

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

PLAINTIFF NAME(S),)	Opposition No. _____
)	Cancellation No. _____
Opposer(s)/Petitioner(s),)	
)	
-v-)	[PROPOSED] FINAL
)	JOINT PRETRIAL ORDER
DEFENDANT NAME(S),)	
)	
Applicant(s)/Respondent(s).)	

The parties having conferred among themselves and with the Board pursuant to Fed. R. Civ. P. 16, and Trademark Rules 2.116(a) and 2.121, 37 C.F.R. §§ 2.116(a) and 2.121, the following statements, directions, agreements and stipulations are adopted as the Final Pretrial Order herein.

I. CERTIFICATION OF MEETING

[State the date and time of the meeting held before the final pretrial conference to prepare the Proposed Final Joint Pretrial Order and identify the persons who attended.]

The parties herein certify that the persons who attended this meeting specifically discussed **limiting** their claims and defenses, disputed issues for trial, stipulations as to facts and evidence, and the possible trial of the proceeding by Accelerated Case Resolution (“ACR”).

II. PARTIES AND COUNSEL

[State the names of all parties, and the names, addresses, telephone numbers and e-mail addresses of counsel, and *pro se* parties, on whose behalf the Proposed Final Joint Pretrial Order is filed.]

III. NATURE OF THE PROCEEDING; STATUS OF PLEADINGS

[Set forth here a **short** (i.e., no more than two paragraphs) mutually agreed upon, non-argumentative, **neutral** statement of the general nature of the proceeding, plaintiff’s claims, defendant’s defenses, and counterclaims, if any.]

[The parties shall also include here an agreed list of pleaded claims and defenses, including any amended claims and defenses. If either party believes certain claims or defenses are not properly pleaded, a list of the

purported improperly pleaded claims or defenses shall be identified. If either party fails to list a claim or defense in this Final Pretrial Order, it will be deemed waived absent a subsequent showing of extraordinary circumstances. If either party intends not to pursue at trial certain claims or defenses, a list of the claims or defenses that will not be pursued shall be identified.]

IV. ISSUES TO BE TRIED

[Set forth a **short** and agreed statement of the issues to be tried.]

V. STIPULATIONS

[Set forth any stipulated facts.]

VI. PENDING MOTIONS

[List, by title, movant, filing date and TTABVUE docket number(s), all pending motions. Any motion not listed will be considered withdrawn. Any pending motions that the parties no longer need resolved should be identified.]

VII. SETTLEMENT

[State whether additional time (of no more than 30 days, which will not be extended) is required for settlement discussions. If settlement prospects have been exhausted, so state. Also, state whether the parties have considered referral of this matter to private mediation.]

VIII. ACCELERATED CASE RESOLUTION

[State whether, as a result of their discussions certified above, the parties desire to have the trial of this proceeding conducted by ACR. If ACR is desired, identify any agreed limits upon, or exceptions to the Trademark Rules of Practice regarding, the presentation of evidence. A brief description of ACR is provided in **Exhibit A.**]

IX. PLAINTIFF'S FACT WITNESS LIST (see description below)

X. DEFENDANT'S FACT WITNESS LIST (see description below)

The fact witnesses listed in this Section are those from whom the parties intend to take testimony, or may take testimony if the need arises, during the parties' trial periods. Only witnesses identified herein shall be permitted to testify in either party's case in chief. Good cause must be shown in support of testimony offered by any witness not identified, and such a showing must be made to, and approved by, the

Board before taking the testimony. If a party does not plan to present testimony from any witnesses, whether by deposition, declaration or affidavit, it shall so state.

[Each party shall list the witnesses it may call in its case in chief, and provide a brief summary of each witness's expected testimony – including how the testimony will be relevant to the disputed issues remaining in the proceeding. The party will specify whether the witness's testimony will be offered by testimony deposition (in person or on written questions), or by testimony declaration or affidavit. For any testimony offered at trial by declaration or affidavit, any adverse party may elect, within the time permitted by the Trademark Rules of Practice, oral cross-examination. If a witness's testimony will occur outside the United States by deposition on written questions, the parties shall provide a schedule for the exchange of direct, cross and rebuttal questions, and for the taking of the witness's testimony overseas. Each party shall set forth here any objections it has to expected testimony designated by the other(s) and the basis therefor – except for objections that reasonably cannot be anticipated prior to the presentation of testimony. Objections that reasonably cannot be anticipated prior to the presentation of testimony shall be preserved: (a) during oral deposition or deposition on written questions, if the testimony is presented in either of these formats, or (b) by separately filed written objections if the testimony is presented by declaration or affidavit – and in either case renewed by the objecting party in its Trial Brief or an Appendix submitted therewith. Pretrial objections to fact witness testimony raised in this Final Pretrial Order shall have the effect of preserving the objection, but the objection must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

XI. PLAINTIFF'S TRIAL EXHIBITS BY TESTIMONY

(see description below)

XII. DEFENDANT'S TRIAL EXHIBITS BY TESTIMONY

(see description below)

[Each party shall list all trial exhibits it intends to offer in its case in chief, or may offer if the need arises, whether via deposition (in person or on written questions), or by testimony declaration or affidavit. The list shall include a description of each exhibit, and the witness(es) through whom the exhibit(s) will be offered. No exhibit may be used during the parties' testimony periods, nor will it be considered by the Board, unless it is listed above, is pre-marked, and is served on all other parties five (5) business days before the opening of Plaintiff's testimony period, except when used (a) for cross-examination purposes, or (b) for rebuttal, or (c) if good cause for its omission from this Final Pretrial Order is shown. In Section XV. below, each party shall set forth any objections it has to the trial exhibits designated by the other party(ies) and the basis therefor – except objections that cannot reasonably be anticipated prior to the introduction of exhibits by testimony. Objections that reasonably cannot be anticipated prior to the presentation of exhibits shall be

preserved: (a) during oral deposition or deposition on written questions, if the exhibits are presented in either of these formats, or (b) by separately filed written objections if the exhibits are presented by declaration or affidavit – and in either case renewed by the objecting party in its Trial Brief or an Appendix submitted therewith. Pretrial objections to exhibits raised in this Final Pretrial Order shall have the effect of preserving the objection, but the objection must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

[In cases likely to involve substantial numbers of trial exhibits, the parties are encouraged to agree within fifteen (15) days after the close of discovery to assign a unique trial exhibit number or letter to each exhibit marked at any discovery deposition so that the trial exhibit designations can be used in trial testimony deposition transcripts or trial testimony declarations or affidavits, without change at trial. Absent use of such a system, plaintiff's trial exhibits shall be identified as OPP-1 or PET-1, and defendant's trial exhibits shall be identified as APP-1 or RESP-1.]

XIII. PLAINTIFF'S TRIAL EXHIBITS BY NOTICE(S) OF RELIANCE
(see description below)

DEFENDANT'S TRIAL EXHIBITS BY NOTICE(S) OF RELIANCE
(see description below)

If allowed by the Trademark Rules of Practice, the parties' trial exhibits may be offered through Notice(s) of Reliance during the parties' testimony periods, **and need not be made of record through witness testimony** – with such Notice(s) including explanations of the relevance of each exhibit to the disputed issues remaining in the proceeding. This paragraph shall not be interpreted to preclude a witness from testifying with respect to a document that has been made of record by way of a Notice of Reliance.

[Each party shall list all trial exhibits it may offer in its case in chief by Notice of Reliance, and brief descriptions of their relevance. **To be clear, the Board requires the brief statements of relevance in this Final Pretrial Order and in the Notice(s) of Reliance when filed.** No Notice of Reliance exhibit may be filed during the parties' trial periods, nor will it be considered by the Board, unless it is listed above, except (a) when used in a party's rebuttal period, or (b) upon a showing of good cause. In Section XV. below, each party shall set forth any objections it has to Notice of Reliance materials designated by the other party(ies) and the basis therefor.]

XIV. STIPULATIONS AND OBJECTIONS WITH RESPECT TO WITNESSES AND EXHIBITS

Objections not set forth herein to the witnesses and exhibits identified above will be considered waived absent good cause shown.

[The parties shall set forth any stipulations with respect to the authenticity and admissibility of exhibits and indicate their respective objections to exhibits and the grounds therefor. The parties are deemed to have stipulated to the foundation and authenticity of all exhibits and testimony unless a party's objections are set forth in this Final Pretrial Order, all subject to the parties' right to argue lack of relevance, probity and weight of the exhibits – except objections that cannot reasonably be anticipated prior to the introduction of testimony or exhibits by testimony. Objections that reasonably cannot be anticipated prior to the presentation of exhibits or testimony shall be preserved: (a) during oral deposition or deposition on written questions, if the exhibits or testimony are presented in either of these formats, or (b) by separately filed written objections if the exhibits or testimony are presented by declaration or affidavit – and in either case renewed by the objecting party in its Trial Brief or an Appendix submitted therewith. Pretrial objections to exhibits raised in this Final Pretrial Order shall have the effect of preserving the objections, but the objections must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

XV. PLAINTIFF'S EXPERT WITNESS LIST

XVI. DEFENDANT'S EXPERT WITNESS LIST

The expert witnesses listed in this Section are those from whom the parties intend to take testimony, or may take testimony if the need arises, during the parties' trial periods. Only expert witnesses identified herein shall be permitted to testify in either party's case in chief. During trial, good cause must be shown in support of testimony offered by any expert witness not identified and listed in this Final Pretrial Order, and such a showing must be made to, and approved by, the Board before taking the testimony. If a party does not plan to present testimony from any expert witnesses, whether by deposition, declaration or affidavit, it shall so state.

[Each party shall list the experts it intends to call in its case in chief, the date on which the witness's expert report was served, the date on which the expert was deposed during discovery (if applicable), and a very short summary of the expected expert's testimony – including how the expert's testimony will be relevant to the disputed issues remaining in the proceeding. The party will specify whether the expert's testimony will be offered by testimony deposition (in person or on written questions), or by testimony declaration or affidavit. For any expert testimony offered at trial by declaration or affidavit, any adverse party may elect, within the time permitted by the Trademark Rules of Practice, oral cross-examination. Each party shall set forth any objections it has to expert testimony designated by the other(s) and the basis therefor. The parties are deemed to have stipulated to the qualification of each identified witness to offer opinion testimony as an expert unless objections to the expert's qualifications are specified in this Final Pretrial Order. Pretrial

objections to expert testimony raised in this Final Pretrial Order shall have the effect of preserving the objection, but the objection must be renewed by the objecting party in its Trial Brief or an Appendix submitted therewith.]

Date:

Administrative Trademark Judge

[Signatures of counsel]

Date:

Date:

Exhibit A

Accelerated Case Resolution

The Board's Accelerated Case Resolution ("ACR") process is an alternative to a typical inter partes Board trial.¹ Under ACR, parties can obtain a determination of their claims and defenses using simplified methods of introducing evidence and in a shorter time period than contemplated by the standard Trademark Rules. The form of ACR can vary. The process can, but does not need to, approximate a motion (or cross-motions) for summary judgment and accompanying evidentiary submissions that the parties agree to submit in lieu of creating a traditional trial record and traditional briefs at final hearing.

The Board allows the parties to stipulate to a variety of deviations from the Board's rules in order to streamline discovery and testimony. If the parties stipulate to ACR they can avoid a formal trial altogether. Although the Board may not decide disputed issues of material fact when considering a motion for summary judgment, the parties may stipulate to the submission of such briefs and evidence in lieu of trial and agree that the Board may make any factual determinations based on such a record.

The standards of proof in an ACR proceeding are the same as the standards of proof in a traditional Board proceeding – the burden of proof remains with Opposer or Petitioner to prove its case by a preponderance of the evidence. *See* TBMP §§ 528.05(a)(2) and 702.04(a). A final decision rendered under ACR may be appealed in the same manner and under the same time frames as non-ACR decisions by the Board. *Id.*

In order to realize fully the expedited handling of their ACR case, parties should submit only relevant, non-cumulative evidence. *See* TBMP § 702.05 (Overly Large Records). Additionally, while the summary judgment model of ACR does not require parties to utilize notices of reliance when submitting documentary evidence that would be admissible at trial by means of a notice of reliance, they are encouraged to submit all documentary evidence under a cover sheet analogous to a notice of reliance, and to (1) separately identify each exhibit being submitted as evidence; (2) indicate the general relevance of the evidence; and, (3) and associate each evidentiary submission with one or more issues in the case. *See generally* TBMP § 704.02 regarding notices of reliance. A compact and well-organized ACR record will facilitate the efficient and expedited determination of the case.

¹ *See, e.g., Chanel Inc. v. Makarczyk*, 110 USPQ2d 2013, 2016–17 (TTAB 2013) (Board's final decision on ACR); *Chanel Inc. v. Makarczyk*, 106 USPQ2d 1774, 1775 (TTAB 2013) (ACR stipulation approved by Board); *see also Bond v. Taylor*, 119 USPQ2d 1049, 1051 (TTAB 2016); *Swiss Grill Ltd. v. Wolf Steel Ltd.*, 115 USPQ2d 2001, 2002 (TTAB 2015)

More information about ACR can be found on the Board's website² under the heading "Alternate resolution options" and in TBMP Sections 528.05(a)(2), 702.04, and 705. If the parties have any questions about ACR, they are encouraged to jointly contact the assigned Interlocutory Attorney via email to schedule an ACR conference.

² <https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board>