.

SXC Health Solutions, Inc.

Benjamin U. Okeke, Interlocutory Attorney:

Accelerated Case Resolution

We note that the legal issues presented in this proceeding have been limited and clarified by the Board's September 11, 2013, and December 30, 2013 orders, and that the parties are well-acquainted with the relevant facts. Accordingly, the parties may wish to stipulate to resolution of this proceeding by means of the Board's accelerated case resolution ("ACR") procedure, on summary judgment briefs and incorporating the current record pursuant to an agreement to proceed under ACR with respect

to opposer's likelihood of confusion claim.[1] *See e.g.*, *Freeman v. National Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002) (parties agreed that evidence and arguments submitted with petitioner's motion for summary judgment and respondent's response could be treated as the final record and briefs). *See also* TBMP § 528.05(a)(2) (3d ed. rev.2 2013) and authorities cited therein. In the event the parties agree to ACR using summary judgment briefs and incorporating the current evidence, including any supplementation of evidence they may agree would be appropriate, they will need to stipulate that the Board may determine any genuine disputes of material fact the Board may find to exist.[2] *See* TBMP § 702.04 for more information.

[1] In this case, the parties would have an opportunity to file new briefs that address the remaining issues under ACR. *See* TBMP § 702.04(b) (ACR briefs may be presented as a single motion for summary judgment or cross-motion for summary judgment; in the case of cross-motions each party is entitled to file a brief, response to the other party's motion and reply). The additional briefing would be without resubmission of evidence already of record.

[2] However, absent such an agreement, the parties should note that the evidence submitted in connection with the previous motion for summary judgment was made of record only for consideration of that motion. To be considered at final hearing, any such evidence must be properly introduced during the appropriate trial period. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993). The parties may, however, stipulate that any or all of the summary judgment evidence be treated as properly of record for purposes of final decision. *See e.g.*, *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628, 1629 n.2 (TTAB 1998).

The parties are therefore encouraged, within **FIFTEEN DAYS** of the mailing date of this order, to confer and agree to a date and time to jointly contact the Board's interlocutory attorney responsible for this proceeding by telephone to discuss the possibility of ACR, any necessary stipulations, and an agreed schedule for proceeding under ACR.

If the parties determine not to proceed via ACR the proceeding will continue on the schedule as set in the Board's December 30, 2013 order.