

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 29, 2009

Cancellation No. 92049206

THINK COMPUTER CORPORATION

v.

FACEBOOK, INC.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

On December 31, 2008, respondent filed a motion to substitute its protective order (governing the exchange of confidential and proprietary information and matter) for the Board's standardized protective order. Respondent indicates that its proposed protective order is very similar to the Board's standardized protective order. Respondent further states that its proposed order is modified slightly in view of petitioner's *pro se* status. (For example, the subsection of the Board's order allowing access to outside counsel but not in-house counsel is not necessary.) Respondent believes its protective order prevents public disclosure of covered information and materials in a more comprehensive manner. Petitioner has not filed a response to respondent's motion.

Accordingly, respondent's motion is granted as conceded. See Trademark Rule 2.127(a). Respondent's proposed protective order is noted and entered and now governs the conduct of this

proceeding for the exchange of confidential and proprietary information and matters.

The parties are referred, as appropriate, to TBMP §§ 412.04 (Filing Confidential Materials With Board) and 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to the operative protective order and that the parties may not use the existence of the order as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

Respondent notes that petitioner has served discovery requests but never served its initial disclosures. Petitioner is reminded of its obligation to do so. The initial disclosures are modest. In accordance with Fed. R. Civ. P. 26(a)(1)(A)(i) & (ii), the requirements are:

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(ii) a copy – or a description by category and location – of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Petitioner is allowed until **THIRTY DAYS** from the mailing date of this order in which to serve its initial disclosures on respondent.¹

With respect to the scope of discovery, each party has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the proceeding. See TBMP §402.01 (2d ed. rev. 2004).

Respondent's amended answer is noted and enter. Operative dates remain as set in the Board's September 24, 2008 order. Such dates are copied below:

| | |
|---|------------|
| Expert Disclosures Due | 4/25/2009 |
| Discovery Closes | 5/25/2009 |
| Plaintiff's Pretrial Disclosures | 7/9/2009 |
| Plaintiff's 30-day Trial Period Ends | 8/23/2009 |
| Defendant's Pretrial Disclosures | 9/7/2009 |
| Defendant's 30-day Trial Period Ends | 10/22/2009 |
| Plaintiff's Rebuttal Disclosures | 11/6/2009 |
| Plaintiff's 15-day Rebuttal Period Ends | 12/6/2009 |

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

¹ In the event respondent did not serve its initial disclosures, it is allowed the same **THIRTY DAYS** in which to do so.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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