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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91276956
Party	Defendant Long Zhang
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Submission	Motion to Dismiss 2.132
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Date	07/11/2023
Attachments	2023-7-11 - Motion for Judgment .pdf(126105 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

THE COOKING GUILD LTD.,

Opposer,

v.

LONG ZHANG,

Applicant.

Opposition No. 91276956

Serial No. 97/003,900

APPLICANT’S MOTION FOR JUDGMENT

Pursuant to 37 C.F.R. § 2.132(a) and TBMP § 534.02, Applicant Long Zhang (“Applicant”), respectfully moves the Board enter a judgment against Opposer The Cooking Guild Ltd., and states the following:

Opposer initiated this opposition proceeding on June 21, 2022. 1 TTABVUE. Under the current scheduling order, Opposer’s 30-day Trial Period ends on June 30, 2023. 9 TTABVUE 1. As of today, Opposer has yet taken testimony or offered any other evidence.

If the time for taking testimony by any party in the position of plaintiff has expired and it is clear to the Board from the proceeding record that such party has not taken testimony or offered any other evidence, the Board may grant judgment for the defendant. 37 C.F.R. § 2.132(a). Any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute. *Ibid.* In the absence of a showing of excusable neglect, judgment may be rendered against the party in the position of plaintiff. *Ibid.* A motion for judgment under 37 CFR § 2.132(a) should be filed before the opening of the moving party’s testimony period, but the Board may, in its discretion, grant the motion even if it is filed thereafter. TBMP § 534.02.

Applicant's Motion for Judgment is timely. Its testimony period has yet opened. *See* 9 TTABVUE 1 (setting Applicant's Pretrial Disclosures due on July 15, 2023). The clear record shows that Opposer has not taken testimony or offered any other evidence during its trial period. As such, the Board should grant Applicant's motion and enter a judgment for Applicant. *See Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710, 1712 (Fed. Cir. 1991) (Board did not abuse discretion in denying motion to reopen testimony and dismissing proceeding on motion to dismiss where plaintiff submitted no evidence and failed to make a prima facie case); *Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542, 1544 (TTAB 2001) (motion to extend testimony period denied; motion to dismiss granted).

For the foregoing reasons, Applicant respectfully requests the Board grant this motion and enter a judgment for Applicant.

DATED July 11, 2023.

Respectfully submitted,

By: /s/ Timothy T. Wang

Timothy T. Wang

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ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION FOR JUDGMENT** has been served upon Alan F. Feeney and colleagues by forwarding said copy on July 11, 2023 via email to the email addresses on file for Opposer: Alan@FeeneyLawGroup.com, JSHyde@FeeneyLawGroup.com, Donald@FeeneyLawGroup.com, kirsten@virtuosolegal.com.

By: /s/ Timothy T. Wang
Timothy T. Wang