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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92074953
Party	Defendant Bytedance Ltd.
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Date	03/03/2021
Attachments	2021-03-03-BYTEDANCE-Response to Petitioner Request for Shortened Discovery Period.pdf(38884 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MUZEIT LIMITED,

Petitioner,

v.

BYTEDANCE LTD.

Registrant.

Cancellation No. 92074953

Reg. No.: 5863551



Reg. No.: 6069519



Reg. No.: 6061833



**REGISTRANT’S RESPONSE TO PETITIONER’S REQUEST FOR  
SHORTENED DISCOVERY PERIOD**

Pursuant to TBMP § 511, Registrant Bytedance Ltd. (“Registrant”), by its undersigned counsel, hereby responds to Petitioner’s Request for Shortened Discovery Period, as it misstates the record.<sup>1</sup>

As indicated in Petitioner’s Statement of Non-Opposition (8 TTABVUE 1), the parties have agreed to consolidation of Cancellation No. 92070954 (“Parent Proceeding”) and the subject Consolidated Cancellation No. 92074953 (“Child Proceeding”). The parties have not, however, agreed to an accelerated proceeding or shortened discovery period.

While Registrant sought an extension of discovery in the Parent Proceeding, it also acknowledged that its Motion to Consolidate in the subject Child Proceeding would moot that request, as the discovery deadlines would be reset and it would have sufficient time to conduct its discovery. *See* No. 92070954, 20 TTABVUE 2-3. However, Petitioner would not agree to coordinate the schedule when requested, and it simply stated that it would file a “Non-

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<sup>1</sup> To clarify the record, in Petitioner’s Request for a Shortened Discovery Period, Petitioner acknowledges that Registrant has objected to Petitioner’s served interrogatories as exceeding the 75 interrogatory limit, and that objection pertains to the total number of requests, in a consolidated proceeding. *See* 8 TTABVUE 2. Petitioner has not raised any comparable objections to the number of Registrant’s served Interrogatories.

Objection,” the complete terms of which were not fleshed out between the parties. *Id.* at 2, Ex. A at ¶¶ 2-4. Registrant, to protect the record, moved alternatively for a stay of the Parent Proceeding, or an extension of the Parent Proceeding, to incorporate rebuttal expert testimony, which was not incorporated into the schedule. The Board’s standard schedule does not provide expert deadlines beyond the opening disclosure, since experts are “not frequently utilized in Board proceedings,” but once a disclosure is made, the Board may issue an order regarding expert discovery and/or set a deadline for rebuttal expert disclosures, whether “on its own initiative or on notice from either party of the disclosure of expert testimony.” *See* TBMP § 401.03; 37 C.F.R. § 2.120(a)(2)(iii). Registrant has made such a request.

Furthermore, there is no basis for Petitioner’s unilateral claim that no further discovery is needed. Notably, it has been Registrant’s position that the Parent Proceeding did not adequately raise a claim for reverse confusion, which has been raised in the Child Proceeding. Other than an agreement to accept the Initial Disclosures of the parties, which Petitioner recently amended, the parties had not agreed to an abbreviated discovery period. Petitioner filed the Child Proceeding well after the Parent Proceeding. *See* No. 92070954, 1 TTABVUE, filed March 29, 2019 and No. 92074953, 1 TTABVUE, filed August 11, 2020). The claims as alleged in the Child Proceeding are not identical to those in the Parent Proceeding. The registrations covered by the Child Proceeding are different. As is customary, when multiple actions are consolidated, the junior proceeding schedule controls. *See* TBMP § 511 (“Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated.”). Indeed, Petitioner interposed the Child Proceeding well after the Parent Proceeding, with the knowledge and understanding that there would be a new schedule.

Consequently, it is requested that a revised schedule be issued by the Board that permits a discovery schedule to assume completion of service of Initial Disclosures in the Child Proceeding, but to otherwise maintain the traditional schedule and to permit a trial schedule that includes Registrant’s counterclaims as interposed in the Parent Proceeding.

A suggested schedule, upon issuance of the Board, would appear as follows:

Discovery Opens	3/21/2021
Expert Disclosures Due	5/21/2021
Rebuttal Expert Disclosures Due	6/20/2021
Discovery Closes	7/20/2021
Plaintiff’s Pretrial Disclosures Due	9/03/2021
30-day Trial Period Ends for Plaintiff	10/18/2021
Defendant and Counterclaim Plaintiff’s Pretrial Disclosures Due	11/02/2021
30-day Trial Period Ends for Defendant and Counterclaim Plaintiff	12/17/2021
Counterclaim Defendant and Plaintiff’s Rebuttal Disclosures Due	1/01/2022
30-day Trial Period Ends for Counterclaim Defendant and Rebuttal Plaintiff	2/15/2022
Counterclaim Plaintiff’s Rebuttal Disclosures Due	3/02/2022
15-day Trial Period Ends for Rebuttal Counterclaim Plaintiff	4/01/2022
Opening Brief for Plaintiff Due	5/31/2022
Combined Brief for Defendant and Counterclaim Plaintiff Due	6/30/2022
Combined Rebuttal Brief for Plaintiff and Counterclaim Defendant Due	7/30/2022
Rebuttal Brief for Counterclaim Plaintiff Due	8/14/2022
Request for Oral Hearing (optional) Due	8/24/2022

It is noted that Petitioner has already served its expert report in the Parent Proceeding, and that report incorporates the Child Proceeding and is limited to a claim for reverse confusion. 8 TTABVUE 1-2.

Based on the foregoing, Registrant respectfully requests that the Board grant its Motion to Consolidate and to accept an amended schedule in the Child Proceeding along the terms outlined above.

Dated: March 3, 2021

Respectfully submitted,

**BAKER & HOSTETLER LLP**

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**CERTIFICATE OF FILING AND OF SERVICE**

The undersigned hereby certifies that on March 3, 2021 a true and correct copy of the foregoing REGISTRANT'S RESPONSE TO PETITIONER'S REQUEST FOR SHORTENED DISCOVERY PERIOD was electronically filed using ESTTA and served on Petitioner's counsel by e-mail at:

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*/Jacqueline M. Lesser/*

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