

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: November 7, 2017

Opposition No. 91230403

Securrency, Inc.

v.

Luigi Boschin

**Katie W. McKnight,
Interlocutory Attorney:**

On October 13, 2017, Opposer filed a motion to compel Applicant's initial disclosures.¹ The motion is uncontested.²

A motion to compel initial disclosures must be filed within thirty days after the deadline therefor to promptly resolve the issues presented by such a motion early in the discovery period. *See* Trademark Rule 2.120(f); TBMP § 523.03 (June 2017).

Pursuant to an agreement between the parties, initial disclosures were due to be

¹ Opposer also requests that the Board enter sanctions in the form of default judgment for Applicant's failure to timely serve initial disclosures. However, sanctions are not available with respect to initial disclosures in this case in the absence of a Board order granting a prior motion to compel initial disclosures, or an express statement by Applicant to Opposer that it does not intend to meet its obligation to serve initial disclosures. *See Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC*, 88 USPQ2d 1541, 1542-43 (TTAB 2008) (the notice of institution does not constitute an order of the Board relating to disclosures within the contemplation of Trademark Rule 2.120(h)); TBMP § 527.01(a) (June 2017). Accordingly, Opposer's motion for sanctions in the form of default judgment is **denied**.

² The Board, in its discretion, declines to treat the uncontested motion as conceded. *See, e.g., Baron Philippe de Rothschild, S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000).

served on August 30, 2017. Opposer's motion to compel initial disclosures is therefore **denied** as untimely. Nevertheless, the Board notes that a party who fails to serve initial disclosures will be barred from propounding discovery requests, and therefore may not file a motion to compel responses to improperly propounded discovery requests. *MySpace, Inc. v. Mitchell*, 91 USPQ2d 1060, 1060 (TTAB 2009); *see also* TBMP § 523.01. Moreover, Applicant may not file a motion for summary judgment until it has made its initial disclosures, except for a motion asserting claim or issue preclusion or lack of jurisdiction by the Board. *See* TBMP § 401.02.

Trial Schedule

Proceedings are **resumed**. Trial dates are reset as follows:

Expert Disclosures Due	January 23, 2018
Discovery Closes	February 22, 2018
Plaintiff's Pretrial Disclosures Due	April 8, 2018
Plaintiff's 30-day Trial Period Ends	May 23, 2018
Defendant's Pretrial Disclosures Due	June 7, 2018
Defendant's 30-day Trial Period Ends	July 22, 2018
Plaintiff's Rebuttal Disclosures Due	August 6, 2018
Plaintiff's 15-day Rebuttal Period Ends	September 5, 2018
BRIEFS SHALL BE DUE AS FOLLOWS:	
Plaintiff's Main Brief Due	November 4, 2018
Defendant's Main Brief Due	December 4, 2018
Plaintiff's Reply Brief Due	December 19, 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, 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).