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

Proceeding	92064459
Party	Defendant TASER International, Inc.
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Attachments	Status Report and Exs.pdf(464279 bytes)

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

Phazzer Electronics, Inc.

Petitioner,

v.

Cancellation Action No.: 92064459
Involving U.S. Registration No. 4,423,789

TASER International, Inc.,

Registrant.

REGISTRANT’S STATUS REPORT ON RELATED PROCEEDINGS

Registrant TASER International, Inc. (“Registrant”), now known as Axon Enterprise, Inc., hereby provides the following status report to the Board.

PROCEDURAL HISTORY

1. On October 28, 2016, the Board entered an Order staying these proceedings pending the first-filed litigation between the parties in the United States District Court for the Middle District of Florida in Case No. 6:16-cv-00366-PGB.

2. On July 21, 2017, the District Court granted TASER’s Motion for Sanctions and entered both a Default Judgment and Permanent Injunction (Doc. 183, Ex. A attached)¹ (“Judgment/Injunction Order”). Pertinent to this proceeding, the Court found: “Taser’s U.S. Trademark Registration No. 4,423,789, issued on October 29, 2013, for the non-functional shape of cartridges used to launch darts, is deemed valid and enforceable, not generic, functional, or merely descriptive, and infringed by Phazzer.” The Court’s Order also directed that “Phazzer shall not challenge or continue to challenge the validity or enforceability of the ‘789 Registration in any manner in any forum, including the USPTO.”

¹ Doc. Nos. are to the District Court’s docket.

3. On August 10, 2017, Phazzer filed its notice of appeal as to the Judgment/Injunction Order (Doc. 192) (U.S. Fed. Circuit Case No. 17-2637).

4. On April 4, 2018, the Court entered its damages accounting and fee award in favor of TASER based on Phazzer's willful infringement and intentional disregard of Court Rules and Orders throughout the litigation (Doc. 267) ("Damages Order").

5. On April 30, 2018, Phazzer filed its notice of appeal as to the Damages Order (Doc. 269) (U.S. Fed. Circuit Case No. 18-1914).

6. On May 4, 2018, the Court entered an Order holding both Phazzer and its executive Steven Abboud ("Abboud") in civil contempt of the Injunction (Doc. 271) ("Contempt Order").

7. On May 11, 2018, the District Court entered final judgment in favor of TASER (Doc. 273).

8. On June 4, 2018, Phazzer filed a notice of appeal as to the Contempt Order (Doc. 282) (U.S. Fed. Circuit Case No. 18-2059).²

9. On October 26, 2018, the Federal Circuit Court of Appeals affirmed "in its entirety" the District Court's Judgment and Injunction in favor of TASER in appeal No. 17-2637 (Doc. 300, Ex. B attached).

10. On January 11, 2019, the mandate issued on appeal No. 17-2637 (Doc. 316), after the denial of Phazzer's Petition for Rehearing En Banc of the Judgment/Injunction Order.

² Abboud similarly appealed the Contempt Order pro per (Doc. 283) (U.S. Fed. Circuit Case No. 18-2057), which was dismissed by the Federal Circuit for lack of standing on July 23, 2019 (Doc. 349), with the mandate issuing on August 30, 2019 (Doc. 354).

11. On July 23, 2019, the Federal Circuit affirmed the District Court's Damages Order in appeal No. 18-1914 (Doc. 351). The mandate issued on August 30, 2019 (Doc. 355), after denial of Phazzer's Petition for Panel Rehearing.

12. On July 23, 2019, the Federal Circuit affirmed the District Court's Contempt Order in appeal No. 18-2059 (Doc. 350). The mandate issued on August 30, 2019 (Doc. 356), after denial of Phazzer's Petition for Panel Rehearing.

13. No further appeals remain related to U.S. Registration No. 4,423,789.

**RES JUDICATA BARS PHAZZER'S COLLATERAL ATTACK ON DEFAULT
JUDGMENT AND INJUNCTION**

14. With appeals exhausted, the Judgment/Injunction Order finding U.S. Registration No. 4,423,789 valid and enforceable is conclusively established with regard to Phazzer and all those in privity with Phazzer. *International Nutrition Co. v. Horphag Research, Ltd.*, 220 F.3d 1325, 1328 (Fed. Cir. 2000) (stating that default judgment can preclude subsequent actions by the same party or those in privity with it).

15. The purpose of res judicata is to protect a party from "being required to relitigate the same issue against the same party in a separate action." *Sharp Kabushiki Kaisha v. ThinkSharp, Inc.*, 448 F.3d 1368, 1372 (Fed. Cir. 2006). Accordingly, TASER submits that this proceeding should be dismissed with prejudice as precluded by res judicata as a result of the final judicial determination as to the '789 Registration's validity. *See Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1329-30 (Fed. Cir. 2008) (upholding dismissal of cancellation petition as impermissible collateral attack on default judgment and injunction).

Respectfully submitted this September 19, 2019.

/s/Ryan T. Santurri

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing has been served by email

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