

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 16, 2018

Opposition No. 91225271

*Asustek Computer Incorporation*

*v.*

*Chengdu Westhouse Interactive  
Entertainment Co., Ltd.*

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

This case now comes up on Opposer's motion to compel discovery responses, filed September 25, 2017.

By its order of June 26, 2017, the Board granted the parties' stipulation to reset dates, setting the due date for Opposer's pretrial disclosures as September 25, 2017. Under the Board's revised rules, effective January 14, 2017, the due date for a motion to compel was shifted from prior to the opening of trial to **prior to** the deadline for the plaintiff's pretrial disclosures. See "Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice," 81 Fed. Reg. 69950, 69951 (Oct. 7, 2016). Under the Rule, once the deadline for pretrial disclosures for the first testimony period has been reached, a motion to compel is untimely. Trademark Rule 2.120(f), 37 C.F.R. § 2.201(f). There is no provision in the rule for Board discretion to consider an untimely motion to compel. See, e.g., *Estudi Moline Dissey, S.L. v. BioUrn, Inc.*, 123 USPQ2d

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1268, 1271 (TTAB 2017) (under Board’s revised rules, discovery requests served fewer than 31 days prior to close of discovery were untimely). *See also* TBMP § 523.03 (June 2017). *Compare La Maur, Inc. v. Bagwells Ents., Inc.*, 193 USPQ 234, 234-36 (Comm’r 1976) (motion for summary judgment filed during the period for taking testimony untimely).

Opposer’s motion filed on the due date for its pretrial disclosures is not filed **prior** to the due date and is therefore untimely.

Accordingly, Opposer’s motion to compel is **denied**.

**Schedule**

Proceedings are resumed. Dates are reset as set out below. To be clear, although the due date for Opposer’s pretrial disclosures is reset below, the original deadline for pretrial disclosures has passed and the Board will not entertain any further motions to compel discovery or for summary judgment.

Plaintiff’s Pretrial Disclosures Due	2/12/2018
Plaintiff’s 30-day Trial Period Ends	3/29/2018
Defendant’s Pretrial Disclosures Due	4/13/2018
Defendant’s 30-day Trial Period Ends	5/28/2018
Plaintiff’s Rebuttal Disclosures Due	6/12/2018
Plaintiff’s 15-day Rebuttal Period Ends	7/12/2018
Plaintiff’s Opening Brief Due	9/10/2018
Defendant’s Brief Due	10/10/2018
Plaintiff’s Reply Brief Due	10/25/2018
Request for Oral Hearing (optional) Due	11/4/2018

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

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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).