THIS ORDER IS NOT A PRECEDENT OF THE TTAB

WF

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
General Email: TTABInfo@uspto.gov

April 27, 2020

Opposition No. 91245121

Alzheimer's Disease and Related Disorders Association

v.

Alzheimer's New Jersey

Before Mermelstein, Wellington, and Coggins,
Administrative Trademark Judges.

By the Board:

This case comes before the Board for consideration of the parties' cross-motions for summary judgment, filed on September 20, 2019,[1] by Alzheimer's Disease and Related Disorders Association ("Opposer"), and on October 15, 2019,[2] by Alzheimer's New Jersey ("Applicant"). Opposer has moved for summary judgment on its pleaded claim of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) and against Applicant's affirmative defenses of failure to state a claim upon which relief can be granted, laches, acts of omission or waiver, acquiesence, estoppel and unclean hands.[3] Applicant, in its response to Opposer's motion, cross-motioned for

[1] 7 TTABVUE.
[2] 10 TTABVUE.
[3] 4 TTABVUE 4-5, ¶¶ 17-22.

summary judgment on its pleaded claim against a Secetion 2(d) claim and against Opposer's dilution claim due to failure to properly plead the claim. The parties' respective motions are fully briefed.

I. BACKGROUND

Applicant filed an application to register the ALZHEIMER'S NEW JERSEY WALK TO FIGHT ALZHEIMER'S Purple and White Design Logo Mark (the "Purple & White Logo") (as shown below[4]) and was assigned Serial No. 87797112 ("Application '112").[5] Opposer opposes registration of Application '112 on the grounds of likelihood of confusion under § 2(d) and dilution by blurring in violation of Section 43(c) of the Trademark Act.[6] In support of its claim, Opposer alleges ownership of

[4]

[5] Application '112 listed that the Purple & White Logo was in use in commerce in connection with "charitable foundation services, namely, providing fundraising activities to support medical research and procedures for those in need; Charitable fundraising; Charitable fundraising services by means of a website where donors search for and make monetary donations to specific charities or projects aimed at Alzheimer's care and research; Charitable fundraising services for Alzheimer's care and research; Charitable fundraising services; Charitable fundraising services by means of organizing and conducting special events; Charitable fundraising services by means of organizing walks and other special events for Alzheimer's; Charitable fundraising services for promoting research, education and other activities relating to Alzheimer's care and research; Charitable fundraising to support Alzheimer's care and research; Charitable services, namely, fundraising services by means of organizing special events for Alzheimer's care and research; On-line charitable fundraising," in International Class 36.

[6] 1 TTABVUE 7-8, ¶¶ 11-16.

Registration No. 4122255 for the WALK TO END ALZHEIMER'S (standard character) mark and pending application Serial No. 88209214 for the WALK TO END ALZHEIMER'S ALZHEIMER'S ASSOCIATION and Design mark (as shown below[7]), both of which identically list the following services in International Class 36: "[c]haritable fundraising, namely, raising money to support educational and informational programs on Alzheimer's disease and to support scientific research on Alzheimer's disease; charitable fundraising services in the nature of a pledged walkathon."[8]

Applicant filed an answer denying the salient allegations in the notice of opposition and asserting affirmative defenses, namely, failure to state a claim upon which relief can be granted, laches, estoppel, unclean hands and acts of omission or waiver and aquiescence.[9]

II. THE PLEADINGS

Consideration of a motion for summary judgment necessarily requires a review of the pleadings. *Asian and Western Classics B.V. v. Selkow*, 92 USPQ2d 1478, 1478 (TTAB 2009).

---

[7]

[8] 1 TTABVUE 5-6, ¶¶ 3-4.
[9] 4 TTABVUE.

a. Opposer's Claims

In the notice of opposition, Opposer sufficiently pleaded a Section 2(d) claim based on allegations of priority and likelihood of confusion. Specifically, Opposer alleges:

> 5. [Opposer's] dates of first use and date of first use in United States commerce for both its [Registration No. 4122255 standard character mark] and its WALK TO END ALZHEIMER'S logo [mark] predate the filing date of [Applicant's] application, February 14, 2018, and [Applicant's] claimed date of first use of its [Purple & White Logo] mark, September 1, 2017.
>
> 6. [Opposer] has been using WALK TO END ALZHEIMER'S and the associated logo continuously and has not abandoned them. Therefore, [Opposer's] rights have priority.
>
> 10. The words "WALK TO END ALZHEIMER'S" and "WALK TO FIGT ALZHEIMER'S" are confusingly similar in appearance, sound, connotation, and meaning.
>
> 11. [Applicant's Purple & White Logo] design mark features the words "WALK TO FIGHT" prominently, making confusion with [Opposer's] registered mark likely.
>
> 12. [Applicant's Purple & White Logo] mark incorporates design elements, including the color purple, that increase the likelihood of confusion. A side-by-side comparison of [Opposer's] logo and [Applicant's Purple & White Logo] highlights their cimilarity:
>
> 
>
> 
>
>
> 13. [Applicant's] services are identical or similar to Opposer's services.
>
> 14. Because the marks are highly similar and are used in connection with the same and/or similar services in the same or overlapping channels of trade, there is a liklihood of confusion as to source, sponsorship, or affiliation of the parties and their respective services, in violation of Section 2(d) of the Trademark Act.[10]

[10] 1 TTABVUE 6-8, ¶¶5-6 & 10-14.

However, Opposer failed to sufficiently plead a claim of dilution. Specifically, Opposer's pleadings are devoid of any allegations regarding the date when its pleaded marks, including its pleaded registration or Purple & White Logo mark, became famous. *See Polaris Industries Inc. v. DC Comics,* 59 USPQ2d 1798, 1800 (TTAB 2000) ("… opposer's allegation of dilution is legally insufficient inasmuch as there is no allegation as to when opposer's mark became famous."). *See also* 15 U.S.C. § 1125(c). Because Applicant's Applciation '112 is based on allegations of use in commerce under Section 1(a) of the Trademark Act, Opposer must plead, for any mark serving as support for its dilution claim, that such mark(s) became famous for dilution purposes prior to Applicant's first use of its applied-for marks in commerce. *See Omega SA (Omega AG) (Omega LTd.) v. Alpha Phi Omega*, 118 USPQ2d 1289, 1292 (TTAB 2016) *citing Toro Co. v. Torohead, Inc.,* 61 USPQ2d 1164, 1174 n.9 (TTAB 2001). Accordingly, the Board will allow Opposer time to perfect their dilution claim within the time frame provided below, failing which Opposer's dilution claim will be dismissed with prejudice.

b. Applicant's Answer and Counterclaims

Applicant's answer to the notice of opposition timely denies all salient allegations. However, Applicant's affirmative defenses are not permissible or fail to plead sufficient facts to provide fair notice to Opposer of the defense and must be stricken.

Specifically, Applicant's first affirmative defense that Alheimer's Ass'n failed to state a claim upon which releif can be granted, is not a true affirmative defense because it relates to an assertion of the insufficiency of the pleading rather than a

statement of a defense to a properly pleaded claim. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.,* 60 USPQ2d 1733, 1738 n.7 (TTAB 2001). Moreover, the defense has no apparent merit, as the Board has reviewed the sufficiency of Opposer's pleading and noted above that Opposer has sufficiently pleaded a Section 2(d) claim. Accordingly, Applicant's defense of failure to state a claim is **stricken**.

Applicant's equitable affirmative defenses, namely, laches, estoppel, acts of omission or waiver, unclean hands, and acquiesence, consist of bald pleadings of the affirmative defenses. A legally sufficient pleading of each defense must include enough factual detail to provide Opposer fair notice of the basis for the defense. Fed. R. Civ. P. 8(b)(1) and 12(f); *IdeasOne Inc. v. Nationwide Better Health, Inc.*, 89 USPQ2d 1952, 1953 (TTAB 2009); *Fair Indigo LLC v. Style Conscience,* 85 USPQ2d 1536, 1538 (TTAB 2007); *Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 5 USPQ2d 1067, 1069 (TTAB 1987).[11] Applicant has done nothing more than list the defenses by name without supplying facts upon which they might be plausibly based.

Additionally, the equitable affirmative defenses of laches, estoppel, and acquiesence, generally are not applicable in opposition proceedings because these defenses only start to run from the time the mark is published for opposition, not from the time of knowledge of use. *See Nat'l Cable Television Ass'n Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 19 USPQ2d 1424, 1432 (Fed. Cir. 1991) (laches does not run from knowledge of use; it runs from the date the application was published for opposition); *Bausch and Lomb Inc. v. Karl Storz GmbH & Co. KG*, 87 USPQ2d 1526,

[11] *See also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP") § 311.02(b) (2019).

1531 (TTAB 2008) ("Conduct which occurs prior to the publication of the application for opposition generally cannot support a finding of equitable estoppel."); *Barbara's Bakery, Inc. v. Landesman*, 82 USPQ2d 1283, 1292 n.14 (TTAB 2007) (defenses of laches, acquiescence or estoppel generally not available in opposition proceedings).

Here, Applicant's involved Application '112 was published for opposition on August 7, 2018, and the opposition was initiated timely on December 4, 2018, pursuant to Opposer requesting and being granted a 90-day extension of time to oppose for good cause, which extended the deadline until December 5, 2018. Based on these facts, the Board cannot conceive of a basis for Applicant to plead any of the listed equitable affirmative defenses.

As to Applicant's alleged unclean hands defense, Applicant has not pleaded any facts to support a defense of unclean hands. In fact, it is not clear from the general allegation, particularly in light of Applicant having listed multiple affirmative defenses, whether Applicant is attempting to plead a defense of unclean hands, laches, acquiescence, estoppel or some other affirmative defense.

Consequently, the Board **strikes** each of Applicant's named affirmative defenses, including laches, estoppel, acts of omission or waiver, unclean hands, and acquiesence.

Although listed in Applicant's "affirmative defense" section, paragraphs 23-34 of the answer are not true affirmative defenses.[12] Rather, the Board construes as mere

[12] 4 TTABVUE 5-6, ¶¶ 23-34.

amplifications of Applicant's denials and consequently are allowed to stand for the limited purpose of amplifying Applicant's position in response to Opposer's claims.

Lastly, Applicant's "expressly reserves the right to plead additiounal affirmative and other defense should any such defenses be revealsed by discovery in this case."[13] However, a defendant cannot reserve unidentified defenses because such a "reservation" does not provide the plaintiff with fair notice of any such defense(s). Whether Applicant may, at some future point, add an affirmative defense would need to be raised by a motion for leave to amend. *See* Fed. R. Civ. P. 15(a). Accordingly, Applicant's attempted reservation of the right to raise defenses in the future is also **stricken**.

However, the Board will allow Applicant an attempt at perfecting its potential affirmative defenses in its amended answer. Applicant is allowed time to replead its aforementioned affirmative defense(s), if the facts so warrant, either until THIRTY (30) DAYS from the date Opposer files its amended notice of opposition or until SIXTY (60) DAYS from the date of this order, if possible, justified, and appropriate despite Opposer not filing an amended notice of opposition, failing which Applicant's affirmative defenses will be dismissed with prejudice.

III. TIMELINESS OF APPLICANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Opposer contends that Applicant's cross-motion for summary judgment should be disregarded as untimely.[14] Specifically, Opposer contends that a motion for summary judgment must be filed "before the day of the deadline for pretrial disclosures for the

[13] *Id.* at 6, ¶ 35.
[14] 17 TTABVUE 26.

first testimony period, **as originally set or as reset**."[15] Opposer contends that because September 25, 2019 was the deadline for the opposer's pretrial disclosure,[16] the first testimony period in the proceeding, Applicant needed to have filed its cross-motion for summary judgment prior thereto; rather than waiting until October 15, 2019.

However, the Board notes in the order of October 16, 2019 that proceedings were suspended "as of the filing date of the motion for summary judgment" (September 20, 2019).[17] Consequently, Applicant's cross-motion for summary judgment is timely filed as Opposer's pretrial disclosure deadline has not yet been reset.

IV. SUMMARY JUDGEMENT

Turning to the merits of the parties' cross-motions, summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes as to any material facts and the moving party is entitled to judgment as a matter of law.[18] In reviewing a motion for summary judgment, the evidentiary record and all justifiable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the non-moving party. *See Lloyd's Food Prods., Inc. v. Eli's, Inc.,* 987 F.2d 766, 25 USPQ2d 2027, 2029-30 (Fed. Cir. 1993); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1546 (Fed. Cir. 1992). When deciding a motion for summary judgment, the Board may not weigh the evidence in an area of disputed fact or make credibility determinations. *See, e.g., Metro. Life Ins.*

[15] *Id. See also* TBMP § 528.02 (emphasis added).
[16] 2 TTABVUE 3.
[17] 11 TTABVUE 3.
[18] Fed. R. Civ. P. 56(a).

Co. v. Bancorp Services, LLC, 527 F.3d 1330, 87 USPQ2d 1140, 1146 (Fed. Cir. 2008) (when resolving conflicting accounts requires ruling on the weight and credibility of the evidence, summary judgment is not available); *Lemelson v. TRW, Inc.*, 760 F.2d 1254, 225 USPQ 697, 701 (Fed. Cir. 1985) (court cannot engage in fact-finding on a motion for summary judgment). Thus, in deciding a motion for summary judgment, the Board may not resolve any factual dispute; it may only determine whether a genuine dispute of material fact exists. *See e.g., Meyers v. Brooks Shoe Inc.,* 912 F.2d 1459, 16 USPQ2d 1055, 1056 (Fed. Cir. 1990) ("[i]f there is a real dispute about a material fact or factual inference, summary judgment is inappropriate; the factual dispute should be reserved for trial").

On cross-motions for summary judgment, the moving party in each motion has the burden as to its motion, and the Board evaluates each motion on its own merits and resolves all doubts and inferences against the party whose motion is being considered. *See Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390-91 (Fed. Cir. 1987); *Drive Trademark Holdings LP v. Inofin and Walsh,* 83 USPQ2d 1433, 1437 (TTAB 2007). The mere fact that cross-motions for summary judgment have been filed does not necessarily mean that there are no genuine disputes of material fact that a trial is unnecessary. *See e.g., Id.* at 1437; *Univ. Book Store v. Univ. of Wis. Board of Regents,* 33 USPQ2d 1385, 1389 (TTAB 1994).

Based on the standards for summary judgment, as set forth above, the Board finds that both parties have failed to demonstrate the absence of genuine disputes of material fact, as to the Section 2(d) – likelihood of confusion – claim, such that the

Board can grant either parties' motion for summary judgment on the ground of likelihood of confusion. In particular, the Board finds that Opposer has failed to adequately substantiate an absence of genuine dispute of material facts as to the similarity between Opposer's WALK TO END ALZHEIMER'S marks, most notably the WALK TO END ALZHEIMER'S Design mark, and Applicant's Purple & White Logo mark.

Opposer's Design	Applicant's Purple & White Logo
	

a. Standing and Priority

For the purpose of summary judgment, Opposer's submission of a status and title copy of its pleaded registration in the form of a Trademark Electronic Search System (TESS) printout, dated December 4, 2018, that accompanied the notice of opposition[19] and copy of the certificate of registration issued by the Office[20] adequately demonstrates that Opposer has standing, and that priority with respect to "charitable fundraising services in the nature of a pledged walkathon" and related services is not at issue in this case.[21] *King Candy Co. v. Eunice King's Kitchen, Inc.,* 496 F.2d 1400,

[19] 1 TTABVUE 12-14.
[20] 6 TTABVUE 268-269.
[21] Although Opposer attaches a TESS report as opposed to a Trademark Status & Document Retrieval (TSDR) report, the Board finds the TESS report sufficiently satisfies applicable rules. *See* Trademark Rule 2.122(d)(1). However, the Board notes Applicant's failure to supply either a TSFR or TESS report as required. *Id.*

182 USPQ 108, 110 (CCPA 1974) (priority not at issue where opposer introduces registration into evidence).[22]

b. Likelihood of Confusion

For either party to prevail on summary judgment with respect to Opposer's Section 2(d) claim, they must demonstrate that there is no genuine dispute of material facts as to whether the contemporaneous use of the parties' respective marks in connection with their respective services would be likely to cause confusion or mistake or to deceive consumers regarding the source of the services.[23] *See Hornblower & Weeks, Inc.,* 60 USPQ2d at 1735. The party seeking judgment in its favor carries the burden of proof. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 323-24 (1986).

Consideration of the issue of likelihood of confusion in the context of summary judgment motions involves an analysis of all the probative facts in evidence that are relevant to the thirteen factors set forth in *In re E.I. du Pont de Nemours & Co.,* 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (the "du Pont factors"). *See also, M2 Software, Inc. v. M2 Communications, Inc.,* 450 F.3d 1378, 78 USPQ2d 1944, 1946

[22] At trial, Opposer may establish its standing, and priority will not be in issue, so long as Opposer demonstrates that it remains the owner of its valid and unchallenged Registration No. 4122255. *Cunningham v. Laser Golf Corp.,* 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Indus., Inc. v. Ralston Purina Co.,* 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982); *King Candy Co.,* 182 USPQ at 110; *Research in Motion Ltd. v. Defining Presence Mktg. Grp. Inc.,* 102 USPQ2d 1187, 1190 (TTAB 2012). Opposer may demonstrate this at trial by properly introducing into evidence a current status and title copy of its pleaded registration.

[23] In its motion, Applicant argues that it is entitled to summary judgment on Opposer's Section 2(d) claim because there is no likelihood of confusion.

(Fed. Cir. 2006); *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772,* 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005); *In re Majestic Distilling Co., Inc.,* 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003).

We look to whether there are genuine disputes with respect to any of these du Pont factors, which would be material to a decision on the merits. Two key factors are the degree of similarity of the parties' marks and the degree to which their respective services are related. *See Federated Foods, Inc. v. Fort Howard Paper Co.,* 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of the differences in the essential characteristics of the goods (and/or services) and differences in the marks.").

Opposer contends that there is "no question of fact in this case that the goods and services at issue are identical."[24] Because the marks relate to the same services, "the degree of similarity in the marks necessary to support a conclusion of likely confusion is diminished."[25] Accordingly, "an average purchaser is likely to believe that the charitable walk events offered under the respective marks is from the same source."[26] Moreover, Opposer asserts that the fame, worldwide recognition and strength of Opposer's marks that it enjoys, particularly in connection with Alzheimer's disease awareness, favors it in a finding that Opposer is entitled to summary judgment on likelihood of confusion.[27]

[24] 7 TTABVUE 15.
[25] *Id.* at 16.
[26] *Id.*
[27] *Id.* at 14-16.

Applicant, in turn, argues that a review of the du Pont Factors, most notably a review of the marks at issue if considered in their respective entireties without dissecting individual elements of the marks will favor Applicant in finding no likelihood of confusion.[28] Applicant asserts that the respective marks are not similar and Opposer cannot be damaged by the registration of an additional registration when "Applicant owns a registration for the same or substantially identical marks for the same or substantially identical [services] which has not been challenged, referencing Applicant's prior registrations (as shown below).[29]

Applicant's Prior Registrations[30]		
Registration No.	Registration Date	Mark
5053635	October 4, 2016	WALK TO FIGHT ALZHEIMER'S (standard character)
5373234	January 9, 2018	

After reviewing the parties' arguments and supporting evidence, and drawing all inferences in favor of the non-movant when considering each motion for summary judgment, the Board finds that neither party has met its burden of establishing that there is no genuine dispute as to material facts and that it is entitled to judgment as a matter of law on the claim of likelihood of confusion. At a minimum, there are

[28] 10 TTABVUE 12-13.
[29] *Id.* at 14.
[30] Applicant merely submitted copies of the certificates of registration, which cannot be deemed as providing current status of or current title to the registrations under Trademark Rule 2.122(d).

genuine disputes of material fact regarding the similarities or dissimilarities between the parties' marks in appearance, sound, connotation and commercial impression.[31] Moreover, Opposer has failed to establish that its WALK TO END ALZHEIMER'S word mark is famous or distinctive in the context of warranting recognition in its field, let alone the Opposer's Design mark as shown above.

c. Affirmative Defenses

Next, the Board turns to Opposer's motion for summary judgment against Applicant's alleged affirmative defenses. As discussed above, Applicant's named affirmative defenses, namely, failure to state a claim upon which relief can be granted, laches, acts of omission or waiver, acquiesence, estoppel and unclean hands, have each been **stricken**.

Accordingly, Opposer's motion for summary judgment as to Applicant's affirmative defenses is **moot**.

d. Dilution

Applicant's cross-motion includes a motion for summary judgment on Opposer's pleaded ground of dilution. The Board essentially elects to treat Applicant's motion as to Opposer's dilution claim as a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

[31] The fact that the Board identified certain genuine disputes as to material facts should not be construed as a finding that these are necessarily the only disputes which remain for trial. Additionally, the parties should note that the evidence submitted in connection with the cross-motions for summary judgment is of record only for consideration of the motions. To be considered as final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period, unless the parties agree to Accelerated Case Resolution ("ACR") stipulations. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.,* 28 USPQ2d 1464, 1465 n.2 (TTAB 1993); *Pet Inc. v. Bassetti,* 219 USPQ 911, 913 n.4 (TTAB 1983).

Applicant contends that Opposer's claim of dilution is insufficient because it fails to allege when Opposer's mark became famous. To properly assert a ground of dilution, a plaintiff must plead that its mark(s) became famous prior to the applicant's filing date and/or use of the mark, and that the applicant is diluting plaintiff's inherently (or acquired) distinctive mark by either blurring or tarnishment. Section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c); *Toro Co. v. Torohead, Inc.,* 61 USPQ2d 1164, 1172-73 (TTAB 2001). Opposer did not allege a date by which its mark(s) became famous and thus did not allege fame prior to Applicant's use date or filing date.

Accordingly, Applicant's cross-motion to dismiss is hereby **granted**. However, as it is the general practice of the Board to allow a party an opportunity to correct a defective pleading, Opposer is allowed 30 DAYS from the date of this order to amend its petition for cancellation, failing which the petition to cancel as to the dilution claim will be dismissed with prejudice.

e. Summary

In view of the foregoing, Opposer's and Applicant's cross-motions for summary judgment on the issue of likelihood of confusion is **denied**. The Board finds that genuine disputes of material fact remain with respect to the likelihood of confusion claim. Opposer's motion for summary judgment as to Applicant's affirmative defenses is **moot** because the affirmative defenses were stricken due to Applicant's failure to offer any factual detail to provide Opposer fair notice of the basis of the defenses.

Lastly, as to Applicant's motion that is construed as a motion to dismiss Opposer's dilution claim, the motion is **granted**.

Accelerated Case Resolution ("ACR")

The relevant facts of this proceeding, particularly, if Opposer does not amend its notice of opposition to include a well-plead claim of dilution, is uncomplicated and the parties appear well-acquainted with them. Accordingly, the parties may wish to stipulate to resolution by means of the Board's ACR procedure. Specifically, the parties may elect to submit summary judgment-type briefs accompanied by evidence, perhaps incorporating the record for this motion, with supplementation. *See Freeman v. National Ass'n of Realtors,* 64 USPQ2d 1700, 1701 (TTAB 2002) (parties agreed that evidence and arguments submitted with petitioner's motion for summary judgment and respondent's response could be treated as the final record and briefs). *See also* TBMP § 528.05(a)(2) and authorities cites therein.

In the event that the parties agree to ACR, they will need to stipulate that the Board may resolve any genuine disputes of material fact the Board may find to exist. If the parties agree to ACR, they could realize a very significant savings in time and cost. *See* TBMP § 702.04 for more information. If the parties have questions about ACR, they are encouraged to contact the assigned interlocutory attorney.

V. SCHEDULE

Proceedings herein are resumed and dates are reset as follows:

Deadline to File Amended Notice of Opposition	**May 24, 2020**
Time to Answer Amended Notice of Opposition	**June 23, 2020**

Opposer's Pretrial Disclosures Due	**July 10, 2020**
Opposer's 30-day Trial Period Ends	**August 24, 2020**
Applicant's Pretrial Disclosures Due	**September 8, 2020**
Applicant's 30-day Trial Period Ends	**October 23, 2020**
Opposer's Rebuttal Disclosures Due	**November 7, 2020**
Opposer's 15-day Rebuttal Period Ends	**December 7, 2020**
BRIEFS ARE DUE AS FOLLOWS:	
Opposer's Main Brief Due	**February 5, 2021**
Applicant's Main Brief Due	**March 7, 2021**
Opposer's Reply Brief Due	**March 22, 2021**
REQUEST FOR ORAL HEARING:	
Deadline to Request Oral Hearing (optional):	**April 1, 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).