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

Proceeding	91206495
Party	Plaintiff SignalShare, LLC
Correspondence Address	ERIC STEVENS POYNER SPRUILL LLP 301 FAYETTEVILLE ST STE 1900 RALEIGH, NC 27601 UNITED STATES estevens@poynerspruill.com, johale@poynerspruill.com
Submission	Motion to Reopen
Filer's Name	Eric P. Stevens
Filer's e-mail	estevens@poynerspruill.com, johale@poynerspruill.com, jk-ing@poynerspruill.com
Signature	/Eric P. Stevens/
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Attachments	SignalShare - Motion to Resume Proceedings and to Issue New Scheduling Order.pdf(1425991 bytes)

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

SignalShare, LLC,

vs.

Amy Gurvey,

Opposer,

Respondent.

Opposition No. 91206495

**MOTION TO RESUME PROCEEDINGS
AND TO ISSUE NEW
SCHEDULING ORDER**

NOW COMES SignalShare, LLC (“Opposer” or “SignalShare”), by and through undersigned counsel, and moves the Board to resume proceedings in the above-captioned matter and to issue a new scheduling order. In support of this Motion, SignalShare shows the Board as follows:

STATEMENT OF FACTS

1. SignalShare commenced the above-captioned opposition proceeding on August 9, 2012, alleging that Respondent’s intent-to-use trademark application for the mark LIVE-FI would give rise to a likelihood of confusion with SignalShare’s prior registration of the same mark.
2. On October 18, 2012, Respondent Amy Gurvey (“Gurvey”), by and through her then-counsel, filed an Answer.
3. On August 27, 2013, Gurvey’s then-counsel (Ohlandt, Greeley, Ruggiero & Perle, LLP and the individual attorneys of the firm Charles N.J. Ruggiero, Terrence J. McAllister, and Jeffrey J. Scepaniski) filed a Request to Withdraw as Counsel.

4. On September 18, 2013, the Board allowed the withdrawal of counsel and suspended the above-captioned proceeding in order to allow Gurvey thirty (30) days to engage substitute counsel.

5. On October 18, 2013, Gurvey filed a motion to extend the deadline to engage substitute counsel until November 18, 2013. SignalShare did not consent to Gurvey's motion.

6. On January 2, 2014, the Board entered an Order deeming Gurvey's motion to have been allowed, but further noting that no counsel had appeared on behalf of Gurvey. The Board provided that Gurvey had twenty (20) days to inform the Board of Gurvey's intent to find replacement counsel.

7. Gurvey did not respond until February 14, 2014. Gurvey advised that she was pursuing litigation in the Southern District of New York against her former counsel, Mr. Ruggiero, and Gurvey requested an additional sixty (60) days to give notice to the Board concerning substitute counsel.

8. The Board has not ruled upon Gurvey's February 14, 2014 request for additional time to engage counsel. If Gurvey's request were deemed to have been granted, Gurvey's extended deadline to inform the Board as to the status of this matter would have been April 15, 2014. To date, Gurvey has made no further filings with the Board, nor has Gurvey contacted undersigned counsel concerning any extensions of time.

ARGUMENT

9. For several reasons, the Board should resume proceedings in this case. First, Gurvey has had since at least September 18, 2013—nearly nine months—to find substitute counsel in this case. That is ample time to engage substitute counsel.

10. Second, Gurvey is well in default of her most-recently-requested deadline to inform the Board as to the status of this case (which, hypothetically, would have been April 15, 2014). The Board has never actually granted Gurvey's most-recent request to extend time; moreover, even when Gurvey made that request, she was already in default of the Board's previous deadline. But even if the Board had granted Gurvey's request, her deadline passed more than six (6) weeks ago.

11. Third, Gurvey has made no showing that the litigation in the Southern District of New York relates to this trademark opposition proceeding (other than an unsupported allegation that SignalShare is somehow infringing upon some unspecified patent right). SignalShare denies such allegations. However, for purposes of this Motion, SignalShare observes that allegations of patent infringement would have no particular relevance to the issues in this trademark opposition proceeding.

12. Fourth, from what SignalShare's counsel has been able to glean from the docket of the S.D.N.Y. litigation, it appears that the Southern District of New York may in fact have ruled upon the discovery requests and/or subpoena(s) referenced in Ms. Gurvey's February 14, 2014 correspondence. On February 24, 2014, the Court entered an order that appears to have denied multiple requests made by Ms. Gurvey to conduct discovery (copy of Order attached as Exhibit 1). In a Declaration submitted by Gurvey just four days later, on February 28, 2014, Gurvey characterized the Court's February 24, 2014 Order as follows:

District Court [sic] also failed to order subpoenas against Plaintiffs patent attorneys post Cowan who were retained to mitigate damages; which is information requested by defendants in discovery. Also in a recent February 24, 2014 order District Court said it has not received Plaintiffs explanation of how her discovery requests pertain to the claims upheld by the Second Circuit.

(February 28, 2014 Gurvey Declaration ¶ 44) (copy attached as Exhibit 2, without additional exhibits thereto). SignalShare's counsel has no knowledge concerning the litigation in which Gurvey is engaged (other than what is publicly available on PACER),¹ but it appears to undersigned counsel that the Southern District of New York may have disposed of whatever discovery issues Gurvey was attempting to litigate before that Court. At any rate, the burden should be upon Gurvey to explain that litigation to the Board.

13. For the foregoing reasons, the Board should resume proceedings in the above-captioned matter and set new deadlines for discovery and trial. Additionally, the Board should issue a new Scheduling Order, in light of this nine-month suspension.

WHEREFORE, SignalShare prays that the Board resume proceedings in the above-captioned matter and issue a new Scheduling Order with new deadlines for further proceedings.

Respectfully submitted, this the 3rd day of June, 2014.

POYNER SPRUILL LLP

/s/ Eric P. Stevens

Eric P. Stevens
P.O. Box 1801 (27062-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075

ATTORNEYS FOR OPPOSER

¹ It appears that Gurvey's litigation in the Southern District of New York may relate, at least in part, to an alleged misappropriation of confidential information by Gurvey's former counsel in order to register patents on behalf of a third party. *See generally* Exhibit 2. In her February 14, 2014 correspondence to the Board, Gurvey stated that SignalShare is allegedly infringing upon those alleged patent rights (which Gurvey appears to claim should have been registered in her name). At any rate, those allegations are irrelevant to this trademark opposition proceeding, and they are especially irrelevant to the issue of whether this proceeding should continue to be suspended on the ground that Gurvey is supposedly continuing to search for substitute counsel.

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