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

September 14, 2022

Opposition No. 91277548

Hangzhou Hikvision Digital Technology Co., Ltd.

v.

Creative Security Technology

Wendy Boldt Cohen, Interlocutory Attorney:

Proceedings are currently suspended pending disposition of Applicant's motion to strike. *See* 6 TTABVUE. Applicant's motion seeks to strike Opposer's claim of claim preclusion arguing that claim preclusion is improper and that Opposer cannot prevail because claim preclusion does not bar the current application. 4 TTABVUE. Although captioned as a motion to strike, Applicant's motion is a motion for summary judgment based on claim preclusion. *See e.g., Chutter, Inc. v. Great Concepts, LLC,* 119 USPQ2d 1865 (TTAB 2016); *Zoba Int'l Corp. v. DVD Format/LOGO Licensing Corp*, 98 USPQ2d 1106, 1108 (TTAB 2011). The Board may entertain a summary judgment motion filed prior to initial disclosures that is based upon issue or claim preclusion. *See* Trademark Rule 2.127(e)(1); *Compagnie Gervais Danone v. Precision Formulations LLC*, 89 USPQ2d 1251, 1255 n.7 (TTAB 2009).

Because Applicant's arguments regarding whether or not Opposer can prevail on the claim of claim preclusion necessarily relies on matters outside the pleadings, *i.e.*, the prior Board order, the motion will be treated as a motion for summary judgment. Fed. R. Civ. P. 12(b). *See* TBMP § 503.04 (2022) and cases cited therein.

The parties are accordingly notified that Applicant's motion will be considered a motion for summary judgment in regard to the issue of whether the doctrine of claim preclusion is applicable to this proceeding, pursuant to Fed. R. Civ. P. 56 and Trademark Rule 2.127(e), and the parties may present any material relevant to such a motion. Fed. R. Civ. P. 12(b).

Applicant is allowed until **October 15, 2022** to supplement, as appropriate, its motion with any relevant evidence, affidavits, and/or brief under Fed. R. Civ. P. 56(e) and Trademark Rule 2.127(e), only regarding Opposer's claim that Applicant's application is barred by the doctrine of claim preclusion. Opposer is allowed until **November 14, 2022** to submit its response to the motion with any relevant evidence, affidavits, and/or brief under Fed. R. Civ. P. 56(e) and Trademark Rule 2.127(e), only regarding Opposer's claim that Applicant's application is barred by the doctrine of claim preclusion. The time for Applicant to submit its reply brief, if any, shall be in accordance with Trademark Rule 2.127(e)(1).

Proceedings remain suspended; the motion will be decided in due course.