

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

May 11, 2022

Opposition No. 91275359

Unity IPR ApS

v.

UNITYPAY LLC

Denise M. DelGizzi, Chief Clerk of the Board:

On May 9, 2022, Applicant filed an answer to the notice of opposition and a counterclaim to cancel Opposer's pleaded Registration Nos. 4978183 and 6121758. Applicant submitted the required fee.

Applicant seeks to cancel Opposer's Registration No. 4978183 for the mark UNITY with regard to the following goods in International Class 9 only:

Computer software used to process mobile payments; Computer software for the storage, transmission, verification, processing and authentication of credit and debit card and other payment and transaction information; Computer software for ensuring the security of mobile payments; Computer software for providing an online database in the field of transaction processing to upload transactional data, provide statistical analysis, and produce notifications and reports.¹

¹ The cover sheet for the Answer and Counterclaims listed all goods in International Class 9 identified in the registration, while the Counterclaims enumerated only these goods.

Applicant seeks to cancel Opposer's Registration No. 6121758 for the mark UNITY with regard to the following goods in International Class 9 only:

Downloadable and recorded computer software for enabling processing of mobile payments; Downloadable and recorded computer software for providing an online database in the field of transaction processing to upload transactional data, provide statistical analysis, and produce notifications and reports.²

Opposer and counterclaim defendant, Unity IPR ApS, is allowed until thirty days from the mailing date of this order to file an answer to the counterclaim. *See* Trademark Rule 2.106(b)(3)(iii).

In accordance with the Trademark Rules of Practice, the parties' obligation to hold their discovery conference by the deadline stated in the prior order is stayed, and conferencing, disclosure, discovery and trial periods are reset as indicated below. *See* Trademark Rule 2.121(b)(2).

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| Answer to Counterclaim Due | 6/10/2022 |
| Deadline for Discovery Conference | 7/10/2022 |
| Discovery Opens | 7/10/2022 |
| Initial Disclosures Due | 8/9/2022 |
| Expert Disclosures Due | 12/7/2022 |
| Discovery Closes | 1/6/2023 |
| Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim | 2/20/2023 |
| 30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim | 4/6/2023 |
| Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim | 4/21/2023 |
| 30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim | 6/5/2023 |
| Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim | 6/20/2023 |
| 30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim | 8/4/2023 |

² *Id.*

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|---|------------|
| Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim | 8/19/2023 |
| 15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim | 9/18/2023 |
| Opening Brief for Party in Position of Plaintiff in Original Claim Due | 11/17/2023 |
| Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due | 12/17/2023 |
| Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due | 1/16/2024 |
| Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due | 1/31/2024 |
| Request for Oral Hearing (optional) Due | 2/10/2024 |

When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates. *See* Trademark Rule 2.121(d).

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.³ 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.

³ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.