

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

vv/MCF

Mailed: June 7, 2018

Opposition No. 91221928 (Parent Case)  
Cancellation No. 92062086

*VDF Futureceuticals, Inc.*

*v.*

*Owen Ryan*

**By the Trademark Trial and Appeal Board:**

**Withdrawal of Counterclaims**

On May 30, 2018,<sup>1</sup> Applicant/Respondent/Counterclaim Petitioner Owen Ryan (Mr. Ryan) filed his combined final trial brief and withdrawal of the counterclaims asserted against Opposer/Petitioner/Counterclaim Respondent VDF Futureceuticals, Inc.'s (VDF) pleaded registrations, namely, Registration Nos. 2849217, 2885094 and

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<sup>1</sup> Mr. Ryan filed copies of his motion on May 29 and 30, 2018. The Board considers the version filed May 30, 2018 as the operative version for purposes of this proceeding. Mr. Ryan clarified on June 5, 2018 that his filing is intended as his final brief and a withdrawal of the counterclaims.

3074359.<sup>2</sup> The withdrawal of counterclaims was filed without the written consent of VDF Futureceuticals, Inc.’s.<sup>3</sup>

After an answer is filed, the counterclaim may not be withdrawn without prejudice except with the written consent of the counterclaim defendant. *See* Trademark Rules 2.114(c) and 2.106(b)(2)(iii).

In view thereof, and because the withdrawal was filed after answer, the counterclaims are dismissed **with prejudice**.

### **Pro Se Information**

It is noted that Mr. Ryan intends to represent himself in this proceeding. While Patent and Trademark Rule 11.14 permits any person to represent himself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered

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<sup>2</sup> VDF’s trial brief (48 TTABVue) and declaration of John Hunter (44 TTABVue) did not include proof of service as required by Trademark Rule 2.119. VDF’s notices of serving copies of its trial brief and declaration on Mr. Ryan, filed May 30 and 31, 2018, are noted. 51 and 52 TTABVue.

<sup>3</sup> Mr. Ryan’s certificates of service attached to his briefs indicate service via U.S. mail and email “via ESTTA.” Mr. Ryan should note that ESTTA is not a means of service upon parties (other than the initial pleading). *See* Trademark Rule 2.119. Information regarding certificates of service is set out herein. Mr. Ryan has stated he served via email in the certificate of service attached to his June 5, 2018 communication.

by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Signature \_\_\_\_\_

Date \_\_\_\_\_

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at <http://estta.uspto.gov/>.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at <http://www.uspto.gov/trademarks->

[application-process/trademark-trial-and-appeal-board-ttab](#), the TTABVUE system for viewing the record for all Board proceedings, available at <http://ttabvue.uspto.gov/ttabvue/>, and the Standard Protective Order, available at <https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0>.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

### **Schedule**

Dates remain as set. The remaining trial briefing schedule is set forth below.

Plaintiff's Reply Brief Due	7/13/2018
Request for Oral Hearing (optional) Due	7/23/2018

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

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final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

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