

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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July 2, 2019

Cancellation No. 92062852

*Christian L. Rishel*

*v.*

*Dave Huselton*

**Geoffrey M. McNutt, Interlocutory Attorney:**

This proceeding has been suspended pending final determination of a civil action between the parties. *See* 11 TTABVUE.

On May 17, 2019, Respondent notified the Board that the civil action which occasioned the suspension of this proceeding has been dismissed based on lack of activity. *See* 20 TTABVUE 4.

Accordingly, proceedings herein are **resumed**. Respondent has until **August 12, 2019**, to file and serve an answer to the petition to cancel.<sup>1</sup> Conference, disclosure, discovery, and trial dates are reset as shown below.

Time to Answer	8/12/2019
Deadline for Discovery Conference	9/11/2019
Discovery Opens	9/11/2019

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<sup>1</sup> All submissions to the Board, including the answer, must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals, absent technical problems or extraordinary circumstances. *See* Trademark Rules 2.114(b)(1) and 2.126(a)-(b); *see also* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 110 (June 2019).

Initial Disclosures Due	10/11/2019
Expert Disclosures Due	2/8/2020
Discovery Closes	3/9/2020
Plaintiff's Pretrial Disclosures Due	4/23/2020
Plaintiff's 30-day Trial Period Ends	6/7/2020
Defendant's Pretrial Disclosures Due	6/22/2020
Defendant's 30-day Trial Period Ends	8/6/2020
Plaintiff's Rebuttal Disclosures Due	8/21/2020
Plaintiff's 15-day Rebuttal Period Ends	9/20/2020
Plaintiff's Opening Brief Due	11/19/2020
Defendant's Brief Due	12/19/2020
Plaintiff's Reply Brief Due	1/3/2021
Request for Oral Hearing (optional) Due	1/13/2021

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).

#### ❖ **Information for a Pro Se Litigant**

The Board notes that Petitioner currently is representing himself in this proceeding. While Patent and Trademark Rule 11.14 permits a party to represent itself, it is strongly advisable for a person who is not acquainted with the

technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 114.02.

Except for the original petition to cancel (as opposed to any amended petition to cancel), every submission filed in a cancellation proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made, before the submission will be considered by the Board. Trademark Rule 2.119(a)-(b), 37 C.F.R. § 2.119(a)-(b); *see also* TBMP § 113. Accordingly, all submissions filed in this proceeding must be accompanied by a signed statement attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* Trademark Rule 2.119; TBMP § 113.03. Service must be made by email unless the parties stipulate to an alternate method of service, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement, which will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rule 2.126(a)-(b), 37 C.F.R. § 2.126(a)(b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are located at <http://estta.uspto.gov/>.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP); the TTABVUE system for viewing the record for all Board proceedings; and the Standard Protective Order, which governs the exchange of confidential information and materials. Links to these resources, and others, can be found on the Board's website.<sup>2</sup>

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

This inter partes proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to

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<sup>2</sup> <https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board>

ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. Trademark Rules §§ 2.122–2.125 govern the trial evidence and testimony. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. Additionally, the testimony of witnesses in inter partes cases may be submitted in the form of an affidavit or a declaration pursuant to 37 C.F.R. § 2.20 and in conformance with the Federal Rules of Evidence, filed during the proffering party's testimony period, subject to the right of any adverse party to elect to take and bear the expense of oral cross-examination of that witness. *See* Trademark Rule 2.123(a)(1), 37 C.F.R. § 2.123(a)(1). No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.