

UNITED STATES PATENT AND TRADEMARK  
OFFICE

**Trademark Trial and Appeal Board**

**P.O. Box 1451**

**Alexandria, VA 22313-1451**

General Contact Number: 571-272-8500

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Mailed: September 14, 2017

**Cancellation No. 92065883**

*Joseph Valenti*

*v.*

*William J. Bearden dba NERO Central*

**Cancellation No. 92065911**

*Joseph Valenti*

*v.*

*NERO World, LLC*

**By the Board:**

The two above-captioned cancellation proceedings are before the Board for consideration of the motions, filed by respondents therein, to dismiss the petitions to cancel, pursuant to Fed. R. Civ. P. 12(b)(6). Respondents filed the motions to dismiss

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on May 29, 2017, and the motions are fully briefed.<sup>1</sup> The Board resolves both motions to dismiss in this single order.<sup>2</sup>

**Possible Consolidation**

Cancellation No. 92065883 involves respondent William J. Bearden’s (“Bearden”) Supplemental Register Registration No. 4697406, registered March 3, 2015, for the mark NERO NEW ENGLAND ROLEPLAYING ORGANIZATION (standard characters; NERO and ORGANIZATION disclaimed) for “entertainment, namely, production of live-action role playing games and interactive theatre productions” in International Class 41.

Cancellation No. 92065911 involves NERO World LLC’s (“NERO World”) Supplemental Register Registration No. 4657988, registered December 16, 2014, for the mark NERO, also for “entertainment, namely, production of live-action roleplaying games and interactive theatre productions” in International Class 41. The USPTO records show that NERO World is the owner of record by assignment of the entire interest from Bearden to NERO World, executed and recorded with the USPTO Assignment Recordation Branch on September 14, 2015.<sup>3</sup>

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<sup>1</sup> Fed. R. Civ. P. 12(b)(6) is made applicable to Board *inter partes* proceedings by Trademark Rule 2.116(a).

<sup>2</sup> The Board is issuing a copy of this order in both proceedings.

<sup>3</sup> The record for Bearden’s Registration No. 4697406 includes a claim of ownership of Registration No. 4657988. A registration owner cannot claim ownership of a registration that it does not own. TMEP § 812.01.

Additionally, Joseph Valenti (“Petitioner”) filed the petitions to cancel on the same day, and respondents Bearden and NERO World are represented in these proceedings by the same law firm.

Accordingly, Bearden or NERO World are allowed until thirty days from the mailing date of this order to submit a filing, through ESTTA, which explains their business relationship, and which specifically addresses whether they are “related” or “related companies” within the meaning of Trademark Act §§ 5 and 45, 15 U.S.C. § 1055 and 15 U.S.C. § 1127.<sup>4</sup> This information is required, as the Board will ascertain whether consolidation of the proceedings is appropriate. Fed. R. Civ. P. 42(a). Consolidation is discretionary with the Board. TBMP 511 (June 2017).

### **Motions to Dismiss**

On the ESTTA cover sheets completed when filing the petitions to cancel, Petitioner selected the grounds of: 1) priority and likelihood of confusion, 2) “registrant not rightful owner of mark for identified goods and services,” and 3) fraud on the USPTO.

In lieu of filing an answer, respondents Bearden and NERO World each filed a motion to dismiss for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).<sup>5</sup>

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<sup>4</sup> The filing party is directed to file a copy of the same response in each of the two proceedings.

<sup>5</sup> The Board has considered the parties’ briefs on the respondents’ contested motions to dismiss, but does not repeat or discuss all of their arguments, and does not address irrelevant arguments. *Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

Matters submitted with briefs on the motions to dismiss that are outside the pleadings or not otherwise part of the record have been given no consideration. TBMP § 503.04.

**Preliminary Matters - Petitioner's June 19, 2017 filings in Cancellation No. 92065883**

First, Petitioner filed a motion captioned as a “motion to dismiss for insufficient service,” requesting that Respondent Bearden’s motion to dismiss be dismissed, on the basis that Bearden did not serve his motion on Petitioner. Petitioner’s motion is procedurally inappropriate and will be given no further consideration. Board procedure does not permit a party to respond to a motion by filing a motion to dismiss said motion. Trademark Rules 2.119(a) and (b) do not provide that the failure to serve a filing is a potentially dispositive action. Furthermore, as evident from the record, Bearden timely *filed* his motion to dismiss, which is allowed as his filing in response to the petition to cancel, and the Board may exercise its discretion to give consideration to Bearden’s motion to dismiss.

Second, Petitioner moved for default judgment, on the similar basis, namely, that because there was ineffective service and Bearden’s motion to dismiss “should be dismissed as a nullity,” Bearden “failed to timely and effectively file an Answer or Motion.”<sup>6</sup> Petitioner’s motion is procedurally inappropriate and will be given no further consideration.<sup>7</sup>

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In these proceedings, the parties should reference the record by citation to the Board's TTABVUE docket, using the docket entry and page numbers, *e.g.*, “20 TTABVUE 10.” *Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

<sup>6</sup> 8 TTABVUE 3.

<sup>7</sup> Inasmuch as Petitioner also filed a substantive brief in response to Bearden’s Fed. R. Civ. P. 12(b)(6) motion, it is evident that Petitioner’s motion to dismiss and motion for default constituted early, unwarranted litigation. Such an approach needlessly increases the cost of litigation. TBMP § 318.

### Motions to Dismiss the Petitions to Cancel

A motion to dismiss for failure to state a claim upon which relief can be granted is a test *solely* of the legal sufficiency of a complaint. TBMP § 503.02, and cases cited therein. To survive a motion to dismiss, a plaintiff need only allege sufficient factual matter as would, if proven, establish that 1) the plaintiff has standing to maintain the proceeding, and 2) a valid ground exists for opposing or cancelling the mark. *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). TBMP § 503.02. Specifically, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Whether a plaintiff can actually prove its allegations is a matter to be determined not upon motion to dismiss, but rather at final hearing or upon summary judgment. *Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993); *Covidien LP v. Masimo Corp.*, 109 USPQ2d 1696, 1697 n.3 (TTAB 2014).

#### Standing

Standing is a threshold issue that must be alleged in every *inter partes* proceeding. *Lipton Indus., Inc. v. Ralston Purina Co.*, 213 USPQ at 189. At the pleading stage, all that is required is that a plaintiff allege facts sufficient to show a “real interest” in the proceeding, and a “reasonable basis” for its belief that it would suffer some kind of damage if the mark is registered. *Empresa Cubana del Tabaco v.*

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*General Cigar Co.*, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *Lipton Indus., Inc. v. Ralston Purina Co.*, 213 USPQ at 189. See also *Herbko Int’l Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375, 1377 (Fed. Cir. 2002); *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021, 2024 (Fed. Cir. 1987) *on remand*, 5 USPQ2d 1622(TTAB 1987), *rev’d*, 853 F.2d 888, 7 USPQ2d 1628 (Fed. Cir. 1988). To plead a “real interest,” plaintiff must allege a “direct and personal stake” in the outcome of the proceeding. The allegations in support of plaintiff’s belief of damage must have a reasonable basis “in fact.” *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025, 1027 (Fed. Cir. 1999). There is no requirement that actual damage be pleaded or proved, or that plaintiff show a personal interest in the proceeding different from or “beyond that of the general public.” *Id.* See also TBMP §§ 303.06 and 309.03(b). If a plaintiff can show standing on one ground, it has the right to assert any other legally sufficient grounds as well in an opposition or cancellation proceeding. *Corporacion Habanos SA v. Rodriquez*, 99 USPQ2d 1873, 1877 (TTAB 2011).

In the introductory paragraph to Cancellation No. 92065883, Petitioner alleges:

Petitioner, Joseph Valenti, with a principal residence of 2763 NC Hwy 731 West, Mount Gilead, NC 27306, is the owner and operator NERO Live Adventure Games LLC, a Pennsylvania limited liability company, having a place of business at 4719 Hatfield Street – FRNT, Pittsburgh, PA 15201, believes that it he (sic) is and will continue to be damaged by Registration No. 4697406...<sup>8</sup>

In the introductory paragraph to Cancellation No. 92065911, Petitioner alleges:

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<sup>8</sup> 1 TTABVUE 3.

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Petitioner, Joseph Valenti, with a principal residence of 2763 NC Hwy 731 West, Mount Gilead, NC 27306, is the owner and operator of NERO Live Adventure Games, LLC, a Pennsylvania limited liability company, having an address at 4719 Hatfield Street – FRNT, Pittsburgh, PA 15201, believes that it is and will continue to be damaged by Registration No. 4657988...<sup>9</sup>

The following allegations are subsequently set forth in ¶¶ 1-2:<sup>10</sup>

1. Petitioner has owned and operated a live action roleplaying gaming community known as “NERO” for almost 19 years.
2. Petitioner purchased the rights to the “NERO” gaming community and the “NERO” trademark (“NERO”) (Registration No. 2270409)<sup>11</sup> through a Bill of Sale, Transfer of Copyright, and Assignment of Trademark (“Assignment”) dated August 3, 1998 from Ford Ivey, President of NERO International, Inc. Said Assignment was recorded with the Trademark Office in Reel: 003066, Frame: 0927.

Regarding the introductory paragraphs, the manner in which the paragraphs are set forth raises question as to the identity of Petitioner. In Cancellation No. 92065883, this paragraph references two entities, and as the pleading presently stands it is unclear whether Petitioner is Joseph Valenti or NERO Live Adventure Games, LLC; thus, it fails to place Bearden on sufficient notice of the specific identity

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<sup>9</sup> 1 TTABVUE 3.

<sup>10</sup> Canc. No. 92065883, 1 TTABVUE 3-5. The identical or nearly identical allegations are set forth in Cancellation No. 92065911.

<sup>11</sup> Registration No. 2270409 was cancelled March 20, 2010. With respect to the future determination on the merits, Petitioner shall note that an expired or cancelled registration is not evidence of anything except that the registration issued. It is not evidence of any presently existing rights in the mark shown in the registration, or that the mark was ever used. *Frito-Lay North America, Inc. v. Princeton Vanguard, LLC*, 109 USPQ2d 1949, 1956 n.9 (TTAB 2014) (cancelled and expired registrations are not probative), *vacated and remanded on other grounds, Princeton Vanguard, LLC v. Frito-Lay North. America, Inc.*, 786 F.3d 960, 114 USPQ2d 1827 (Fed. Cir. 2015); *Black & Decker Corp. v. Emerson Electric Co.*, 84 USPQ2d 1482, 1490 (TTAB 2007) (cancelled registration has no probative value). *See also* TBMP § 704.03(b)(1)(A).

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of Petitioner. Similarly, in Cancellation No. 92065911 this paragraph references the same two entities, and as the pleading presently stands it appears to identify Petitioner as NERO Live Adventure Games, LLC, although this is unclear and contradicts the entity identified on the ESTTA cover sheet, which is Joseph Valenti. Consequently, neither pleading identifies who the Petitioner is in a manner that provides the necessary notice to the respondents.

In both pleadings, ¶ 2 references an assignment to “Petitioner” of pleaded (cancelled) Registration No. 2270409 at Reel 3066 and Frame 0927. The Office records indicate that the August 3, 1998 assignment was an assignment from “Nero International, Incorporated” to “Nero International Holding Co., Inc.” As a result of these instances of ambiguity, the identity of Petitioner is not sufficiently pleaded.

Furthermore, the Board notes that in Cancellation No. 92065883, the pleading sets forth the following allegations, which are also set forth in a nearly identical manner in Cancellation No. 92065911:<sup>12</sup>

For almost 19 years, Petitioner has actively maintained the NERO gaming community website located at NEROLARP.com as a promotional vehicle and as a means of keeping his community and fans updated about NERO news, upcoming NERO events, local and nationwide Chapter information, and a forum for members to talk and engage with one another.

Petitioner has performed, and continues to perform, under the NERO name for over 19 years and during that time, Petitioner has developed a substantial client and fan base. As a result, NERO has become well-known in the US and abroad, which includes over 5,000 members, 31 NERO Chapters in various US states, 2 NERO Chapters in Canada, and 1 NERO Chapter in South Africa.

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<sup>12</sup> Canc. No. 92065911, 1 TTABVUE 4-5.



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Petitioner also operates and controls NERO LARP (Live Action Role-Playing) on Facebook, which has been active since or on about January 1, 2008, and has on or about 1,964 active members.

On or about April 3, 2006, William J. Bearden d/b/a NERO Central (“Registrant”), seeking to be a NERO Chapter owner, signed a “NERO License Offering and Agreement” (the “Agreement”) with Petitioner to become part of the NERO gaming community.

On Page 2 of the Agreement, Petitioner is listed as doing business as NERO, New England Roleplaying Organization, and NERO Game Systems.

Petitioner has used, and continues to use, these business names for over 19 years and has the names listed in all of his Agreements.

While Petitioner never registered the name “New England Roleplaying Organization” or “NERO Game Systems,” Petitioner has continuously used, and still uses both names in sales to the public.

Registrant paid royalties and fees to NERO under the Agreement to Petitioner until on or about September 1, 2009 before unilaterally cancelling his Agreement with Petitioner.

These matters set forth with factual specificity, *inter alia*, allegations of use of the mark NERO in connection with gaming services, and use of the business names NERO, New England Roleplaying Organization and NERO Game Systems. However, the noted lack of clarity in identifying who Petitioner is renders these allegations concomitantly lacking in substantive clarity.

In conclusion, the pleadings do not sufficiently allege facts which identify Petitioner or demonstrate a “direct and personal stake” in the outcome of the proceedings as well as a “reasonable basis” for a belief of damage. Thus, Petitioner has not pleaded facts which, if proven, would establish standing to bring the proceedings.

Grounds

In each proceeding, under the heading “Registrant’s Fraudulent Procurement of the Mark,” Petitioner sets forth allegations of a claim of fraud on the USPTO, but also sets forth allegations relevant to a claim of likelihood of confusion pursuant to Trademark Act § 2(d). These are separate and distinct grounds for cancellation of a registered mark, and should be pleaded as such. Here, Petitioner merges and conflates the allegations, rendering each pleading lacking in clarity for notice pleading purposes.<sup>13</sup>

*Fraud*

Fraud in procuring a federal trademark registration occurs when a party knowingly makes a false, material representation of fact in or in connection with an application to register a mark, or maintaining a mark, with the intent to deceive the USPTO so as to obtain or maintain a registration to which the party is otherwise not entitled. *In re Bose Corp.*, 580 F.3d 1240, 91 USPQ2d 1938 (Fed. Cir. 2009). *See also*, *ShutEmDown Sports Inc. v. Lacy*, 102 USPQ2d 1036, 1044 (TTAB 2012); *Qualcomm Inc. v. FLO Corp.*, 93 USPQ2d 1768, 1770 (TTAB 2010).

A claim of fraud on the USPTO must be pleaded with heightened particularity as required under Fed. R. Civ. P. 9(b).<sup>14</sup>

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<sup>13</sup> In preparing the *amended* pleadings, if Petitioner sets forth more than one claim, Petitioner should set forth the claims separately, and in numbered paragraphs the contents of each of which are limited to a statement of a single set of circumstances. Fed. R. Civ. P. 10(b); TBMP § 309.03(a)(2).

<sup>14</sup> Moreover, all claims of fraud on the USPTO have a very high burden of proof. Specifically, “the very nature of the charge of fraud requires that it be proven ‘to the hilt’ with clear and

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Inasmuch as fraud is not pleaded as a separate claim, it is unclear which allegations comprise the claim. The allegations that appear to set forth the claim do not allege with sufficient factual specificity all of the following required elements of the claim: a specific false, material representation of fact, made knowingly, in or in connection with an application or registration, made with the intent to deceive the USPTO with respect to registrability. Regarding the misrepresentation of a material fact, Petitioner alleges that respondent “misrepresented the nature of his use in commerce of the Mark;”<sup>15</sup> however, Petitioner does not clearly specify what fact was misrepresented, or explain the fact’s materiality to the determination of registrability. Furthermore, Petitioner alleges that what respondent “knew” was that the mark was owned by and being used by Petitioner, and that members of the public would encounter the mark in connection with the services and “relate it to Petitioner;”<sup>16</sup> thus, what respondent “knew” does not relate back to an identifiable statement made in the underlying applications.

Petitioner does sufficiently allege intent to induce the USPTO to grant the registrations. However, without a sufficient pleading of all elements of the claim, the claim is not well-pleaded.

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convincing evidence. There is no room for speculation, inference or surmise and, obviously, any doubt must be resolved against the charging party.” *In re Bose, supra, citing Smith Int'l, Inc. v. Olin Corp.*, 209 USPQ 1033, 1044 (TTAB 1981). The standard of proof is the rigorous clear-and-convincing evidence standard, which is strictly applied. *Hiraga v. Arena*, 90 USPQ2d 1102, 1107 (TTAB 2009).

<sup>15</sup> Canc. No. 92065883, 1 TTABVUE 6; Canc. No. 92065911, 1 TTABVUE 7.

<sup>16</sup> Canc. No. 92065883, 1 TTABVUE 6; Canc. No. 92065911, 1 TTABVUE 6-7.

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In view of these findings, Petitioner does not allege fraud on the USPTO as a ground for cancellation in either proceeding. For completeness, to the extent that Petitioner seeks to set forth a claim that the application declaration or oath was executed fraudulently, in that there was another use of the same or a confusingly similar mark at the time the declaration oath was signed, Petitioner must allege *particular facts* which, if proven, would establish that 1) there was in fact another use of the same or a confusingly similar mark at the time the oath was signed, 2) the other user had legal rights superior to the applicant's, 3) the applicant knew that the other user had rights in the mark superior to applicant's, *and* either believed that a likelihood of confusion would result from applicant's use of its mark or had no reasonable basis for believing otherwise, *and* 4) the applicant, in failing to disclose these facts to the USPTO, intended to procure a registration to which it was not entitled. *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1293 (TTAB 1999), *citing Intellimedia Sport Inc. v. Intellimedia Corp.*, 43 USPQ2d 1203, 1206 (TTAB 1997).<sup>17</sup>

In summary, the petitions to cancel do not allege the required elements of a fraud claim.

*Likelihood of confusion*

To plead a claim pursuant to Trademark Act § 2(d), a plaintiff must sufficiently allege, in addition to standing, that 1) it has registered or previously used a mark, and 2) the contemporaneous use of the parties' respective marks on or in connection

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<sup>17</sup> As noted above, the heightened pleading requirements of Fed. R. Civ. P. 9(b) apply, and each of the required elements must be set forth with sufficient clarity and specificity.

with their respective identified goods or services would be likely to cause confusion, mistake or to deceive consumers with respect to the source of the goods and services. *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001).

Petitioner alleges use of the mark NERO for “a live action roleplaying gaming community” “for almost 19 years”<sup>18</sup> and “for over 19 years,”<sup>19</sup> and in the following paragraphs sets forth further factual allegations of or relating to use of this mark. Petitioner does not allege use of the asserted mark in interstate commerce or commerce that may be lawfully regulated by Congress. Trademark Act § 45; 15 U.S.C. § 1127. *See also* TMEP § 901.03. In these allegations, Petitioner does not sufficiently plead priority.

Other than stating in the introductory paragraph that “the *registration* ... is likely to be confused with a mark previously used and not abandoned by Petitioner,”<sup>20</sup> Petitioner does not clearly allege that the parties’ use of their respective marks is likely to cause confusion, mistake or to deceive consumers with respect to the source of the goods and services. Inasmuch as the Board finds that an amended pleading is required in each proceeding in order to properly allege standing and a claim of fraud, the Board also requires a more acceptable pleading of likelihood of confusion.

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<sup>18</sup> Canc. No. 92065883, 1 TTABVUE 3-4.

<sup>19</sup> Canc. No. 92065911, 1 TTABVUE 3-4.

<sup>20</sup> 1 TTABVUE 3. (emphasis added)

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In summary, the Petition to cancel does not allege the required elements of a likelihood of confusion claim.

*“Registrant not rightful owner of mark for identified goods and services”*

As with the allegations that go to fraud and likelihood of confusion, Petitioner does not clearly and separately set forth sufficient factual allegations supporting non-ownership of the respective marks. Petitioner’s allegation, presently set forth within and as part of its fraud allegations, that “Registrant ... misrepresented his rights to the Mark”<sup>21</sup> are incomplete and insufficient for notice pleading purposes.

**Summary**

Inasmuch as Petitioner does not sufficiently plead standing or at least one ground for cancellation, the petitions to cancel fail to state a claim upon which relief can be granted. In each proceeding, the motion to dismiss is granted. Fed. R. Civ. P. 12(b); TBMP § 503.

**Leave to Amend**

If the Board finds, upon determination of a motion to dismiss, that a complaint fails to state a claim upon which relief may be granted, in whole or in part, it may exercise its discretion to allow the plaintiff an opportunity to file an amended pleading. TBMP § 503.03, and cases cited therein. The Board has determined that allowing leave to amend is appropriate here.

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<sup>21</sup> Canc. No. 92065883, 1 TTABVUE 6; Canc. No. 92065911, 1 TTABVUE 7.

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Accordingly, Petitioner is allowed until thirty days from the mailing date of this order to file, in each proceeding, an amended petition to cancel. If an amended pleading is not filed in either proceeding, the Board will dismiss the proceeding with prejudice.<sup>22</sup>

Bearden and NERO World, respectively, are allowed until thirty days from the date of service of the amended pleadings to file their answer thereto in the respective proceedings.

**Resumption, Schedule and Discovery and Settlement Conference**

Proceedings are deemed suspended as of the filing date of the motions to dismiss for failure to state a claim. Proceedings are now resumed in both proceedings. To accommodate leave to amend as allowed herein, conference, disclosure, discovery and trial dates are reset as follows:

Deadline for Required Discovery Conference	12/13/2017
Discovery Opens	12/13/2017
Initial Disclosures Due	1/12/2018
Expert Disclosures Due	5/12/2018
Discovery Closes	6/11/2018
Plaintiff's Pretrial Disclosures Due	7/26/2018
Plaintiff's 30-day Trial Period Ends	9/9/2018
Defendant's Pretrial Disclosures Due	9/24/2018

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<sup>22</sup> The parties shall note that certain provisions of Fed. R. Civ. P. 11 are applicable to pleadings, motions and all other submissions in *inter partes* proceedings before the Board. Fed. R. Civ. P. 11, which is applicable by operation of Trademark Rule 2.116(a) and U.S. Patent and Trademark Office Rule 11.18, requires that all filings be made in good faith and with evidentiary support. Specifically, all grounds for relief and allegations in support thereof must have a basis in law or fact, and must not be filed for any improper purpose. Fed. R. Civ. P. 2.116(a); TBMP §§ 318, 502.07 and 527.02.

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Defendant's 30-day Trial Period Ends	11/8/2018
Plaintiff's Rebuttal Disclosures Due	11/23/2018
Plaintiff's 15-day Rebuttal Period Ends	12/23/2018
Plaintiff's Opening Brief Due	2/21/2019
Defendant's Brief Due	3/23/2019
Plaintiff's Reply Brief Due	4/7/2019
Request for Oral Hearing (optional) Due	4/17/2019

Generally, the Federal Rules of Evidence, Federal Rules of Civil Procedure and Trademark Rules of Practice 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, matters in evidence, the manner and timing of taking testimony, 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).