

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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January 5, 2022

Cancellation No. 92070823

*ICware Systems, Inc. dba BatchTest
Corporation and BatchTest Corporation*

v.

Ikonix USA LLC

**M. Catherine Faint,
Interlocutory Attorney:**

By its December 13, 2021 order, the Board suspended these proceedings for consideration of Petitioner's motion to compel.¹ Respondent then filed four motions/stipulations for further suspension/enlargement of time. The piecemeal filings in this proceeding should **stop** as the parties are straining the Board's patience and resources.

Respondent's motion, filed December 23, 2021 with consent,² to suspend proceedings for settlement discussions is **granted for 120 days**. The Board has enlarged the requested time in the hope that the parties will engage in serious and fruitful settlement discussions. Proceedings are suspended until and including April

¹ 53 TTABVUE.

² 55 TTABVUE.

22, 2022, subject to the right of either party to request resumption at any time.³ See Trademark Rule 2.117(c). The parties are **barred** from using the ESTTA consent form for requesting any further extensions or suspensions. If the parties **do not settle** during this period and provide the Board written notice of their settlement, they **must provide the Board a report** of their settlement efforts by April 25, 2022 before seeking any further extensions or suspensions, or to resume proceedings at any point during this suspension. If and when the Board resumes proceedings, time will be set for Respondent to respond to the pending motion to compel, if appropriate.⁴

Specifically, to establish good cause for all future motions to suspend or extend, or to seek resumption of these proceedings, the parties **must include in the motion a status report setting forth what specific efforts** the parties have made towards settlement during the previous period of suspension. The report must set forth, **at a minimum**, 1) all dates on which the parties communicated, and the method of each communication (*e.g.* telephone conferences, emails, in-person meetings), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for resolution of the remaining issues. Appropriately designated confidential

³ The parties should note that if proceedings are suspended for a lengthy period of time pursuant to the filing of several motions to suspend for settlement, the Board retains discretion to condition the approval of any future consented or stipulated motion to suspend on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. Trademark Rule 2.117(c).

⁴ The Board notes that the second amended petition to cancel filed December 11, 2019, as construed by the Board's order of March 31, 2020,⁴ is the pleading of record.⁴ The amended answer filed April 30, 2020 is already of record.

information or materials may be filed under seal pursuant to Trademark Rule 2.126(c). *See* TBMP § 605.02.

Due to this requirement, the parties may no longer use the ESTTA “Consent Motions” forms to submit motions to extend or suspend dates for settlement. Rather, the parties must select the “Opposition, Cancellation or Concurrent Use (general filings)” option, the “Scheduling Motions” option, then the “Motion to Suspend for Settlement Discussions” form to which the parties may attach the motion they prepared. The motion must set forth both the required status report and a proposed trial schedule.⁵

Absent the required status report, a motion to suspend or extend may be denied, even if consented to by the parties, or the Board may issue an order to show cause why this proceeding should not be dismissed for lack of interest. *See* TBMP § 509.01(a).

In view of the foregoing, the other motions/stipulations filed December 17, 23 and 28, 2021 will be given no further consideration.⁶

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed.

⁵ When parties stipulate to the rescheduling of a deadline for pretrial disclosures and subsequent testimony periods or to the rescheduling of the closing date for discovery and the rescheduling of subsequent deadlines for pretrial disclosures and testimony periods, a stipulation presented in the form used in a trial order, signed by the parties, or a motion in said form signed by one party and including a statement that every other party has agreed thereto, shall be submitted to the Board through ESTTA, with the relevant dates set forth and an express statement that all parties agree to the new dates. Trademark Rule 2.121(d).

⁶ 54, 56 and 57 TTABVUE.

If the parties resolve this proceeding through settlement, they should so inform the Board. The motion to compel will otherwise be decided in due course, if appropriate.