

ESTTA Tracking number: **ESTTA1324650**  
Filing date: **11/27/2023**

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

|                        |  |
|------------------------|--|
| Proceeding no.         | 91284071   |
| Party                  | Plaintiff<br>Bird & Cronin, LLC, Dynatronics Corporation   |
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| Submission             | Motion to Quash  |
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| Signature              | /s/ Joshua S. Rupp   |
| Date                   | 11/27/2023   |
| Attachments            | FINALOpposers Motion for Protective Order w exhibits.pdf(702582 bytes )  |

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

Mark: PRODY  
Serial No. 90/884,850  
Published for Opposition: November 22, 2022

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| <p>BIRD &amp; CRONIN, LLC; DYNATRONICS CORPORATION,</p> <p style="text-align: center;">Opposers,</p> <p style="text-align: center;">v.</p> <p>MARY R. PRODY,</p> <p style="text-align: center;">Applicant.</p> | <p style="text-align: center;">Opposition No. 91284071</p> <p style="text-align: center;"><b>OPPOSERS' COMBINED MOTION FOR<br/>PROTECTIVE ORDER AND/OR<br/>MOTION TO QUASH NOTICES OF<br/>DEPOSITION</b></p> |
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Pursuant to Rules 7, 26, and 30 of the Federal Rules of Civil Procedure (the “Rule(s)”), Trademark Rule 2.120, and Sections 410, 521 and/or 526 of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), Opposers Bird & Cronin, LLC and Dynatronics Corporation (collectively, “Opposers”) together hereby respectfully move the Trademark Trial and Appeal Board (the “Board”) for a protective order or to otherwise quash Applicant Mary R. Prody’s (“Applicant”) (a) Amended Notice of Rule 30(b)(6) Deposition of Opposer Bird & Cronin, LLC<sup>1</sup> and (b) Amended Notice of Rule 30(b)(6) Deposition of Opposer Dynatronics Corporation<sup>2</sup> (collectively, the “Amended Notices”), temporarily preventing Applicant from conducting the Rule 30(b)(6) depositions of Opposers in the manner set forth in the Amended Notices served upon Opposers on November 20, 2023 pending the resolution of Opposers’ objections to the Amended

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<sup>1</sup> Attached as “**Exhibit A**”.

<sup>2</sup> Attached as “**Exhibit B**”.

Notices,<sup>3</sup> including but not limited to objections premised on Opposers' pending motion to suspend (18 TTABVUE), discussed in greater detail *infra*.

### FACTUAL BACKGROUND

1. On September 1, 2023, discovery in the above-captioned Opposition proceeding commenced as Applicant and Opposers, respectively, served initial disclosures on each other, in accordance with the schedule established for this proceeding. (*See* 12 TTABVUE.)

2. On October 9, 2023, former counsel for Applicant withdrew as Applicant's attorney, and Applicant's new counsel served discovery requests upon Opposers. (*See, e.g.*, 16 TTABVUE.) The discovery requests included fifty-eight (58) requests for production of documents, forty-five (45) interrogatories, and eight (8) requests for admission. (*See, e.g., id.*) A week later, Applicant served a second set of discovery containing two additional requests for production of documents. (*See, e.g., id.*)

3. Despite diligently working to gather the information and documents necessary to respond in good faith to Applicant's requests, it became apparent that Opposers needed more time to respond to Applicant's discovery requests due, in part, to Opposers' intervening attention to settlement efforts (consistent with historical settlement negotiations predating the appearance of Applicant's new counsel), as well as complications arising from Dynatronics Corporation's acquisition of Bird & Cronin in the latter stages of the parties' business relationship as well as recent changes in the management and leadership of Opposers, necessitating bringing previously uninvolved people up to speed on the issues involved in the present dispute. (*See, e.g., id.*) Moreover, where the parties' business relationship originated some seventeen (17) years ago, the

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<sup>3</sup> *See* Opposer's Combined Objections to Applicant's Amended Notice of Rule 30(b)(6) Deposition of Opposer Bird & Cronin, LLC and Applicant's Amended Notice of Rule 30(b)(6) Deposition of Opposer Dynatronics Corporation, attached as "**Exhibit C**".

long span of time encompassed in Applicant's written discovery requests, and the scope of potentially responsive information and documents thereto, further complicated Opposers' efforts to fully respond to the discovery requests absent additional time. (*See, e.g., id.*)

4. Accordingly, Opposers' counsel reached out to counsel for Applicant to request an extension of time to respond to the discovery requests on November 6, 2023, before the deadline for Opposers' responses had lapsed. (*See, e.g., id.*) Unfortunately, Applicant's counsel would not agree, making it necessary for Opposers to submit a motion to the Board seeking an extension of time, which was filed on November 7, 2023. (*See, e.g., id.*)

5. Concurrently with Opposers' informal request for an extension of time, and despite neither party having yet served any written discovery responses at that time,<sup>4</sup> without consulting with Opposers in advance as to the date, time, or location, Applicant served Opposers with a single purported notice of Rule 30(b)(6) deposition on both Bird & Cronin, LLC and Dynatronics Corporation (the "Initial Notice"), without distinguishing between the two entities, attempting to simultaneously set the depositions for November 29, 2023 at 9:00 am in Minnesota.<sup>5</sup> Applicant did not communicate with Opposers prior to serving the Initial Notice, for example to coordinate times or even to ensure the availability of Opposers' counsel or the individuals who may be designated to testify on behalf of Opposers, let alone the location of any such individuals.

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<sup>4</sup> On November 8, 2023, the day after the filing of Opposers' motion for extension of time, out of an abundance of caution and as a show of good faith and diligence in responding as far as Opposers were able, Opposers did serve responses and objections to Applicant's first set of requests for admission in conformance with the original November 8, 2023 deadline. In addition, on November 10, 2023, Opposers served a first set of written discovery requests on Applicant, comprising seventy (70) requests for production of documents, seventy (70) interrogatories, and sixty-four (64) requests for admission. Applicant's responses thereto are not presently due until Monday, December 11, 2023.

<sup>5</sup> One or more of Opposers' potential Rule 30(b)(6) designees, pending the resolution of additional objections, may reside and/or are regularly employed in Utah, where Opposer's are organized.

6. With service of the Initial Notice on November 6, 2023, Opposers were given substantially less than thirty (30) days' notice, with the added complication of the intervening Thanksgiving holiday, to (a) object to Applicant's Initial Notice on numerous grounds, (b) resolve any such objections, and (c) prepare, if appropriate, one or more designees for both Bird & Cronin, LLC and Dynatronics Corporation on the seventeen (17) topics set forth in Applicant's Initial Notice, as well as to arrange any necessary travel for Opposers' designee(s) and counsel, if appropriate.

7. Counsel for Opposers and counsel for Applicant met and conferred via a telephone call on November 16, 2023 regarding Opposers' responses to Applicant's first set of requests for admission. While not formally part of the meet and confer, Applicant's Initial Notice was briefly discussed during the course of the parties' telephone conference. Counsel for Opposers expressed various concerns (including concerns regarding the fact that Applicant had noticed two separate and distinct legal entities for the same deposition, on the same day, and at the same time, which is improper and, even if feasible, could cause confusion regarding designees and confusion in the record with respect to which information should be attributed to which entity) and foreshadowing other forthcoming objections.

8. By way of preliminary response to some of Opposer's objections to the Initial Notice, Applicant served the Amended Notices on November 20, 2023. (Exs. A & B.) Nevertheless, without consulting with Opposers in advance as to the date, time, or location, Applicant kept the original deposition date of November 29, 2023 and added the deposition date of November 30, 2023 so that the depositions were to take place nine (9) days after the Amended Notices were served, which period of time included the intervening Thanksgiving holiday.

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