

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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mbm

April 2, 2019

Opposition No. 91240520

Omega Capital Management, LLC

v.

F.N.B. Corporation

Mary Beth Myles, Interlocutory Attorney:

On May 21, 2018, Applicant/Counterclaim-Plaintiff filed an answer to the notice of opposition and counterclaim seeking to cancel Opposer/Counterclaim-Defendant's pleaded registration. On June 27, 2018, Opposer/Counterclaim-Defendant filed a motion to dismiss the counterclaim for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). The Board granted Applicant/Counterclaim-Plaintiff two extensions of time to file a response to the motion to dismiss on August 25, 2018 and November 21, 2018. 9, 11 TTABVUE. On December 19, 2018, Applicant/Counterclaim-Plaintiff filed a motion for leave to amend its answer and counterclaim, with Opposer/Counterclaim-Defendant's consent. 12 TTABVUE. Applicant/Counterclaim-Plaintiff filed a copy of the proposed amended pleading concurrently with its motion.

Inasmuch as Opposer/Counterclaim-Defendant consents to the amendment, the December 19, 2018 amended answer and counterclaim is accepted as Applicant/Counterclaim-Plaintiff's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A) and (B).

Accordingly, Opposer/Counterclaim-Defendant's motion to dismiss is moot and will be given no consideration.

Opposer/Counterclaim-Defendant is allowed until **May 3, 2019** in which to file an answer to the amended counterclaim.

Conferencing, discovery and trial dates are reset as follows:

Answer to Counterclaim Due	5/3/2019
Deadline for Discovery Conference	6/2/2019
Discovery Opens	6/2/2019
Initial Disclosures Due	7/2/2019
Expert Disclosures Due	10/30/2019
Discovery Closes	11/29/2019
Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim	1/13/2020
30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim	2/27/2020
Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim	3/13/2020
30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim	4/27/2020
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim	5/12/2020
30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim	6/26/2020
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim	7/11/2020
15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim	8/10/2020
Opening Brief for Party in Position of Plaintiff in Original Claim Due	10/9/2020
Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due	11/8/2020

Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due	12/8/2020
Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due	12/23/2020
Request for Oral Hearing (optional) Due	1/2/2021

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