

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](mailto:TTABInfo@uspto.gov)

EJW/ra

October 25, 2019

Opposition No. 91250246

*The Village Recorder*

*v.*

*Darius Bolden*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

The answer to the notice of opposition was due September 25, 2019. Applicant filed a communication on September 10, 2019.

**I. No Proof of Service on Opposer's Counsel**

Applicant's communication does not indicate proof of service of a copy of same on counsel for Opposer as required by Trademark Rule 2.119. As explained below, strict compliance with Trademark Rule 2.119 is required in all further submissions filed with the Board. **The Board may decline to consider any future submission filed in this proceeding by Applicant which does not include proof of service.**

## II. Applicant's "Answer"

The Board presumes that this communication is intended as Applicant's answer to the notice of opposition. However, said communication does not comply with Fed. R. Civ. P. 8(b), which is made applicable to this proceeding by Trademark Rule 2.116(a).

Fed. R. Civ. P. 8(b) provides, in part:

(b) Defenses; Admissions and Denials.

(1) *In General*. In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(5) *Lacking Knowledge or Information*. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

The notice of opposition filed by Opposer consists of ten (10) paragraphs setting forth the basis of Opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b), Applicant must answer the notice of opposition **by admitting or denying the allegations contained in each paragraph, that is, Applicant must state, "admitted" or "denied."** If Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, he should so state and this will have the effect of a denial. Trademark Rule 2.106(b)(2).

In view of the foregoing, Applicant is allowed until **THIRTY DAYS from the date of this order** in which to file through ESTTA pursuant to Trademark Rule 2.106(b)(1)<sup>1</sup>, and serve pursuant to Trademark Rule 2.119(b), an answer which complies with Fed. R. Civ. P. 8(b).

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<sup>1</sup> Instructions and forms for filing through ESTTA are available at <http://estta.uspto.gov>. All Board proceeding files can be viewed via TTABVUE at <http://ttabvue.uspto.gov>.

### III. Answer Due; Trial Dates Reset

In view of the foregoing, the parties' mandatory discovery conference, disclosure due dates, discovery and trial dates are also reset as follows:

<b>Time to Answer</b>	<b>11/24/2019</b>
<b>Deadline for Discovery Conference</b>	<b>12/24/2019</b>
<b>Discovery Opens</b>	<b>12/24/2019</b>
<b>Initial Disclosures Due</b>	<b>1/23/2020</b>
<b>Expert Disclosures Due</b>	<b>5/22/2020</b>
<b>Discovery Closes</b>	<b>6/21/2020</b>
<b>Plaintiff's Pretrial Disclosures Due</b>	<b>8/5/2020</b>
<b>Plaintiff's 30-day Trial Period Ends</b>	<b>9/19/2020</b>
<b>Defendant's Pretrial Disclosures Due</b>	<b>10/4/2020</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>11/18/2020</b>
<b>Plaintiff's Rebuttal Disclosures Due</b>	<b>12/3/2020</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>1/2/2021</b>
<b>Plaintiff's Opening Brief Due</b>	<b>3/3/2021</b>
<b>Defendant's Brief Due</b>	<b>4/2/2021</b>
<b>Plaintiff's Reply Brief Due</b>	<b>4/17/2021</b>
<b>Request for Oral Hearing (optional) Due</b>	<b>4/27/2021</b>

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).

**THE FOLLOWING INFORMATION ON BOARD PROCEEDINGS IS PROVIDED AS A COURTESY TO APPLICANT.**

- **Nature of an Opposition Proceeding**

An *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.**

- **Legal Representation Is Strongly Encouraged**

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent itself, or him or herself, it is generally advisable for a person (including an entity) who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition or cancellation proceeding to secure the services of an attorney who is familiar with such matters. The U.S. Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that Applicant obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed at the USPTO's Trademarks page: <https://www.uspto.gov/trademark/laws-regulations>. The Board's main webpage, <https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board>, includes information on the Trademark Rules applicable to Board proceedings, on the Board's online systems, Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE ("TBMP").<sup>2</sup> Further, all Board proceedings and other information regarding the Trademark Trial and Appeal Board may be accessed at the following URLs: <http://ttabvue.uspto.gov/ttabvue/> and <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

- **Electronic Submissions to the Board**

All submissions in Board proceedings must be made via ESTTA, the Electronic

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<sup>2</sup> The TBMP may be accessed at the following URL: <https://tbmp.uspto.gov/RDMS/TBMP/current#/current/tbmpd0e18.html>.

System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and 2.126(b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are located at <http://estta.uspto.gov/>.

- **Requirement for Service on Adverse Party of All Papers Filed**

Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which Applicant may file in this proceeding (including for Applicant, the answer required herein) must be accompanied by “proof of service” of a copy on the adverse party or the adverse party’s counsel if one is appointed.

“Proof of service” usually consists of a signed, dated statement attesting to the following matters: (1) the title or nature of the paper being served, (2) the method of service (*i.e.*, electronic mail), (3) the person being served and the email address used to effect service, and (4) the date of service. This written statement should take the form of a “certificate of service” which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon Opposer by forwarding said copy, via email to: [insert email address].

The certificate of service must be signed<sup>3</sup> and dated.

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<sup>3</sup> An electronic signature comprises a forward slash, “/”, placed before and after the typed name of the person actually signing the document. *See* Trademark Rule 2.193; *see also* TBMP §§ 106.02 and 106.03.

- **All Parties Must Comply with Board Deadlines**

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). **Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.**

- **Applicant's Correspondence Address**

Applicant is reminded that it is his responsibility to ensure that the Board<sup>4</sup> has his current correspondence address, **including email address and telephone number**. See TBMP § 117.07 (If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party).

- **General Information on Discovery Conferences**

Applicant is referred to the Board's institution order in this proceeding, 2 TTABVUE, and to the following URL:

[http://www.uspto.gov/trademarks/process/appeal/RULES08\\_01\\_07.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf), see, e.g., pp. 42245, 42246, 42248 and 42252.

During the conference, the following topics must be discussed:

- (1) the nature of and basis for their respective claims and defenses;
- (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and;

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<sup>4</sup> When an *inter partes* proceeding is not pending before the Board, the registrant must maintain a current address with the Trademark Office.

(3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case.

Either party may request the participation of the Board in the discovery conference.

*See* Trademark Rule 2.120(a)(2), 37 C.F.R. § 2.120(a)(2).

- **Information on Initial Disclosures**

Applicant is referred to TBMP § 401.02 and to the following web addresses to obtain information regarding initial disclosures:

[http://www.uspto.gov/trademarks/process/appeal/RULES08\\_01\\_07.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf) and to

<http://edocket.access.gpo.gov/2006/pdf/06-197.pdf> or to

[http://www.uspto.gov/trademarks/process/appeal/RULES01\\_17\\_06.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES01_17_06.pdf). *See* Notice

of Final Rulemaking (“Miscellaneous Changes to Trademark Trial and Appeal

Board Rules”) in the Federal Register, 72 Fed. Reg. 147 (August 1, 2007) and 71

Fed. Reg. 10, 2501 (January 17, 2006).

