

UNITED STATES PATENT AND TRADEMARK OFFICE
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Mailed: August 8, 2018

Cancellation No. 92067402

G&S Sporting Goods, LLC

v.

Derrick L Gray

By the Trademark Trial and Appeal Board:

On July 23 and 24, 2018, Petitioner filed motions for entry of sanctions under Trademark Rule 2.120(h)(1) based on Respondent's alleged failure to participate in the parties' mandatory discovery conference. The Board in its discretion elects to decide that motion now. *See* Trademark Rule 2.127(a).

Under the schedule adopted by way of the Board's April 23, 2018 order, the deadline for the parties' initial disclosures was July 23, 2018. Rule 2.120(h)(1) states that "[a] motion for sanctions against a party for its failure to participate in the required discovery conference must be filed ***prior to the deadline*** for any party to make initial disclosures" (emphasis added). Accordingly, any motion under Rule 2.210(h)(1) was required to be filed by not later than Sunday, July 22, 2018, and the motions for entry of sanctions under Rule 2.120(h)(1) that Petitioner filed on Monday, July 23, 2018 and Tuesday, July 24, 2018 are untimely. *See KID-Systeme GmbH v. Türk Hava Yollari Teknik Anonim Sirketi*, 125 USPQ2d 1415 (TTAB 2018) (motion

for summary judgment filed on the deadline for plaintiff's pretrial disclosures denied as untimely).

Trademark Rule 2.196 does not make the make the motion timely. That rule must be read in conjunction with Rule 2.120(h)(1), which expressly requires that a motion for sanctions for failure to participate in the discovery conference be filed prior to the deadline for initial disclosures. *Cf. Estudi Moline Dissey, S.L. v. BioUrn Inc.*, 123 USPQ2d 1268, 1270-71 (TTAB 2017) (discovery requests must be served by the thirty-first day from the close of discovery, regardless of whether the day of service falls on a weekend or holiday). That is, treating Petitioner's motion as timely filed would contravene Rule 2.120(h)(1) because it would allow the filing of that motion on the deadline for initial disclosures.

Based on the foregoing, the motions for sanctions under Rule 2.120(h)(1) is denied. The Board deems that the parties have waived their discovery conference. Dates remain as last reset in the April 23, 2018 order.

The Board will treat the answer that Respondent filed on May 22, 2018 as a general denial. *See* Fed. R. Civ. P. 8(b)(3).