

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

EJW/mt

Mailed: January 4, 2016

SunPower Corporation

v.

Feng Jingjing

Opposition No. 91223959

Eric McWilliams, Supervisory Paralegal:

The answer to the notice of opposition was due by November 1, 2015. Applicant filed a communication on October 30, 2015. This communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. As fully explained below, strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board, and the Board may decline to consider any future paper filed in this proceeding by applicant which does not comply with this requirement.

Although the Board presumes that this communication is intended to be applicant's answer to the notice of opposition, applicant's submission is argumentative in nature, like a trial brief and, thus, does not comply with Rule 8(b) of the Federal Rules of Civil Procedure, which is made applicable this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

(b) Defenses; Admissions and Denials.

(1) *In General*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(5) *Lacking Knowledge or Information*. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

The notice of opposition filed by opposer herein consists of 31 paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition **by specifically admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.**

In view of the foregoing, applicant is allowed until **February 3, 2016**, in which to file **and serve on counsel for opposer** an answer herein which complies in full with Fed. R. Civ. P. 8.

Accordingly, conference, disclosure, discovery and trial dates are reset as follows:

Time to Answer	2/3/2016
Deadline for Discovery Conference	3/4/2016
Discovery Opens	3/4/2016
Initial Disclosures Due	4/3/2016
Expert Disclosures Due	8/1/2016
Discovery Closes	8/31/2016
Plaintiff's Pretrial Disclosures Due	10/15/2016

Plaintiff's 30-day Trial Period Ends	11/29/2016
Defendant's Pretrial Disclosures Due	12/14/2016
Defendant's 30-day Trial Period Ends	1/28/2017
Plaintiff's Rebuttal Disclosures Due	2/12/2017
Plaintiff's 15-day Rebuttal Period Ends	3/14/2017

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.135.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by the Trademark Rule 2.129.

The following information regarding Board proceedings is provided as a courtesy to Applicant:

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding 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.

It is recommended that applicant be familiar with Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and which are available at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings,

on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Every motion, paper or communication filed with the Board must include proof of service of a copy on opposing counsel or party, in compliance with Trademark Rule 2.119(a) and (b). The Board may decline to consider any motion, paper or communication filed herein which does not include proof of service, such as a Certificate of Service. The Board's Manual of Procedure (TBMP) sets forth the following suggested format for a Certificate of Service:

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 mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party). See TBMP § 113.03.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. See *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006). The Board's order instituting this proceeding also includes information with which applicant should be familiar.

General Information on Discovery Conferences

Applicant is referred to the Board's institution order in this proceeding and to the following URL:

http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf, see, e.g.,

pp. 42245, 42246, 42248 and 42252. During the conference, the following topics must

be discussed:

- (1) the nature of and basis for their respective claims and defenses;
- (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and;
- (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case.

Either party may request the participation of the Board in the discovery conference.

See Trademark Rule 2.120(a)(2), 37 C.F.R. § 2.120(a)(2).

Information on Initial Disclosures

The parties are referred to the following web addresses to obtain information regarding initial disclosures:

http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf and to

<http://edocket.access.gpo.gov/2006/pdf/06-197.pdf> or to

http://www.uspto.gov/trademarks/process/appeal/RULES01_17_06.pdf. See Notice of Final Rulemaking (“Miscellaneous Changes to Trademark Trial and Appeal Board Rules”) in the Federal Register, 72 Fed. Reg. 147 (August 1, 2007) and 71 Fed. Reg. 10,2501 (January 17, 2006).

