UNITED STATES PATENT AND TRADEMARK OFFICE
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EJW

July 14, 2019

Opposition No. 91242213 (parent)
Opposition No. 91242238

AUDEMARS PIGUET HOLDING S.A.

v.

Haas Outdoors, Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up for consideration of Applicant's motion (filed December 13, 2018) to compel Opposer's responses to certain of Applicant's production requests and to require Opposer's production of responsive documents in the United States; Opposer's motion (filed February 11, 2019) to extend the time to serve its expert disclosures; and Opposer's motion (filed March 13, 2019) for leave to use expert testimony. All three motions are fully briefed.

The Board has considered the parties' briefs on the contested motions, but does not repeat or discuss all of the arguments. *Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015). For purposes of this order, the Board presumes the parties' familiarity with the pleadings and the parties' arguments and materials submitted in connection with the subject motions.

Applicant's Motion to Compel

- **Bases for Applicant's Objections to Opposer's Responses to Applicant's First Requests for Production of Documents**

Applicant served discovery requests on Opposer on September 13, 2018, 9 TTABVUE 11, and Opposer responded thereto on October 15, 2018.[1] 9 TTABVUE 24. In response to 15 of Applicant's 23 requests for production, Opposer stated that it "will permit inspection and copying of non-privileged documents responsive to this request." Additionally, in Opposer's general objection no. 4, Opposer included several limitations on how it would provide responsive documents to Applicant, specifically:

- Opposer has objected to each request "on the grounds and to the extent that it is unduly burdensome and overly broad and thus, in part, is designed to burden, harass, annoy, and oppress Audemars Piguet rather than to serve any legitimate discovery purpose;"
- "Where the request is overbroad, Audemars Piguet will initially produce a representative sample of requested documents or will produce summary information in lieu of individual documents;"
- "Overbreadth is also evident to the extent that electronic information is called for and responsive [*sic*]" explaining that "electronic storage media contains extensive data irrelevant to the issues in this case;"
- Opposer states that "after the produced documents are reviewed, Audemars Piguet will meet and confer with Haas" (1) "regarding production for inspection

[1] Opposer's responses were timely insofar as the due date, October 13, 2018, was a Saturday. *See* Trademark Rule 2.196.

of any additional documents specifically requested by Haas;" and (2) "will produce "electronic information reasonably requested and specifically identified by Haas;" and

- "The fact that Audemars Piguet agrees to produce documents in a certain request shall not be interpreted to be an admission or inference that any such documents exist or that Audemars Piguet has any such documents in its possession, custody, or control."

9 TTABVUE 13-14, 16.

Additionally, in correspondence to Applicant's counsel dated November 15, 2018, Opposer's counsel advised Applicant's counsel that the responsive documents are located at Opposer's offices in Le Brassus, Switzerland, and Applicant's counsel should advise Opposer when Applicant would like to inspect Opposer's documents. 9 TTABVUE 27.

- **Board's Analysis and Orders**

Applicant requests that the Board require Opposer (1) to clarify whether responsive documents exist; and (2) to produce documents in such a manner that Applicant's counsel will not be required to travel to Switzerland to inspect and review potentially responsive documents.

  - **Showing of Good Faith Effort**

Initially, the Board finds that Applicant made the requisite showing of having made a good faith effort to resolve the discovery dispute before filing its motion to compel. *See* Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1). Specifically,

Applicant's counsel sent a lengthy letter to Opposer's counsel on November 8, 2018, explaining Applicant's concerns regarding Opposer's responses to Applicant's interrogatories and requests for production of documents, 9 TTABVUE 29, and Opposer's counsel did not address Applicant's concerns sufficiently in response thereto. See 9 TTABVUE 26.

- **Boilerplate Objections Withdrawn**

Opposer responded in part to Applicant's production requests with 4½ pages of boilerplate, general objections. This practice is improper.[2] *See* Fed. R. Civ. P. 34(b)(2)(B); *see also Medtronic, Inc. v. Pacesetter Sys., Inc.,* 222 USPQ 80, 83 (TTAB 1984) (party must articulate objections to interrogatories with particularity). However, in Opposer's response to the motion to compel, it states that "Audemars Piguet waived the inadvertent general objections [in its response to the letter written by Applicant's counsel regarding Opposer's responses]–and if there is any doubt about that, Audemars Piguet repeats that waiver now." 10 TTABVUE 6. Therefore, apart from how Opposer intends to produce documents to Applicant discussed within the general objections, discussed *infra*, the Board considers Opposer's general objections to Applicant's requests for production to be withdrawn and they will be given no further consideration.

[2] The Board hastens to add that not only were the general objections improper, they unnecessarily complicated the discourse between the parties, especially given Opposer's later clarification (in counsel's November 15, 2018 letter to Applicant's counsel), that "[i]f the specific response does not contain an objection, then for the record Audemars Piguet does not object to it." 9 TTABVUE 27.

- **Responses to Requests for Production of Documents**

Applicant propounded 23 requests for production and in response to 15 of them, *i.e.*, Request Nos. 2-3, 7, 11-19, and 21-23, Opposer states that it "will permit inspection and copying of non-privileged documents responsive to this request."[3]

1. Inadequate Responses

The Board finds Opposer's responses to Applicant's Request Nos. 2-3, 7, 11-19, and 21-23 to be insufficient because Opposer has failed to state unequivocally whether responsive, non-privileged documents exist. A proper response requires either stating that there are responsive documents and they will be produced or withheld on a claim of privilege, or stating that there are no responsive documents. *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1555 (TTAB 2000); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 406.04(c) (2019). Secondly, buried within Opposer's general objections was the following statement:

> [T]he fact that Audemars Piguet agrees to produce documents in a certain request shall not be interpreted to be an admission or inference that any such documents exist or that Audemars Piguet has any such documents in its possession, custody, or control.
>
> 9 TTABVUE 16.

Opposer's response suggests that Opposer has not actually searched for responsive documents and, therefore, has no idea whether there are documents responsive to particular requests for production. Thus, Opposer's several

[3] Opposer stated explicitly in response to production Requests Nos. 4, 5, 6, 8, and 20 that it "has no documents [photographs] responsive to this request," and no other specific objections were set forth in response to Request Nos. 2-3, 7, 11-19, and 21-23. In view thereof, and because all general objections have been overruled, there are no objections of record to Request Nos. 2-3, 7, 11-19, and 21-23.

responses that it "will permit inspection and copying of non-privileged documents responsive to this request" are essentially meaningless and, assuming that Applicant's counsel were to go to Opposer's offices in Switzerland as suggested by Opposer, such a trip could result in the proverbial "wild goose chase." Opposer's apparent conduct, as evidenced by its equivocal responses, contravenes its "duty to thoroughly search its records for all information properly sought in the request, and to provide such information to [Applicant] within the time allowed for responding to the request." *No Fear*, 54 USPQ2d at 1556; *see also* TBMP § 408.02. In view of the foregoing, Applicant's motion to compel better answers from Opposer to Applicant's Request Nos. 2-3, 7, 11-19, and 21-23 is **GRANTED**. Accordingly, Opposer is **ORDERED** to serve on Applicant's counsel within **THIRTY (30) DAYS** of the mailing date of this order revised responses to those requests for production, stating unequivocally whether or not responsive documents exists and if any privileged documents to particular requests have been withheld.

2. Improper Method of Production of Documents

Applicant also objects to the methods by which Opposer proposes to "produce" responsive documents to Applicant's counsel, which essentially consist of (i) Opposer initially producing a representative sample of requested documents or producing summary information in lieu of individual documents, at Opposer's choice; (ii) Opposer permitting Applicant's counsel to inspect documents at Opposer's offices in Switzerland, and (iii) *after Applicant's counsel inspects the documents in Switzerland*,

Opposer meeting with Applicant "regarding production for inspection of any additional documents specifically requested by [Applicant]." Opposer "will [also] produce electronic information reasonably requested and specifically identified by [Applicant]."

As discussed *supra*, Opposer's responses indicate that it has not thoroughly searched its records for responsive documents, including electronically-stored documents. Additionally, as discussed below, under the circumstances of this case, Opposer's proposed methods of production are improper.

Fed. R. Civ. P. 34(b)(2)(B), applicable to this proceeding under Trademark Rule 2.116(a), provides that the responding party who has not objected to a production request must state that inspection will be permitted as requested *or* it may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. *See also* Trademark Rule 2.120(e); *Elec. Indus. Ass'n v. Potega*, 50 USPQ2d 1775, 1777 (TTAB 1999) ("A party is not required to copy responsive documents and forward them to its adversary in response to document requests."). Therefore, as argued by Opposer, on its face, Rule 34 allows a responding party to arrange for inspection and copying, rather than requiring the responding party to copy the responsive documents and produce them to the party that propounded the discovery.

However, in this proceeding, the responding party is a foreign entity, specifically, a corporation that is located in Switzerland and has Swiss citizenship. 1 TTABVUE 1. In view thereof, Opposer cannot blithely direct Applicant's counsel to travel to

Switzerland to review Opposer's documents. In the first instance, the Board has no doubt that such a trip would be more costly and time-consuming than if Opposer were to search its own files, as required, and copy and produce responsive, non-privileged documents. Moreover, in Board cases, parties often extend each other the courtesy of producing requested documents by photocopying and forwarding them to the requesting party at the requesting party's expense or by providing copies electronically. *No Fear v. Rule*, 54 USPQ2d at 1555; *Elec. Indus, Ass'n v. Potega*, 50 USPQ2d at 1777.

Second, Opposer's requirement that Applicant's counsel inspect Opposer's documents at its office in Switzerland raises the following issues, namely, (i) whether the presence of Applicant's counsel *in Switzerland* would comply with Swiss law, specifically, Article 271 of the Swiss Criminal Code (Art. 271); and (ii) whether The Hague Convention on Taking Evidence Abroad ("Hague Convention")[4] should be applied to Applicant's requests for production of documents. *See Cochran Consulting, Inc. v. Uwatec USA, Inc.*, 102 F.3d 1224, 41 USPQ2d 1161, 1165 (Fed. Cir. 1996) (noting that "the courts have given great weight to whether compliance with the discovery order would violate foreign criminal laws") (internal citations omitted); *see*

[4] The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. The United States has been a party since 1972. *Double J. of Broward Inc. v. Skalony Sportswear GmbH*, 21 USPQ2d 1609, 1611 (TTAB 1991) (citing 23 U.S.T. 2555). The Hague Convention establishes three procedures through which parties to a proceeding in one country may obtain evidence and is considered to be a permissive supplement to the Federal Rules of Civil Procedure, not a preemptive or mandatory replacement therefor. Thus, the Convention provides an optional, alternative means of obtaining evidence abroad, and is intended to facilitate that process. *Id.* at 1612 (citing Wright & Miller, Federal Practice and Procedure: Civil § 2005 (1991)).

also Work v. Bier, 106 F.R.D. 45, 48 (D.D.C. 1985) ("it seems clear that where depositions of party witnesses are sought to be taken *within* the geographic boundaries of a State which is a party to the Hague Evidence Convention, such discovery must be in accord with the procedures required by that Convention, in order to protect the territorial sovereignty of that Nation"); *compare Schindler Elevator Corp. v. Otis Elevator Co.*, 657 F.Supp.2d 525, 530 (D.N.J. 2009) ("A deposition in accordance with the Federal Rules in the United States, or at some other convenient location outside of Switzerland, is expressly contemplated by *Societe Nationale*[5] and its progeny and does not offend foreign judicial sovereignty.") (internal citation omitted).

Turning first to whether Swiss law would prevent Applicant's counsel from obtaining documents from Opposer at its office in Switzerland, the Board reviews Article 271 of the Swiss Criminal Code (21 December 1937)[6] which provides, in relevant part, as follows:

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[5] *Société Nationale Industrielle Aerospatiale v. U.S. Dist. Court for the S. Dist. of Iowa,* 482 U.S. 522, 536 (1987). In *Société Nationale*, the Supreme Court explained that the use of Hague Procedures is "optional," and that "the Hague Convention did not deprive the District Court of the jurisdiction it otherwise possesse[s] to order a foreign national party before it to produce evidence physically located within a signatory nation." *Salt River Project Agr. Impr. and Power Dist. v. Trench France SAS*, 303 F.Supp.3d 1004, 1007 (D.Ariz. 2018)) (citing *Société Nationale*, 482 U.S. at 539-40.

[6] 311.0 Swiss Criminal Code of 21 December 1937 (Status as of 1 July 2019) (unofficial English translation); Title Thirteen: Felonies and Misdemeanours against the State and National Security; retrieved from: https://www.admin.ch/opc/en/classified-compilation/19370083/index.html on July 7, 2019.

> Art. 271 **1**. Felonies and misdemeanours against the state / Unlawful activities on behalf of a foreign state
>
> Unlawful activities on behalf of a foreign state
>
> 1. Any person who carries out activities on behalf of a foreign state on Swiss territory without lawful authority, where such activities are the responsibility of a public authority or public official,
>
> any person who carries out such activities for a foreign party or organisation, any person who facilitates such activities,
>
> is liable to a custodial sentence not exceeding three years or to a monetary penalty, or in serious cases to a custodial sentence of not less than one year.[2]

Under Art. 271, "[a] request for the review and/or collection of documents on Swiss territory by … a foreign lawyer acting as a representative of an opposing party, is considered to [be] an official act." S. Lembo and A. Conrad Hari, Blocking Provisions: Pitfalls to Collecting Evidence in Switzerland.[7] Specifically, "the addressor of the request in case of an involuntary transfer could be liable under Article 271, as the addressor performs an 'official act' by being involved in the taking of evidence." *Id.* *See also Randall v. Offplan Millionaire AG*, Case No. 6:17-cv-2103-Orl-31TBS, slip op. at *3 2019 WL 0113167 (M.D.Fla. March 1, 2019) ("[A] foreign request for obtaining evidence in Switzerland – such as an order for pre-trial discovery – is subject to prior authorization by the Swiss Federal Department of Justice and Police.").

[7] Retrieved from: https://1.next.westlaw.com/Document/I8417d7481cb111e38578f7ccc38dcbee/View/FullText.html?contextData=(sc.Default)&transitionType=Default on July 7, 2019. The article states that it addresses Article 271 of the Swiss Criminal Code as of "01 Aug 2012."

In view of the Board's limited jurisdiction, the Board can neither decide nor speculate as to what the exact consequences would be to Applicant or its counsel under Art. 271 of the Swiss Criminal Code should Applicant's counsel be required (because the Board did not grant Applicant's motion to compel) to inspect and copy Opposer's documents *in* Switzerland. It is evident, however, from the various federal court decisions and materials discussed herein that conducting discovery *in* Switzerland would be complicated at best, and at worst, potentially produce undesirable legal consequences to Applicant or its counsel.

In contrast, Swiss law apparently does not preclude the *voluntary* production of documents by a private party, "voluntary" being defined broadly to include the production of discovery so long as the party faces only procedural consequences rather than criminal sanctions for its failure to produce. *EFG Bank AG v. AXA Equitable Life Ins. Co.*, Case No. 17-CV-4767 (JMF), slip. op. at *2, 2018 WL 1918627 (S.D.N.Y. April 20, 2018) (denying protective order and request to use Hague Evidence Convention to obtain documents located in Switzerland) (emphasis original); *see also Motorola Credit Corp. v. Uzan*, 73 F.Supp.3d 397, 404 n.3 (S.D.N.Y. 2014) (dismissing an argument that Article 271 precluded production of bank documents located in Switzerland on the ground that the Swiss law "speaks only tangentially to the production of documents and, according to the Swiss Federal Department of Justice and Police, does not create criminal liability for a bank that adheres to a U.S. court's order to search for bank account documents located in Swiss bank branches"), *recon. granted on other grounds*, 132 F.Supp.3d 518 (S.D.N.Y. 2015); *see also* S. Lembo and

A. Conrad Hari, Blocking Provisions: Pitfalls to Collecting Evidence in Switzerland, *supra* ("A Swiss-based party to foreign proceedings can freely review and collect its own documents even if they are intended for use in foreign proceedings, as the collection of evidence by a Swiss party does not fall within the ambit of Article 271."[8]).

In view of the foregoing, the Board finds that, although Fed. R. Civ. P. 34(b)(2)(B) allows a party responding to discovery to require the propounding party to inspect its records, in Board proceedings, the rule should not be used by parties indiscriminately to avoid cooperating with the adverse party in the discovery process. In this instance, Opposer's demand that Applicant's counsel go to Opposer's offices in Switzerland to inspect documents is not well-founded, thwarts the exchange of information, and disregards its obligation to cooperate in discovery. Accordingly, Applicant's motion to compel is also **GRANTED** with respect to the method of production to be used by Opposer to provide responsive, non-privileged documents on Applicant's counsel. Specifically, Opposer is **ORDERED** to thoroughly inspect its own documents to find those that are responsive to Applicant's Request Nos. 2-3, 7, 11-19, and 21-23, and to produce any such non-privileged documents by photocopying and forwarding them to

[8] "The filing of documents before a foreign court will not trigger the application of Article 271 if the documents are produced by a party to the foreign proceedings either voluntarily or involuntarily (that is, further to an official order rendered by a foreign authority). In that case, the purpose of the production of documents by the party is to support its allegation in the proceedings and cannot be deemed an 'official act' if filing does not involve prior investigations or the co-operation of third parties in Switzerland. Therefore, a transferring person who is a party to the proceedings will not violate Article 271, as long as he files documents that were in his possession." *Id.*

Applicant's counsel at Opposer's expense or by providing copies electronically. *See No Fear v. Rule*, 54 USPQ2d at 1555; *Elec. Indus, Ass'n v. Potega*, 50 USPQ2d at 1777.

As to whether the Hague Convention is relevant to Applicant's discovery, the Board need not decide that question and, in this instance, it would be inappropriate to do so. Specifically, Opposer did not seek protection from discovery served under the Federal Rules of Civil Procedure by requesting that the Hague Convention procedures be used by Applicant to obtain documents from Opposer. It is the obligation of the party seeking protection under the convention to show that its procedures should be applied. *See Double J. of Broward*, 21 USPQ2d at 1612 ("The party who seeks the application of the procedures set forth in the Hague Evidence Convention bears the burden of demonstrating the necessity of using those procedures."); *see also Alfadda v. Fenn*, 149 F.R.D. 28, 34 (S.D.N.Y. 1993) (a party seeking an order to apply Hague Convention procedures in lieu of the procedures set forth in the Federal Rules of Civil Procedure must demonstrate that a specific foreign law "actually bars the production or testimony at issue."); *Cooper Indus., Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918, 919 (S.D.N.Y. 1984) ("Defendant has waived any right to claim protection under the Hague Convention. Defendant made no effort to seek protective relief when the discovery request was served upon it.").

- **Privilege Log**

In reviewing Opposer's ambiguous responses to Applicant's Requests for Production Nos. 2-3, 7, 11-19, and 21-23, discussed *supra*, the Board notes *sua sponte* Opposer's attached privilege log. The log is equally vague and uninformative, and

indicates that Opposer did not effectuate a search of its records for documents responsive to Applicant's requests for production. Specifically, Opposer states the Opposer "*will withhold* the following documents based on attorney-client privilege and/or attorney work product[, namely,] – Communications between Opposer and Opposer's attorneys, concerning whether other OAK-RELATED marks are confusingly similar to Opposer's marks – Communications between Opposer and Opposer's attorneys concerning this opposition, oppositions against other OAK-related marks, and objections by Opposer to other parties' use of OAK-related marks." 9 TTABVUE 25.

Opposer's privilege log is insufficient because Opposer has not specified that any specific documents have been withheld. Further, Opposer does not specify the particular nature of the privilege or protection claimed as to specific documents, the author, the name of the person to whom any document is directed or for whom the document was prepared, the date and place of the communications, and a summary of the particular document's general subject matter. *See Sulaymu-Bey v. City of New York*, 372 F.Supp.3d 90, 93 (E.D.N.Y. 2019) (internal citations omitted); *Bowne of N.Y. City, Inc. v. AmBase Corp.,* 150 F.R.D. 465, 474 (S.D.N.Y. 1993) (explaining that a privilege log should "identify each document and the individuals who were parties to the communications, providing sufficient detail to permit a judgment as to whether the document is at least potentially protected from disclosure"); Fed. R. Civ. P. 26(b)(5) Notes of Advisory Committee on Rules – 1993 Amendment (the notice should be sufficiently detailed so as to enable the receiving party and the court to understand

the basis for the claim and to determine whether waiver has occurred); TBMP § 406.04(c). Neither Applicant's counsel nor the Board can make an assessment as to the applicability of an alleged privilege if specific documents are not sufficiently identified and described. Accordingly, Opposer is **ORDERED** to provide an amended privilege log to Applicant's counsel, which must specify any responsive documents that it withholds from Applicant and other relevant information, as discussed herein.

- **Summary**

Applicant's motion to compel is **GRANTED**. Accordingly, Opposer is allowed until **AUGUST 15, 2019**, to produce to Applicant's counsel non-privileged documents that are responsive to Applicant's Requests for Production Nos. 2-3, 7, 11-19, and 21-23, and to serve an amended privilege log, as discussed herein.

In the event that Opposer fails to serve full responses to Applicant's particular document requests as ordered herein, Applicant's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(h)(1), 37 C.F.R. § 2.120(h)(1); TBMP § 411.05.

Opposer's Motion to Extend its Time to Serve Expert Disclosures[9]

As last reset, the expert disclosure due date was reset to February 11, 2019. 8 TTABVUE 4. Opposer seeks a thirty-day extension of the due date for serving its expert disclosures in view of the suspension of the proceeding after Applicant filed its motion to compel. The Board finds good cause for the extension. *Cf. Elec. Indus. Ass'n*

[9] The Board considers the motion to extend the expert disclosure due date to be germane to the motion to compel insofar as it relates to the suspension order issued in connection with the motion to compel and is likely to affect the reset schedule for the consolidated proceeding.

v. Potega, 50 USPQ2d 1775, 1776 n.4 (TTAB 1999) (dates reset beginning with the period that was running when the potentially dispositive motion was filed). Accordingly, Opposer's motion for a thirty-day extension of time is **GRANTED**. *See* Fed. R. Civ. P. 6(b); Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a). Accordingly, Opposer's submissions of its notice of expert witness disclosure (filed on March 13, 2019), as well as its notice of its rebuttal expert witness (filed March 12, 2019), are timely. In view thereof, Opposer's motion for leave to use expert testimony (filed March 13, 2019) is moot and will be given no further consideration.

Proceeding Resumed; Trial Dates Reset

Rather than continue the suspension of this proceeding under Trademark Rule 2.120(a)(2)(iii) for any discovery that the parties may seek related to the parties' respective expert disclosures, in view of the foregoing order granting Applicant's motion to compel, the consolidated proceeding is resumed to allow the parties to continue discovery. Should the parties need additional time to conduct discovery solely related to their respective expert disclosures, the parties should so advise the Board. Trial dates are reset as shown below:

Opposer's Discovery Responses Due	**8/15/2019**
Amended Expert Disclosures Due, if Any	**10/1/2019**
Discovery Closes	**10/31/2019**
Plaintiff's Pretrial Disclosures Due	**12/15/2019**
Plaintiff's 30-day Trial Period Ends	**1/29/2020**
Defendant's Pretrial Disclosures Due	**2/13/2020**
Defendant's 30-day Trial Period Ends	**3/29/2020**
Plaintiff's Rebuttal Disclosures Due	**4/13/2020**

Plaintiff's 15-day Rebuttal Period Ends	**5/13/2020**
Plaintiff's Opening Brief Due	**7/12/2020**
Defendant's Brief Due	**8/11/2020**
Plaintiff's Reply Brief Due	**8/26/2020**
Request for Oral Hearing (optional) Due	**9/5/2020**

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, 37 C.F.R. §§ 2.121-2.125. 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), 37 C.F.R. §§ 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), 37 C.F.R. § 2.129(a).

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