UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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mw/kk

February 4, 2020

Cancellation No. 92068213

Charles Bertini

v.

Apple Inc.

Michael Webster, Interlocutory Attorney:

On January 10, 2020, Petitioner filed a motion for summary judgment. The motion is timely pursuant to Trademark Rule 2.127(e)(1). The Board notes that the only issue in the summary judgment motion is abandonment and that discovery is closed and Petitioner has filed the motion on the last available day for filing such a motion.[1] Thus, the parties may wish to stipulate to the Board's treatment of the summary judgment briefs and evidence as the final records and final briefs on the case. If the parties agree to the treatment of the summary judgment briefs as the final briefs on the case, the parties would stipulate that the Board may resolve any genuine disputes of material fact that may be presented by the record or discovered by the panel. *See Freeman v. Nat'l Assoc. of Realtors*, 64 USPQ2d 1700, 1701 (TTAB 2002) (parties stipulated that case would be decided on petitioner's motion for summary judgment

[1] Generally, the filing of a motion for summary judgment on the day before pretrial disclosures does not serve the purpose of judicial economy.

and respondent's response). The Board would convert the case to Accelerated Case Resolution (ACR). *See generally* TBMP § 702.04(c) (June 2019). The Board will generally render a final decision on an ACR case within FIFTY days of completion of briefing. If the parties agree to conversion of the summary judgment motion to ACR, the parties should promptly contact the assigned interlocutory attorney by telephone.

When a party timely files a potentially dispositive motion, the proceeding is suspended with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. *See* Trademark Rule 2.127(d). Accordingly, as of the filing date of the motion for summary judgment, proceedings are **suspended** pending disposition of the motion. Any paper filed during the pendency of this motion which is not germane thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03.

The motion for summary judgment will be decided in due course.