

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: January 17, 2017

Opposition No. 91223683

Made in Nature, LLC

v.

Pharmavite LLC

Veronica P. White, Paralegal Specialist:

Opposer's consented motion (filed January 6, 2017) to further extend disclosure, discovery, and trial dates is granted. Trademark Rule 2.127(a). Accordingly, trial dates are reset in accordance with Opposer's motion.

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, matters in evidence, the manner and timing of taking testimony, 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).

Progress Report Required for Any Further Motions to Extend or Suspend for Settlement

The Board has granted numerous motions to extend (totaling more than one year) to accommodate the parties' settlement efforts. In view of the amount of time already granted, any prospective motion to extend, suspend, or reopen, based on settlement, must establish good cause by way of a **detailed report** setting forth what progress the parties have made towards settlement during the previously granted period of extension or suspension. This report must set forth, at a minimum, **1) all dates on which the parties communicated, and the method of each communication (e.g. telephone, email, in-person meeting), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for resolution of the unresolved issues.** Appropriately designated confidential information or materials may be filed under seal and will be barred from public viewing. *See* Trademark Rule 2.126(c); TBMP §§ 120.02 and 502.02(c).

Due to the requirement for a detailed progress report, the ***parties can no longer use the ESTTA “consent motions” option to file future motions to extend or suspend. Instead, they must use the “general filings” option in ESTTA and attach the report along with a proposed amended schedule.***¹ *See* TBMP § 509.02.

¹ When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed

Absent a progress report as required above, a motion to extend or suspend may be denied, even if consented to by the parties. If the Board denies such a motion, dates may remain as previously set. *See* TBMP § 509.01(a).

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE WILL BE 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.

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>
- A chart summarizing the affected rules and changes:
http://www.uspto.gov/sites/default/files/documents/RulesChart_01_14_17.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 by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by mail. 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

thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates. Trademark Rule 2.121(d).

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 2.101 and 2.111.

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.