

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: May 11, 2017

Opposition No. 91217436

Opposition No. 91217437

Google Inc.

v.

Hanginout, Inc.

**M. Catherine Faint,
Interlocutory Attorney:**

On May 11, 2017 the Board held a telephone conference involving John C. Blattner, Atty., counsel for Google, Inc. (Opposer), and Matthew A. Becker, Atty., counsel for Hanginout, Inc. (Applicant). Before the Board was Opposer's motion, filed March 1, 2017, in the alternative to compel the discovery deposition of Applicant's CEO Justin Malone.¹ The motion is fully-briefed. Proceedings are considered suspended as of the filing of the motion to compel.

¹ The motion was filed as one for sanctions, or in the alternative to compel. The Board will not entertain a motion for discovery sanctions absent an order compelling discovery. *See, e.g., Nobelle.com LLC v. Qwest Comms. Int'l, Inc.*, 66 USPQ2d 1300, 1303 (TTAB 2003) (request to preclude party from submitting trial evidence as sanction for alleged failure to comply with discovery obligations was procedurally baseless where no discovery order was violated or even issued).

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However, on March 24, 2017, Opposer filed a motion to extend discovery, and on April 10, 2017 Applicant filed a communication stating the parties had scheduled the deposition of Mr. Malone.

During the teleconference the parties confirmed that the deposition of Mr. Malone is scheduled for June 6, 2017. In view thereof, the motion to compel is **deferred**. If the deposition is not held on that date, Opposer's counsel will contact the Interlocutory Attorney to re-schedule a teleconference on the motion to compel. If the deposition is held on that date, the motion to compel will be considered moot.

Opposer's motion to extend disclosure, discovery and trial dates is granted to the extent that dates in this consolidated proceeding are reset in accordance with the dates in the motion, as copied below.²

Proceedings are resumed.

Expert Disclosure Due:	05/28/2017
Discovery Closes:	06/27/2017
Plaintiff's Pretrial Disclosures:	08/11/2017
Plaintiff's 30-day Trial Period Ends:	09/25/2017
Defendant's Pretrial Disclosures:	10/10/2017
Defendant's 30-day Trial Period Ends:	11/24/2017
Plaintiff's Rebuttal Disclosures:	12/09/2017
Plaintiff's 15-day Rebuttal Period Ends:	01/08/2018

² If the parties find that additional time is required to conduct discovery, the parties may file a consented motion to extend time, or if a contested motion to extend is filed, the party filing the contested motion must contact the Interlocutory Attorney to schedule a teleconference on the motion.

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BRIEFS SHALL BE DUE AS FOLLOWS:

Plaintiff's Main Brief Due	03/9/2018
Defendant's Main Brief Due	04/8/2018
Plaintiff's Reply Brief Due	04/23/2018

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).

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website:
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>

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- The correction to the final rule:
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes:
http://www.uspto.gov/sites/default/files/documents/RulesChart_12_9_16.pdf

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.
