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Filing date: **03/27/2020**

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

Proceeding	91254145
Party	Defendant PATTERN INC.
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Submission	Motion to Suspend for Civil Action
Filer's Name	Tiffany D.W. Shimada
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Signature	/Tiffany Shimada/
Date	03/27/2020
Attachments	2020-03-27 - Motion to Suspend Proceeding.pdf(20986 bytes) Exhibit A - Complaint with attachments.pdf(336359 bytes)

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

In the Matter of Application Serial No. 88/194,208
Published in the Official Gazette of October 22, 2019

ETSY, INC.,)	
)	
Opposer,)	Opposition No. 91254145
)	
v.)	
)	
PATTERN INC.,)	
)	
Applicant.)	

**MOTION TO SUSPEND PROCEEDINGS IN VIEW OF PENDING
CIVIL ACTION PURSUANT TO TRADEMARK RULE 2.117(a)**

Applicant Pattern Inc. (“Applicant”) hereby moves the Trademark Trial and Appeal Board (“Board”) to suspend the above-captioned Opposition Proceeding, pending determination of a pending civil action, pursuant to Trademark Rules 2.117(a) and 2.127(a), and TBMP § 510.02(a).

Applicant and Opposer Etsy, Inc. (“Opposer”) are involved in litigation pending before the United States District Court for the District of Utah, Central Division, entitled *Pattern Inc. v. Etsy, Inc.*, Civil Action No. 2:20-cv-00206-HCN (the “Federal Action”). Attached hereto as **Exhibit A** is a copy of the Complaint filed in the Federal Action on March 27, 2020. The Federal Action involves the same mark and the same issues as those involved in the instant Opposition Proceeding. Applicant asks the Court in the Federal Action for a declaratory judgment confirming Applicant’s right to use the mark for its goods and services and of non-infringement of Opposer’s mark. Thus, the pending federal litigation will address the issue of

whether Applicant's mark is confusingly similar to Registrant's mark, which is the issue raised in the instant Opposition Proceeding. *See* Notice of Opposition ¶¶ 7-10. As a result, the determination of the issues raised in the Federal Action will be dispositive of all issues raised in the Opposition Proceeding.

Suspension of the Opposition Proceeding will also avoid the unnecessary expenditure of the Board's resources as well as the resources of the parties in litigating the same issues in two forums. It would also avoid the potential for inconsistent results. Where the parties to a proceeding before the Board are involved in a civil action, the final determination of which will have a bearing on the proceeding before the Board, those proceedings should be suspended until final determination of the civil action. *See* 37 C.F.R. § 2.117(a); *Miller v. B&H Foods, Inc.*, 209 U.S.P.Q. 357, 359 (T.T.A.B. Jan. 5, 1981) ("Thus, under normal circumstances, where, as here, the civil action between the parties may be dispositive or have a direct bearing on the issues in a proceeding before the Board, it is the practice to suspend the proceeding before the Board to await the outcome of the civil action and to determine its effect on the issues in the action in the Patent and Trademark Office.").

If the Board decides to deny the present Motion to Suspend, Applicant hereby moves pursuant to TBMP § 502.04, to extend the deadline for all discovery, testimony, and trial dates by ninety (90) days, based on the date of the Board's decision.

For the above reasons, Applicant respectfully requests that the Board grant this Motion to Suspend the above-captioned Opposition Proceeding pending the final disposition of the Federal Action.

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Dated: March 27, 2020

/s/ Tiffany Shimada

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Attorneys for Applicant Pattern Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION TO SUSPEND PROCEEDINGS IN VIEW OF PENDING CIVIL ACTION PURSUANT TO TRADEMARK RULE 2.117(a)** has been served via email on March 27, 2020, to:

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