

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

January 3, 2020

Opposition No. 91246161

The Executors of the Estate of Les Paul

v.

Gibson Brands, Inc.

Rebecca Stempien Coyle, Interlocutory Attorney:

On October 14, 2019, Applicant filed a motion to dismiss Opposer's notice of opposition. 10 TTABVUE. On November 4, 2019, Opposer filed an amended notice of opposition. 12 TTABVUE. On November 25, 2019, Applicant filed a motion to dismiss directed to the amended notice of opposition. 14 TTABVUE.

Because Opposer filed its amended notice of opposition within twenty-one days after Applicant's first motion to dismiss, Opposer's amended notice of opposition is accepted as a matter of course and is now Opposer's operative pleading in this proceeding. Fed. R. Civ. P. 15(a)(1)(B). Applicant's October 14, 2019, motion to dismiss, which is directed to Opposer's original notice of opposition, is therefore moot and will be given no further consideration.

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. Trademark Rule 2.127(d). Accordingly, proceedings are **suspended** pending disposition of Applicant's second motion to dismiss. *Id.* Any paper filed during the pendency of this motion which is not germane thereto will be given no consideration. *Id.*

The parties should note that the schedule for the discovery conference, initial disclosures and discovery is also suspended by this order and will be reset in the event that the Board resumes proceedings. TBMP § 401.01.

Applicant's November 25, 2019, motion to dismiss will be decided in due course.