

ESTTA Tracking number: **ESTTA623651**

Filing date: **08/26/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216233
Party	Plaintiff Duke University
Correspondence Address	SUSAN FREYA OLIVE OLIVE & OLIVE PA 500 MEMORIAL ST DURHAM, NC 27701 UNITED STATES emailboxTTAB@oliveandolive.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Susan Freya Olive
Filer's e-mail	emailboxTTAB@oliveandolive.com
Signature	/sfo/
Date	08/26/2014
Attachments	20140826 Surreply-MotSusp-233a.pdf(15129 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Before the Trademark Trial and Appeal Board**

Duke University, Plaintiff-Opposer  vs  John Wayne Enterprises, LLC, Defendant-Applicant	<b>Opposition No. 91216233</b>
--	--------------------------------

Our Ref.: DUKU9270-a

**OPPOSER’S SURREPLY IN OPPOSITION TO MOTION TO SUSPEND PROCEEDINGS**

First, Opposer respectfully notes that Applicant has not substantively responded to the points raised by Opposer in response to Applicant’s motion—including the fact that Applicant has not met any part of its burden with respect to showing why suspension should be granted. Applicant should thus be deemed to have conceded that Opposer is correct as to those issues. On the merits, therefore, Applicant’s motion should be denied.

Second, insofar as Applicant’s sole point—a red herring allegation that Applicant intends to successfully object to one of the law firms whom Opposer has retained to assist it in California—Applicant once again provides no evidence in support of its allegation. They did not provide any evidence because none exists: no such motion has been filed although Applicant has filed a paper claiming—as it claimed to this Board—that it intends to file such a motion in the future (allegedly, “later this week”). Opposer’s motion to dismiss the California lawsuit still is set for hearing on September 8.<sup>1</sup>

In short, Enterprise’s conduct demonstrates a pattern of intentional delay, reinforcing Opposer’s arguments made in its brief in chief. The purported last-minute efforts by Enterprises to introduce collateral issues into the litigation, particularly ones that Enterprises contends should

---

<sup>1</sup> Opposer points out that no disqualification motion or threat of such a motion involves the law firm of the undersigned. If such a motion were to be filed, whether alleging disqualification grounds as to Opposer’s California-based counsel or as to the law firm of the undersigned, it would be resisted as utterly groundless. And, if such a motion ever is filed, there is no reason to believe that the Court would delay ruling on a jurisdictional motion that involves no confidential information relating to Enterprises, in any event, solely to accommodate a last-ditch, untimely effort by Applicant to delay what Opposer believes is the inevitable dismissal of its action.

cause delay of that proceeding, counsel strongly in favor of keeping the TTAB proceeding on schedule toward a prompt resolution.

Opposer respectfully requests that Applicant's motion be denied.

Respectfully submitted this the 26<sup>th</sup> day of August, 2014.

**OLIVE & OLIVE, P.A.**  
Attorneys for Opposer

/Susan Freya Olive/  
Susan Freya Olive  
NC Bar No. 7252  
Olive & Olive, P.A.  
P. O. Box 2049  
Durham, North Carolina 27702  
Telephone: (919) 683-5514  
Email: [emailboxTTAB@oliveandolive.com](mailto:emailboxTTAB@oliveandolive.com)

**CERTIFICATE OF SERVICE**

Pursuant to an agreement between the parties calling for electronic service of documents, the undersigned certifies that a true copy of the foregoing document, together with any and all attachments thereto, is served upon Applicant by emailing a copy to Applicant's counsel of record at the addresses agreed for service of same and at an additional address within the firm, to wit:

Lindsay J. Hulley; Robert Oines; and Kathryn Domin  
Rutan & Tucker LLP  
[lhulley@rutan.com](mailto:lhulley@rutan.com); [roines@rutan.com](mailto:roines@rutan.com) ; [kdomin@rutan.com](mailto:kdomin@rutan.com)

on this the 26<sup>th</sup> day of August, 2014.

**OLIVE & OLIVE, P.A.**  
Attorneys for Opposer

/Susan Freya Olive/  
Susan Freya Olive  
NC Bar No. 7252  
Olive & Olive, P.A.  
P. O. Box 2049  
Durham, North Carolina 27702  
Telephone: (919) 683-5514  
Email: [emailboxTTAB@oliveandolive.com](mailto:emailboxTTAB@oliveandolive.com)