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TTAB

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

July 25, 2022

Opposition No. 91265013

*Guangzhou Huanmao Business Service Co.,
Ltd.*

v.

*Bigo Technology Pte. Ltd. and Likeme Pte.
Ltd.*

**Before Taylor, Kuczma, and English,
Administrative Trademark Judges.**

By the Board:

This proceeding comes up for consideration of Opposer’s motion for summary judgment, filed February 20, 2022.¹ The motion is fully-briefed.²

¹ 19 TTABVUE. Record citations are to TTABVUE, the Board’s publicly available docket history system. *See, e.g., New Era Cap Co. v. Pro Era, LLC*, 2020 USPQ2d 10596, at *2 n.1 (TTAB 2020).

² On March 9, 2022, the Board sua sponte joined Likeme Pte. Ltd. (“Likeme”) as a party-defendant in the proceeding in view of an assignment of the subject application from Bigo Technology Pte Ltd. (“Bigo Technology”) to Likeme. 20 TTABVUE 1-2. Bigo Technology filed an opposition to the motion for summary judgment on March 21, 2022. 21 TTABVUE. Four days later, and after the deadline for filing the opposition, counsel for Bigo Technology filed a “Notice of Assignment” and a “revised” opposition brief in the name of Likeme, incorporating by reference the previously-filed attachments. *See* 22 TTABVUE. Because the two opposition briefs appear to be otherwise identical, and because Opposer did not object, we exercise our discretion to consider the “revised” opposition brief. Counsel’s assertion that “Likeme Pte. Ltd. is the sole defendant,” however, is incorrect, as Likeme and Bigo Technology are joined co-defendants. *See* 20 TTABVUE 1-2. A motion to substitute Likeme for Bigo Technology has not been filed, nor has Opposer consented to substitution. In any

We have considered the parties' briefs and accompanying evidence, but address the record only to the extent necessary to set forth our analysis and findings and do not repeat or address all of the parties' arguments or evidence. *See Omega SA (Omega AG) (Omega Ltd.) v. Alpha Phi Omega*, 118 USPQ2d 1289, 1292 n.11 (TTAB 2016); *Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

I. Background

Guangzhou Huanmao Business Service Co., Ltd. opposes registration on the Principal Register of the stylized mark **Likee** for the following goods in International Class 9:

Downloadable software in the nature of a mobile application for social networking; Downloadable software in the nature of a mobile application for facilitating communication through audio, video, image and text messaging over a wireless network; Downloadable graphics for mobile phones; Downloadable music files; Downloadable software in the nature of a mobile application for casual social online game; Downloadable video files in the fields of music, movies, digital pictures, mobile games, reality show, dancing performance, singing performance; Downloadable applications for mobile phones to download music and videos; Cinematographic film, exposed; Video disks with recorded animated cartoons; Downloadable electronic publications in the nature of books, magazines, news journals, booklets, manuals, and pamphlets, in the fields of music, entertainment and games.³

event, the Board already determined that, given the timing of the assignment from Bigo Technology to Likeme, joinder is appropriate to facilitate discovery and trial. *Id.* The Board herein refers to Bigo Technology and Likeme, collectively, as "Defendants."

The Board notes Defendants' exhibits are not labeled or separated by divider pages. Failure to organize and label exhibits makes the Board's review of filings difficult and may delay resolution of matters before the Board. The Board has used its best efforts to associate documents with the exhibits described by Defendants. *See* "TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS" at the conclusion of this order.

³ Application Serial No. 88432124, filed May 15, 2019 on the basis of bona fide intent to use the mark in commerce pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). The mark is described as the stylized wording "Likee". The application states that the term "likee" has no meaning in a foreign language. Color is not claimed as a feature of the mark.

The amended notice of opposition asserts a claim of likelihood of confusion under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), with Opposer’s previously used common law mark LIKEE.⁴ Opposer also pleads ownership of a pending application for registration of the mark LIKEE, in standard characters, on the Principal Register for “Camcorders; Headphones; Scales; Sunglasses; Videorecorders; Cinematographic cameras; Facsimile machines; Galvanic cells; Geiger counters; Integrated circuits; Measuring buckets; Notebook computers; Optical lenses; Smartphone mounts; Telephone apparatus; Video screens” in International Class 9, which Opposer alleges has been refused in view of Defendants’ subject application.⁵ In an order dated May 11, 2021, the Board found that the amended notice of opposition states a sufficient claim under Section 2(d) based on Opposer’s alleged prior use of its pleaded LIKEE mark for “headphones, optical lenses, video screens, smartphone mounts”⁶

By their answer to the amended notice of opposition, Defendants admit Opposer filed the referenced application for its pleaded mark. Defendants also admit:

Applicant’s applied-for “LIKEE” mark (stylized) is confusingly similar to Opposer’s “LIKEE” mark (standard character) in appearance sound, connotation, and commercial impression. The wording in Applicant’s applied-for mark is the same as the wording in the Opposer’s mark. Both marks are comprised of the word “LIKEE”. The sound of the two marks is also similar because the two marks are phonetically equivalent. In addition, the connotation and commercial impression of the two marks do not differ when considered in connection with Applicant’s and Opposer’s respective goods.⁷

⁴ 8 TTABVUE.

⁵ Application Serial No. 90077134, filed July 28, 2020 pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging first use and first use in commerce of March 17, 2017. Opposer states that the term “likee” has no meaning in a foreign language.

⁶ See 15 TTABVUE 12 (citing 8 TTABVUE 5, ¶ 9).

⁷ Compare 8 TTABVUE 2-3, 4-5, ¶¶ 1, 8, with 18 TTABVUE 2-3, ¶¶ 1, 8.

Defendants deny the other salient allegations of the amended complaint.

Opposer argues there are no genuine disputes of material fact that it is entitled to summary judgment on its likelihood of confusion claim. Opposer asserts it has priority based on earlier use of its pleaded mark, and the parties' marks are likely to be confused because the goods are related and the parties' goods travel in the same channels of trade. Opposer submits evidence under cover of two declarations. First, Opposer's Manager, Guodong He, states that "Opposer started using the 'LIKEE' mark in commerce in the United States prior to the filing date of Applicant's U.S. Application No. 88432124 and has continuously used the 'LIKEE' mark in connection with its products."⁸ Mr. He provides copies of printouts from the Amazon online marketplace to support his averment of Opposer's prior use of the LIKEE mark for smart sports wrist bands, fitness trackers, bluetooth speakers, virtual reality headsets, and car mounts for cellphones.⁹

Second, Opposer's counsel, Shiyong Ye, submits a declaration attaching printouts of: (a) records of Defendants' and Opposer's pending applications from the USPTO's electronic TSDR database,¹⁰ and (b) Internet websites of third parties Apple, Samsung, Sony, and Sony PlayStation.¹¹ Opposer argues the websites show "the same entity offering Opposer's goods such as headphones/earbuds, speakers, fitness tracker/bands and virtual reality headsets along with Applicant's Goods identified in

⁸ 19 TTABVUE 14, ¶ 2.

⁹ *Id.* at 14, ¶¶ 3-4; *id.* at 17-159 (Exhs. 1 and 2).

¹⁰ *Id.* at 160-61, ¶¶ 3-5; *id.* at 166-82 (Exhs. 3-5).

¹¹ *Id.* at 161-62, ¶¶ 6-9; *id.* at 183-327 (Exhs. 6-9).

U.S. Application No. 88432124 such as social networking software, mobile applications for communicating, recorded digital media, and similar goods.”¹²

In opposition to the motion, Defendants argue Opposer’s evidence shows, at most, only one instance where Opposer’s pleaded “headphones” and “video screens” originate from the same source as one type of goods identified in the subject application – namely, “downloadable applications for mobiles phones to download music.” Defendants argue “this evidence alone is insufficient to show that Applicant’s Goods and Opposer’s Goods commonly originate from the same source.”¹³ In support of this argument, Defendants rely on printouts from the USPTO electronic TESS database of ten registrations that identify “headphones” or “video screens” but do not identify Defendants’ goods.¹⁴ Defendants also provide print outs of twenty-five third-party registrations “that identify downloadable applications for mobile phones for downloading music, none of which identify any of Opposer’s goods.”¹⁵ In addition, under cover of the declaration of their counsel John Alunit, Defendants submit screenshots of mobile applications for downloading music, which Defendants argue “shows that such apps are provided by smaller, lesser-known companies than Apple,

¹² *Id.* at 11.

¹³ 22 TTABVUE 15.

¹⁴ 21 TTABVUE 41-60 (Attachment 6).

¹⁵ *Id.* at 61-115 (Attachment 7). We consider the supplied print-out of search results from the USPTO’s TESS database for whatever probative value it may have. *Id.* at 38-40 (Attachment 5). *Edom Labs., Inc. v. Lichter*, 102 USPQ2d 1546, 1550 (TTAB 2012) (listing of third-party marks downloaded from USPTO records does not make registrations of record); *see also* TBMP § 704.03(b)(1)(B). Also, we do not consider Defendants’ examples of third-party websites, *id.* at 116-44 (Attachment 8), because these documents do not bear a date and therefore are not self-authenticating. *See* Trademark Rule 2.122(e), 37 C.F.R. § 2.122(e). *See also* TBMP 704.08(b).

Samsung or Sony [which] specialize in music download, and are not known for selling the type of goods offered by Opposer.”¹⁶

In reply, Opposer supplies a table purporting to show correlation of the products shown in the submitted third-party websites with the goods sold under Defendants’ and Opposer’s marks.¹⁷

II. Relevant Law

Summary judgment is appropriate only where there are no genuine disputes as to any material facts, thus allowing the case to be resolved as a matter of law. Fed. R. Civ. P. 56(a). The burden is on the party moving for summary judgment to demonstrate the absence of any genuine dispute of material fact, and that it is entitled to summary judgment as a matter of law. Fed. R. Civ. P. 56(c). When a moving party’s motion for summary judgment is supported by evidence sufficient to indicate that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment, the burden shifts to the non-moving party to demonstrate the existence of at least one genuine dispute as to a material fact that requires resolution at trial.

A factual dispute is genuine if, on the evidence of record, a reasonable fact finder could resolve the matter in favor of the non-moving party. *See Opryland USA Inc. v.*

¹⁶ 22 TTABVUE 15-16; 21 TTABVUE 145-54. Mr. Alunit testifies that he accessed the screenshots on March 13, 2022 via the iPhone app store. 21 TTABVUE 145. This testimony is sufficient to make the materials of record for our consideration. *See Icon Health & Fitness, Inc. v. Eifit LLC*, 2022 USPQ2d 315, at *14 (TTAB 2022) (a witness may identify and authenticate Internet documents).

¹⁷ 23 TTABVUE 3-8.

Great Am. Music Show Inc., 970 F.2d 847, 23 USPQ2d 1471, 1472 (Fed. Cir. 1992); *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992). Evidence on summary judgment must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *Lloyd's Food Prods., Inc. v. Eli's, Inc.*, 987 F.2d 766, 25 USPQ2d 2027, 2029 (Fed. Cir. 1993); *Opryland*, 23 USPQ2d at 1472. The Board may not resolve genuine disputes as to material facts; it may only ascertain whether genuine disputes as to material facts exist. *See Lloyd's*, 25 USPQ2d at 2029; *Olde Tyme*, 22 USPQ2d at 1542.

To prevail on summary judgment on a claim of likelihood of confusion, Opposer must establish there is no genuine dispute either that it is entitled to a statutory cause of action, it has priority of use, and contemporaneous use of the parties' marks in connection with their respective goods or services would be likely to cause confusion, mistake or to deceive consumers regarding the source of the respective goods or services. *See* Trademark Act Section 2(d); *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001). We base our determination on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion. *In re E. I. DuPont DeNemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) ("*DuPont*"), cited in *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 113 USPQ2d 2045, 2049 (2015). *See also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). "In discharging this duty, the thirteen *DuPont* factors 'must be considered'

‘when [they] are of record.’” *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019) (citations omitted).

A party may not obtain summary judgment, however, on an issue that has not been pleaded. *See* Fed. R. Civ. P. 56(a); *Omega*, 118 USPQ2d at 1291 n.2, 1292 (applicant may not obtain summary judgment on unpleaded defense) (citing *Bausch & Lomb Inc. v. Karl Storz GmbH & Co. KG*, 87 USPQ2d 1526, 1528 n.3 (TTAB 2008)); *Paramount Pictures Corp. v. White*, 31 USPQ2d 1768, 1772 (TTAB 1994) (summary judgment is not appropriate on unpleaded issue) (internal citations omitted); *see also* TBMP § 528.07(a).

III. Analysis

As an initial matter, as previously found by the Board, the amended notice of opposition sufficiently pleads Opposer’s Section 2(d) claim with regard to headphones, optical lenses, video screens, and smartphone mounts. Thus, in deciding Opposer’s motion for summary judgment, we do not consider the wider variety of unpleaded goods shown in Opposer’s evidence, such as Bluetooth speakers, fitness tracker/bands, and virtual reality headsets.¹⁸ *Omega SA*, 118 USPQ2d at 1291 n.2, 1292.

As to priority, Defendants are entitled to rely on the filing date of the subject application, May 15, 2019, as their constructive date of first use. *Zirco Corp. v. Am. Tel. and Tel. Co.*, 21 USPQ2d 1542, 1544 (TTAB 1991) (“[T]here can be no doubt but

¹⁸ If Opposer wants to rely on such goods in support of its pleaded claim under Trademark Act Section 2(d), it must seek leave to amend its notice of opposition to so plead. *See* Fed. R. Civ. P. 15(a); *see also* TBMP § 507.02.

that the right to rely upon the constructive use date comes into existence with the filing of the intent-to-use application and that an intent-to-use applicant can rely upon this date in an opposition brought by a third party asserting common law rights.”). Accordingly, Opposer must prove prior common law use of its LIKEE mark.

In support of Opposer’s claim of prior common law use, Mr. He’s declaration states, vaguely, that “Opposer started using the ‘LIKEE’ mark in commerce in the United States prior to the filing date of Applicant’s U.S. Application No. 88432124 and has continuously used the ‘LIKEE’ mark in connection with **its products**.”¹⁹ Yet, Opposer provides undisputed evidence in support of its priority of use as to headphones and car mounts for cell phones.²⁰ Thus, there is no dispute of genuine material fact that Opposer has priority as to only these two goods.²¹

Turning to the thirteen *DuPont* factors, Defendants dispute only the issue of the similarity of the parties’ respective goods. *See In re Chatam Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945-46 (Fed. Cir. 2004); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry

¹⁹ 19 TTABVUE 14, ¶ 2 (emphasis added).

²⁰ *See id.* at 44-70 (sales of headphones/earbuds from 2016-18), 134-59 (sales of car mounts for cellphones from 2016-18). Opposer has not submitted any documentary evidence to support prior use of its mark for video screens or optical lenses, and Mr. He’s vague averment that Opposer has used the LIKEE mark with “its products” is not sufficient to establish prior use for these goods. *Executive Coach Builders, Inc. v. SPV Coach Co.*, 123 USPQ2d 1175, 1184 (TTAB 2017) (“The oral testimony even of a single witness may be adequate to establish priority, but only if it is sufficiently probative Such testimony ‘should not be characterized by contradictions, inconsistencies, and **indefiniteness** but should carry with it conviction of its accuracy and applicability.”) (emphasis added) (quoting *B.R. Baker Co. v. Lebow Bros.*, 150 F.2d 580, 66 USPQ 232, 236 (CCPA 1945) and *Nationstar Mortg. LLC v. Ahmad*, 112 USPQ2d 1361, 1372 (TTAB 2014)).

²¹ We make this determination for purposes of summary judgment only. *See n. 25, infra.*

mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks.”). *See also In re i.am.symbolic, llc*, 866 F.3d 1315, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017) (“The likelihood of confusion analysis considers all *DuPont* factors for which there is record evidence but ‘may focus . . . on dispositive factors, such as similarity of the marks and relatedness of the goods.’”) (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)).

“[L]ikelihood of confusion can be found ‘if the respective products are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Coach Servs. Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). In this regard, the Federal Circuit has stated that “evidence, such as whether a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis” *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002).

Opposer’s evidence, however, provides only one example of a source arguably offering the pertinent goods of both parties – namely, that Apple offers headphones (under the marks “AirPods” and “AirPods Max”), earbuds (under the mark “EarPods”), and “downloadable applications for mobiles phones to download music” (under the mark “Apple Music”).²² One example of a company that may be selling the

²² 19 TTABVUE 186-87, 197-99, 208-09. Opposer argues earbuds are “related” to headphones. 23 TTABVUE 5. It is not entirely clear, however, that the “Apple Music” application allows

goods of both Opposer and Defendants (under different marks) is insufficient to establish there is no genuine dispute of material fact that such goods are related: that is, that consumers would expect to find headphones/earbuds and downloadable applications to download music emanating from a common source.²³ *Cf. In re C.H. Hanson Co.*, 116 USPQ2d 1351, 1355-56 (TTAB 2015) (relatedness found where Internet evidence from six companies and five use-based third-party registrations demonstrated goods commonly emanated from the same source under a single mark) (citations omitted).

Upon careful consideration of the parties' arguments and evidence, and drawing all reasonable inferences with respect to the motion in favor of Defendants as the nonmoving party, we find that Opposer has not carried its burden to demonstrate that no genuine dispute of material fact remains for trial as to its Section 2(d) claim. At a minimum, a genuine dispute of material fact exists as to similarity of Defendants' involved goods to Opposer's pleaded goods.

Accordingly, the motion for summary judgment is **denied**.²⁴

consumers to download (as opposed to stream) music: the exhibit states only that the consumer may “[g]et unlimited access to millions of tracks, curated playlists and original content from the artists you know and love.” 19 TTABVUE 186.

²³ Even were we to consider that Apple offers the aforesaid goods under its APPLE house mark, such marks are less persuasive on the issue of relatedness of goods as they are used to identify a broad range of products in different fields. *See In re Donnay Int'l, S.A.*, 31 USPQ2d 1953, 1954 n.3 (TTAB 1994) (minimizing the significance of two third-party registrations for house marks); *but see Wet Seal, Inc. v. FD Mgmt., Inc.*, 82 USPQ2d 1629, 1640 (TTAB 2007) (finding relatedness where evidence showed it is not unusual for a company to use a variation of its house mark when extending clothing line to fragrances and other cosmetics). *See also* TRADEMARK MANUAL OF EXAMINING PROCEDURE § 1402.03(b) (July 2022) (discussing house marks).

²⁴ We need not, therefore, reach the issue of the sufficiency of Defendants' remaining evidence. Nonetheless, for purposes of supplying guidance for trial, although third-party

IV. Dates Reset

Proceedings are **resumed**.²⁵ Dates for disclosure and trial are **reset** as follows:

Plaintiff's Pretrial Disclosures Due	8/15/2022
Plaintiff's 30-day Trial Period Ends	9/29/2022
Defendants' Pretrial Disclosures Due	10/14/2022
Defendants' 30-day Trial Period Ends	11/28/2022
Plaintiff's Rebuttal Disclosures Due	12/13/2022
Plaintiff's 15-day Rebuttal Period Ends	1/12/2023
Plaintiff's Opening Brief Due	3/13/2023

registrations showing that various entities have adopted a single mark for the goods of both parties may have probative value to the extent that they suggest that the goods identified therein are of a type which may emanate from the same source, *see, e.g., Joel Gott Wines, LLC v. Rehoboth Von Gott, Inc.*, 107 USPQ2d 1424, 1432 (TTAB 2013), the opposite is not true. *In re G.B.I. Tile & Stone, Inc.*, 92 USPQ2d 1366, 1370 (TTAB 2009) (“[T]he mere fact that some goods are not included in a registration’s identification of goods does not establish that the *owner of the mark* has not registered the mark for those goods in another registration since, for example, the registrant may have begun using the mark on those goods at a later date.”) (emphasis in original). Nor have Defendants provided any evidentiary support for their argument that “smaller, lesser-known companies than Apple, Samsung or Sony . . . [which] specialize in music download, [] are not known for selling the type of goods offered by Opposer.” 22 TTABVUE 15-16 (referring to Attachment 9). *See, e.g., Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1799 (Fed. Cir. 2018) (assertions of fact in brief are not evidence); *Gemtron Corp. v. Saint-Gobain Corp.*, 572 F.3d 1371, 91 USPQ2d 1409, 1415 (Fed. Cir. 2009) (reasoning that a party’s “unsworn attorney argument . . . is not evidence” and thus cannot rebut record evidence); *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 76 USPQ2d 1616, 1622 (Fed. Cir. 2005) (“Attorney argument is no substitute for evidence.”).

²⁵ The parties should note that the evidence submitted in connection with the motion for summary judgment is of record only for consideration of that motion. To be considered at final hearing, any such evidence must be properly introduced during the appropriate trial period. *See Land O’ Lakes, Inc. v. Hugunin*, 88 USPQ2d 1957, 1960 n.7 (TTAB 2008); *Univ. Games Corp. v. 20Q.net, Inc.*, 87 USPQ2d 1465, 1468 n.4 (TTAB 2008); *Levi Strauss & Co. v. R. Josephs Sportswear, Inc.*, 28 USPQ2d 1464 (TTAB 1993) (declaration of witness submitted in connection with summary judgment motion was part of record for trial where witness identified and attested to accuracy of it during applicant’s testimony period). Furthermore, the fact that we have identified a genuine dispute of material fact sufficient to deny the motion should not be construed as a finding that this is the only issue which remains for trial. Should this matter proceed to trial, the burden remains on Opposer to prove its case, including evidence of its entitlement to bring a statutory cause of action and **clear and specific evidence** of its priority of use as to each category of goods upon which it seeks to rely.

Defendants' Brief Due	4/12/2023
Plaintiff's Reply Brief Due	4/27/2023
Request for Oral Hearing (optional) Due	5/7/2023

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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or **evidence**, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered - use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126.

Submissions failing to meet all of the criteria above may require re-filing.

Note: Parties are strongly encouraged to check the entire document before filing.²⁶

The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the **ESTTA help** webpage.

²⁶ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.