

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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EY/TAB/CME

December 27, 2021

Opposition No. 91271507

MagicSnow Systems LLC

v.

Anker Play Products, LLC

Christen M. English, Administrative Trademark Judge:

On September 7, 2021, Opposer filed a notice of opposition and the Board served the notice of opposition on Applicant. 1 TTABVUE and 2 TTABVUE. On October 13, 2021, and before Applicant filed an answer, Opposer filed an amended notice of opposition.¹

Pursuant to Fed. R. Civ. P. 15(a)(1), made applicable to Board proceedings by Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a), a party may amend its pleading once as a matter of course within 21 days after serving it, or if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Fed. R. Civ. P. 12(b), (e) or (f), whichever is earlier. *See* Trademark Rule 2.107, 37 C.F.R. § 2.107; TBMP § 507.01. However, as a practical matter, because the time to answer set by the Board's institution order is

¹ Applicant's change of correspondence address filed on December 22, 2021 is noted. *See* 7 TTABVUE. The Board's records have been updated accordingly.

40 days, a plaintiff may amend its complaint once as a matter of course beyond the initial 21 days from serving it until the defendant files either an answer or a motion under Fed. R. Civ. P. 12(b), (e) or (f). *See* TBMP § 507.02.

Opposer's amended notice of opposition was filed as a matter of course before Applicant filed an answer, and is accepted as Opposer's operative pleading in this proceeding. *See* Fed. R. Civ. P. 15(a)(1)(A).

Applicant is allowed until **January 31, 2022** to file an answer to the amended notice of opposition. The proceeding schedule is reset as follows:

Time to Answer	1/31/2022
Deadline for Discovery Conference	3/2/2022
Discovery Opens	3/2/2022
Initial Disclosures Due	4/1/2022
Expert Disclosures Due	7/30/2022
Discovery Closes	8/29/2022
Plaintiff's Pretrial Disclosures Due	10/13/2022
Plaintiff's 30-day Trial Period Ends	11/27/2022
Defendant's Pretrial Disclosures Due	12/12/2022
Defendant's 30-day Trial Period Ends	1/26/2023
Plaintiff's Rebuttal Disclosures Due	2/10/2023
Plaintiff's 15-day Rebuttal Period Ends	3/12/2023
Plaintiff's Opening Brief Due	5/11/2023
Defendant's Brief Due	6/10/2023
Plaintiff's Reply Brief Due	6/25/2023
Request for Oral Hearing (optional) Due	7/5/2023

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).