

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

May 5, 2020

Opposition No. 91246293

Ibrahim M. Nasser

v.

Kevin A. Broten

Andrew P. Baxley, Interlocutory Attorney:

The Board notes Opposer's notice (filed May 1, 2020) of "failure to complete or comply [with] discovery" requests that Opposer served on March 27, 2020, 17 TTABVUE. In that notice, Opposer threatens to move for summary judgment if Applicant does not "satisfy the discovery request."

Such notice is not well-taken.¹ The discovery period closed in this case on December 24, 2019, more than four months ago. 6 TTABVUE 13. Any discovery requests in this case were required to be served early enough in the discovery period so that responses would be due by no later than the close of discovery. *See* Trademark Rule 2.120(a)(3). That is, Opposer was required to serve any discovery requests in this case by the thirty-first day prior to the close of the discovery period, November 24, 2019. *See Estudi Moline Dissey, S.L. v. BioUrn Inc.*, 123 USPQ2d 1268, 1270

¹ Unless filed as an exhibit to a motion related thereto, correspondence between parties generally should not be filed with the Board. *See* Trademark Rule 2.120(k)(8).

(TTAB 2017). Based on the foregoing, the discovery requests at issue in Opposer's notice were served more than three months after the close of discovery and are untimely by more than four months. Applicant need not respond to those discovery requests. *See* TBMP § 403.01. Further, because the due date for Opposer's pretrial disclosures was April 20, 2020 (14 TTABVUE 9), Opposer may no longer file a motion to compel or a motion for summary judgment in this case. *See* Trademark Rule 2.120(f)(1) and 2.127(e)(1). Opposer's notice will receive no further consideration.

Dates remain as last reset in the February 20, 2020 order. Under the schedule set forth in that order, Opposer's testimony period opens on May 6, 2020.