

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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April 4, 2022

Opposition No. 91254539

Dwell Media, LLC

v.

Dwell Inspect, LLC

Victoria von Vistauxx, Paralegal Specialist:

Opposer's consented motion, filed March 31, 2022, to suspend this proceeding for 90 days, is granted. 30 TTABVUE.

Status Report Required for Future Motions to Suspend or Extend

The Board retains discretion to condition the approval of a consented or stipulated motion to suspend on the party or parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. See Trademark Rule 2.117(c); TBMP §§ 509.02 and 605.02.

Due to the number of extensions approved in this proceeding, the Board imposes a condition on the approval of all future motions to suspend or extend for settlement. Specifically, to establish good cause for all future motions to suspend or extend, the parties must include in the motion a status report on the parties' settlement efforts. While the rule does not require a great deal of specificity, the report must set forth,

at minimum, the issues that have been resolved, the issues that remain to be resolved or that remain for trial, and a proposed timetable for resolution of the remaining issues. Appropriately designated confidential information or materials may be filed under seal pursuant to Trademark Rule 2.126(c). *See* TBMP § 605.02. **Absent the required status report, a motion to suspend or extend may be denied, even if consented to by the parties.** If the Board denies such a motion, dates may remain as previously set. *See* TBMP § 509.01(a).

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.**

The requirement to use the general filings ESTTA form is limited to consent motions based on settlement discussions, and does not prohibit the use of ESTTA consent forms for other filings.

Because the parties are negotiating for a possible settlement of this case, proceedings are suspended, subject to the right of either party to request resumption at any time.¹ *See* Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02.

¹ 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

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. *See* Trademark Rule 2.18(b)(1).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, **proceedings shall resume without further notice or order from the Board**, in accordance with Opposer's motion, as follows:

Proceedings Resume: **6/30/2022**

Initial Disclosures Due	7/24/2022
Expert Disclosures Due	11/21/2022
Discovery Closes	12/21/2022
Plaintiff's Pretrial Disclosures Due	2/4/2023
Plaintiff's 30-day Trial Period Ends	3/21/2023
Defendant's Pretrial Disclosures Due	4/5/2023
Defendant's 30-day Trial Period Ends	5/20/2023
Plaintiff's Rebuttal Disclosures Due	6/4/2023
Plaintiff's 15-day Rebuttal Period Ends	7/4/2023
Plaintiff's Opening Brief Due	9/2/2023
Defendant's Brief Due	10/2/2023
Plaintiff's Reply Brief Due	10/17/2023
Request for Oral Hearing (optional) Due	10/27/2023

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 manner and timing of taking testimony, matters in evidence, and the procedures for

on a party or the parties providing necessary information about the status of settlement talks, discovery activities, or trial activities, as may be appropriate. *See* Trademark Rule 2.117(c).

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.² 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.

² To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.