

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

RK

October 21, 2021

Cancellation No. **92076586**

Adamson Systems Engineering, Inc.

v.

Peavey Electronics Corporation

Yong Oh (Richard) Kim, Interlocutory Attorney:

On August 26, 2021, Petitioner moved to compel Respondent's responses, without objection on the merits, to its first sets of interrogatories and requests for production of documents served on June 16, 2021, on the ground that Respondent's responses served on July 30, 2021, were untimely and therefore constituted a waiver of objections on the merits.¹ Respondent has not contested the motion.²

A party that fails to respond to interrogatories or document requests during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. *See No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). When a motion to compel

¹ 6 TTABVUE.

² A response to the motion was due by September 15, 2021. *See* Trademark Rule 2.127(a), 37 C.F.R. § 2.127(a).

is uncontested, as in this instance, the Board generally orders discovery responses to be provided without objection on the merits.³ *Id.*

In view of Respondent's failure to respond to the motion, Petitioner's motion to compel discovery is hereby **GRANTED as conceded** as ordered herein. *See* Trademark Rule 2.127(a); TBMP § 502.04 (2021). **Respondent is directed to serve, no later than NOVEMBER 18, 2021, its written responses to Petitioner's first sets of interrogatories and document requests, as well as documents responsive thereto, in full and without objection on the merits.** *See No Fear Inc.*, 54 USPQ2d at 1554.

Responses to requests for production should comply with the provisions of Fed. R. Civ. P. 34(b). In accordance with Fed. R. Civ. P. 34(b)(2)(B) and (C), a proper response to a request for production of documents and things must address each item or category of documents or things identified in the request and state, as to each, whether there are any responsive documents. If none, the responding party must state as such. *Id.* at 1555. If there are responsive documents, the party must specify whether such documents will be produced, either by allowing inspection or providing copies, or withheld on a claim of privilege, *see id.*, unless the party opts to

³ Objections that go to the merits of a discovery request "include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information." *No Fear Inc.*, 54 USPQ2d at 1554.

object,⁴ in whole or in part, to the request, in which case the party must specify the reasons for the objection and state whether any responsive material is being withheld on the basis of the objection. *See* Fed. R. Civ. P. 34(b)(2)(C). An objection in part must identify the part being objected to and permit inspection of the rest. *Id.* If responsive documents are withheld on a claim of privilege, the responding party must expressly make the claim and provide a privilege log that does not disclose the privileged or protected information but affords sufficient detail to enable the requesting party to assess the claim. *See* Fed. R. Civ. P. 26(b)(5)(A). The privilege log should identify each document withheld and provide information regarding the nature of the privilege claimed, the name of the person making/receiving the communication, the date and place of the communication, and the document's general subject matter. *See No Fear, Inc.*, 54 USPQ2d at 1556.

In the event that Respondent fails to serve its responses as ordered herein, Petitioner's remedy may lie in a motion for sanctions, as appropriate. *See* Trademark Rule 2.120(h)(1).

Proceedings herein remain otherwise **SUSPENDED** and will **RESUME** on **NOVEMBER 19, 2021**, in accordance with the following schedule:

Expert Disclosures Due	12/31/2021
Discovery Closes	1/30/2022
Plaintiff's Pretrial Disclosures Due	3/16/2022
Plaintiff's 30-day Trial Period Ends	4/30/2022
Defendant's Pretrial Disclosures Due	5/15/2022
Defendant's 30-day Trial Period Ends	6/29/2022
Plaintiff's Rebuttal Disclosures Due	7/14/2022

⁴ Respondent is reminded, however, that pursuant to this order, Respondent may not raise any objection on the merits.

Plaintiff's 15-day Rebuttal Period Ends	8/13/2022
Plaintiff's Opening Brief Due	10/12/2022
Defendant's Brief Due	11/11/2022
Plaintiff's Reply Brief Due	11/26/2022
Request for Oral Hearing (optional) Due	12/6/2022

Generally, the Federal Rules of Evidence 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, matters in evidence, the manner and timing of taking testimony, 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).

* * *