

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

January 27, 2021

Cancellation No. 92067794

Joshua S. Schoonover

v.

The Burton Corporation

Rebecca Stempien Coyle, Interlocutory Attorney:

On December 18, 2020, Respondent submitted, and served, the testimonial declarations of the following witnesses, Steven Cooley, Christopher L. Cunningham, Eric Gaisser, and Mark D. Wakeling. (33 TTABVUE through 36 TTABVUE). On January 4, 2021, Petitioner filed notices of election to take the oral cross-examinations of each declarant. (42 TTABVUE through 45 TTABVUE). Such notices were filed within twenty days from the date of service of the declarations, and therefore are timely. *See* Trademark Rule 2.123(c).

Oral cross-examination of an affiant or declarant must be completed within thirty days from the date of service of the notice of election. When such oral cross-examination cannot be completed within the relevant testimony period, the Board shall suspend or reschedule other proceedings to allow for its orderly completion. *See* Trademark Rule 2.123(c).

Here, Petitioner noticed each of the oral cross-examinations to occur on January 26, 2021. Accordingly, the Board resets the remaining dates, beginning with Petitioner's rebuttal disclosures, as follows.¹

Plaintiff's Rebuttal Disclosures Due	2/12/2021
Plaintiff's 15-day Rebuttal Period Ends	3/14/2021
Plaintiff's Opening Brief Due	5/13/2021
Defendant's Brief Due	6/12/2021
Plaintiff's Reply Brief Due	6/27/2021
Request for Oral Hearing (optional) Due	7/7/2021

The Federal Rules of Evidence generally 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).

¹ If the parties have not completed the noticed oral cross-examinations and additional time is required, the parties should file the appropriate motion with the Board.

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:** Parties are strongly encouraged to check the entire document before filing.² The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

² To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.