

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

January 24, 2024

Cancellation No. 92081595

*Mercury One, Inc.*

*v.*

*Honest History Co.*

**Ashlyn Lembree, Interlocutory Attorney:**

On January 19, 2024 and January 22, 2024, Petitioner filed notices with the Board, pursuant to Fed. R. Civ. P. 26(a)(2) and Trademark Rule 2.120(a)(2)(iii), of the service of expert disclosures. 9, 10 TTABVUE. *See* TBMP § 401.03. On January 22, 2024, Respondent filed the parties' stipulated motion (11 TTABVUE) to extend disclosure, discovery, and trial dates, and setting forth the parties' proposed dates for the exchange of discovery concerning planned expert testimony, including that of any rebuttal experts. *See* Fed. R. Civ. P. 26(a)(2); *see also* Trademark Rule 2.120(a)(2)(iii).

The parties' stipulations, notice of which Petitioner filed on January 4, 2024, regarding admissibility of produced documents and regarding remote depositions are also noted. 8 TTABVUE.<sup>1</sup>

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<sup>1</sup> The Board notes that Respondent's motion to extend and Petitioner's notices of the parties' stipulations regarding admissibility of produced documents and regarding remote depositions are not accompanied by proof of service. Although the motion and notices are stipulated, the party filing a request with the Board must include proof of service of the filing

The parties' stipulated motion to extend dates is granted as modified in the schedule set forth below. *See* Trademark Rule 2.127(a); *see also* Trademark Rule 2.121(d) (a stipulation rescheduling of the closing date for discovery and subsequent deadlines shall be submitted with the relevant dates set forth); *see also* 2.120(a)(2)(iv) (disclosure deadlines and obligations may be modified upon written stipulation of the parties approved by the Board, **but the expert disclosure deadline must always be scheduled prior to the close of discovery.**).

Trial dates are reset as follows:

Initial Expert Disclosures Due (closed)	<b>1/22/2024</b>
Rebuttal Expert Disclosures Due	<b>3/2/2024</b>
Discovery Closes	<b>4/7/2024</b>
Plaintiff's Pretrial Disclosures Due	<b>5/6/2024</b>
Plaintiff's 30-day Trial Period Ends	<b>6/20/2024</b>
Defendant's Pretrial Disclosures Due	<b>7/5/2024</b>
Defendant's 30-day Trial Period Ends	<b>8/20/2024</b>
Plaintiff's Rebuttal Disclosures Due	<b>9/4/2024</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>10/4/2024</b>
Plaintiff's Opening Brief Due	<b>12/4/2024</b>
Defendant's Brief Due	<b>1/2/2025</b>
Plaintiff's Reply Brief Due	<b>1/17/2025</b>
Request for Oral Hearing (optional) Due	<b>1/27/2025</b>

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, the

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on its adversary, as required by Trademark Rule 2.119(b), 37 C.F.R. § 2.119(b). In its discretion, the Board accepts the filing. A copy of the filing can be viewed on TTABVUE at: <http://ttabvue.uspto.gov>.

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).

### **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.<sup>2</sup> 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.

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<sup>2</sup> To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.