

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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October 16, 2019

Opposition No. 91245121

*Alzheimer's Disease and Related Disorders
Association*

v.

Alzheimer's New Jersey

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

On September 20, 2019, Opposer filed a motion for summary judgment. The motion is timely pursuant to Trademark Rule 2.127(e)(1). On October 10, 2019, Applicant submitted its response and cross-motion for summary judgment.

Also on September 20, 2019, Opposer submitted a “thumb drive” containing .WAV files as Exhibit D to the Declaration of Mary Garza. While exhibits to affidavits or declarations consisting of recordings of commercials, demonstrations, etc., are permitted, such submissions are not permitted through the use of external storage devices (CD-ROM, flash drives, etc.) due to security risks to USPTO systems. *See* Trademark Rule 2.126(a)(1), 37 C.F.R. § 2.126(a)(1); *see also See Hunter Indus., Inc. v. Toro Co.*, 110 USPQ2d 1651, 1654-55 (TTAB 2014) (parties may not override Trademark Rule 2.126 provisions for form of submissions by agreement; however,

video and audio recordings of evidence such as commercials may be submitted), *appeal dismissed per stipulation*, No. 14-CV-4463 (D. Minn. January 15, 2016); TBMP § 528.05(b).

Opposer is allowed until **20 Days** from the date of this order to submit its .WAV files in an appropriate format such as DVD or CD (or transcription in electronic format, if appropriate), failing which the submission will be given no consideration.

In view of the overlapping grounds on which the parties have based their cross-motions for summary judgment, the Board, in exercising its inherent authority to control the cases on its docket, schedules the remaining briefing in connection with those cross-motions and objections as follows: **Opposer is allowed until 30 days** from the date of service of Applicant's response and cross-motion to file a combined reply brief in support of its motion for summary judgment and brief in response to Applicant's cross-motion for summary judgment, limited to 25 pages. Applicant's reply brief in support of its cross-motion for summary judgment, if any, is due in accordance with Trademark Rules 2.119(c) and 2.127(e)(1).

Accelerated Case Resolution (ACR)

The parties may wish to consider using the Board's Accelerated Case Resolution (ACR) procedure. This procedure is similar to the use of cross-motions for summary judgment, but the parties must stipulate that, in lieu of trial, the Board may resolve any genuine issues of material fact. The Board's ACR procedure is detailed under the heading "Alternate Resolution Options" at: <https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board>. The parties are encouraged to

contact the assigned Interlocutory Attorney at (571) 272-9274 for a teleconference if they wish to schedule ACR in this proceeding.

When a party timely files a potentially dispositive motion, the proceeding is suspended with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. *See* Trademark Rule 2.127(d). Accordingly, as of the filing date of the motion for summary judgment, proceedings are **suspended** pending disposition of the motion. Any paper filed during the pendency of the motions which is not germane thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03.

The motions for summary judgment will be decided in due course.