

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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mbm

May 11, 2022

Opposition No. 91274662

Agilent Technologies, Inc.

v.

mAgilEnt LLC

Mary Beth Myles, Interlocutory Attorney:

The deadline to conduct the mandatory discovery conference in this proceeding under Fed. R. Civ. P. 26(f) and Trademark Rule 2.120(a)(2)(i) was scheduled for May 3, 2022 by the Board's February 22, 2022 institution order. Having encountered difficulty scheduling the conference with Applicant, on May 2, 2022, Opposer's counsel contacted the Board by telephone to request that the Board aid in the scheduling of the conference and participate therein. The Board granted the request and on May 2, 2022 sent an email to both parties at their respective email addresses of record. By that email, the Board directed the parties to respond with an agreeable time to hold the conference.

On May 3, 2022, both Opposer's counsel and Applicant responded, providing availability for the discovery conference. The Board then set the discovery conference for May 10, 2022 at 1:00 pm ET and provided call-in instructions to the parties by

email. On May 10, at 1:00 pm ET, the Board convened the conference with Alexander Garcia and Julie Kent appearing for Opposer and Interlocutory Attorney Mary Beth Myles appearing on behalf of the Board. By 1:10 pm, Applicant had not appeared and the Board adjourned the discovery conference.

In the interest of promoting, among other things, cooperation in the discovery process, parties are required to hold a conference to discuss plans for discovery. *See* Trademark Rule 2.120(a)(2); Fed. R. Civ. P. 26(f). All parties to a proceeding have a duty to cooperate and conduct the discovery conference in a timely fashion. *See, e.g., Promgirl, Inc. v. JPC Co.*, 94 USPQ2d 1759, 1762 (TTAB 2009) (responsibility to schedule a conference and to confer on each of the topics outlined in Fed. R. Civ. P. 26 and the institution order is a shared responsibility); *Guthy-Renker Corp. v. Boyd*, 88 USPQ2d 1701, 1703 (TTAB 2008) (“it is the equal responsibility of both parties to ensure that the discovery conference takes place by the assigned deadline”). The conference must be held prior to the opening of the discovery period. Trademark Rule 2.120(a)(2)(i). *See also* MISCELLANEOUS CHANGES TO TRADEMARK TRIAL AND APPEAL BOARD RULES, 72 Fed. Reg. 42242, 42245 (August 1, 2007). The Board has the authority to order parties to hold a discovery conference, either sua sponte or upon motion. *See, e.g., Promgirl, Inc.*, 94 USPQ2d at 1763. Accordingly, the Board **orders** the parties to appear for the discovery conference by telephone on Friday, May 13, at 12:00 pm ET.

The parties are directed to contact the Board’s Interlocutory Attorney at the designated time by using the below conference line:

Dial: 571-273-0000
Meeting Number: 20016
Access Code: 363167811

Applicant is cautioned that should Applicant fail to participate in the conference as scheduled, the Board may order Applicant to show cause why judgment should not be entered against it for failure to participate in the discovery conference. Alternatively, Applicant may be subject to a motion for sanctions under Trademark Rule 2.120(h). *See Patagonia, Inc. v. Azzolini*, 109 USPQ2d 1859, 1861-63 (TTAB 2014). In any event, the Board may, for Applicant's failure to satisfy the Board's show cause order or upon grant of a motion for sanctions for failure to participate in the discovery conference, impose any of the sanctions provided in Fed. R. Civ. P. 37(b)(2), including judgment. *Id.*

In view of the foregoing, the proceeding is **suspended** pending the discovery conference.