

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

CSG

Mailed: April 23, 2003

Opposition No. 91125203

NOVO NORDISK A/S

v.

INNOJECT, INC.

This case now comes up on opposer's motion to extend its testimony period, filed January 6, 2003, and applicant's cross motion, filed January 23, 2003, to dismiss this proceeding with prejudice under 2.132(a) "if the Board determines opposer has failed to demonstrate good cause for its delay and denies opposer's motion."

We turn first to applicant's motion to dismiss under 2.132(a).

Inasmuch as applicant filed its motion to dismiss prior to the close of opposer's testimony, applicant's motion to dismiss is denied as premature under Trademark Rule 2.132(a). Moreover, applicant's motion to dismiss is not well taken inasmuch as opposer has since filed two notices of reliance in this proceeding during its testimony period. Accordingly, applicant's motion to dismiss is denied.

The Board now turns to opposer's motion to extend. To prevail on its motion, opposer must establish good cause for the requested extension of time. See Fed.R.Civ.P. 6(b)(1); *American Vitamin Products, Inc. v. DowBrands, Inc.*, 22 USPQ2d 1316 (TTAB 1992); and TBMP Section 509.

In support of its motion, opposer essentially argues that because it will receive applicant's discovery responses during its testimony period, it needs additional time to review the responses, determine their sufficiency, and prepare for trial.

In response, applicant argues that the motion to extend should be denied since opposer's motion fails to establish good cause for an extension of opposer's testimony period.

The Board finds that opposer has not established good cause to warrant an extension of time of its testimony period.

First, opposer's request to extend its testimony period based on the need for additional time to determine the sufficiency of applicant's discovery responses does not constitute good cause. *Cf. Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383 (TTAB 2001) ("The Board rejects opposer's contention that opposer's desire to

"formally deal" with certain purported deficiencies in applicant's discovery responses constitutes good cause for an extension of opposer's testimony period.")

Second, opposer's reliance on receipt of applicant's discovery responses during its testimony period as the basis for its motion to extend is undercut by its own actions. Opposer mutually agreed to being served with applicant's discovery responses during its testimony period and knew that this was a possibility; therefore, opposer cannot now complain that receipt of applicant's discovery responses during its testimony period leaves it with insufficient time to prepare for trial so that it needs an extension.¹ Cf. *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 (TTAB 1987) ("A party may not wait until the waning days of the discovery period to serve his discovery requests or notices of deposition and then be heard to complain that he needs an extension of the discovery period in order to take additional discovery.") Moreover, the Board notes that opposer had three weeks remaining in its testimony period once the responses were served, on January 13, 2003, (as indicated by both parties), which certainly appears to be

¹ Although opposer asserts that it was diligent in the period preceding testimony, we note that opposer waited until the closing days of the discovery period to serve its discovery requests.

adequate time for reviewing applicant's discovery² and preparing for trial.³ Because the grounds stated in opposer's motion do not demonstrate good cause for an extension of its testimony period, opposer's motion to extend is DENIED.

Remaining trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	CLOSED
30-day testimony period for party in position of defendant to close:	June 5, 2003
15-day rebuttal testimony period for party in position of plaintiff to close:	July 20, 2003

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

² In applicant's response, applicant has stated that its discovery responses consisted of 134 pages. Applicant's brief at 1.

³ Although applicant's discovery responses were received by opposer prior to opposer filing its reply to the motion to extend, opposer has failed to provide the Board with any specific information in its reply brief as to why, with sufficient time remaining in its testimony period, it was unable to prepare for trial once it had received and reviewed applicant's responses.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

***By the Trademark Trial
and Appeal Board***