

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

Mailed: September 30, 2003

Opposition No. 91150094

OLD WORLD INDUSTRIES, INC.  
and SPLITFIRE  
INTERNATIONAL, INC.

v.

AUTO METER PRODUCTS, INC.

**David Mermelstein, Attorney:**

Now before the Board is opposers' motion, filed September 26, 2003,<sup>1</sup> for an extension of time to file its reply brief on the case. The Board finds that this matter is appropriate for resolution by telephone conference. Trademark Rule 2.120(i)(1); TBMP § 502.06 (2d ed. June 2003).

A telephone conference was initiated by the Board on September 29, 2003. Participating were Sanjiv D. Sarwate, for opposers, Philip T. Petti and Sandra V. Scavo, for applicant, and the above Board attorney.

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<sup>1</sup> Opposers filed their motion by Express Mail, with a "courtesy copy" faxed to the above Board attorney. The filing of unrequested copies is strongly discouraged. Further, the Board does not generally accept any papers by facsimile. However, in exigent circumstances, parties may contact the Board attorney responsible for resolving interlocutory matters and request that filing by facsimile be permitted and that resolution of the motion be by telephone conference.

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Opposers' reply brief is currently due on September 30, 2003; opposers now seek an extension until October 30, 2003. As grounds for their motion, opposers state that settlement negotiations are continuing,<sup>2</sup> and that opposers' primary counsel will be out of the office for his marriage and honeymoon from October 3 until October 20, 2003.

Applicant opposes the motion, stating that, while a settlement has been reached in principle, the parties have not been able to reduce their agreement to writing, allegedly due to delays on the part of opposers. Applicant further states that it has already allowed opposers two extensions in this matter, and that it does not desire any further delay in this matter.<sup>3</sup> Applicant stated its willingness to accede to an extension only until October 10, 2003.

**Analysis**

An extension of time - requested prior to the expiration of the relevant period - will be granted upon a showing of good cause. Fed. R. Civ. P. 6(b). While "good

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<sup>2</sup> Apparently negotiations have been between the parties' principals, and neither counsel was able to supply any direct knowledge of the current status of the settlement discussions.

<sup>3</sup> Both parties have also brought to the Board's attention - apparently for the first time - the pendency of a Section 337 investigation at the U.S. International Trade Commission involving these parties and the subject mark. Although the validity of the subject mark is also pending before the USITC, neither party wishes to have this proceeding suspended. It does not currently appear to the Board that suspension is appropriate; few of the factors supporting the Board's usual policy of

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cause" is a flexible standard depending on all of the circumstances, the Board has typically granted extensions where the moving party has been diligent and the requested extension would not result in unreasonable delay. See TBMP § 509.01(a) (2d ed. June 2003), and cases cited therein.

The extension requested is relatively brief. While Mr. Sarwate is not opposers' only counsel of record, he is undisputedly opposers' primary counsel. Although opposer has previously been granted extensions (with applicant's consent), the privilege has not been abused in this matter, and opposer's counsel should be able to take some time away from this case to attend to personal matters.<sup>4</sup> Finally, it appears that the parties are at least still in contact regarding settlement, which even applicant's counsel indicates has been reached in principle, although details may yet remain unresolved.

**Conclusion**

Good cause having been shown, opposers' motion is GRANTED. Fed. R. Civ. P. 6(b). Opposers' reply brief shall be filed no later than October 30, 2003. However, no further extensions should be expected.

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suspending in favor of civil court proceedings are applicable in this situation.

<sup>4</sup> This strikes the Board as a situation which should have be resolved as a matter of professional courtesy. Sooner or later, every attorney finds him or herself in a similar position.

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Any request for oral argument must be filed no later than ten days after the due date for opposers' reply brief. Trademark Rule 2.129(a).

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### **New Developments at the Trademark Trial and Appeal Board**

- Files of TTAB proceedings can now be examined using TTAB Vue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format. Papers filed prior to January 2003 may not have been scanned. Unscanned papers are available for public access at the TTAB. For further information on file access, call the TTAB at (703) 308-9330.
- Parties should also be aware of recent changes in the rules affecting trademark matters, including the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) ([www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf](http://www.uspto.gov/web/offices/com/sol/notices/68fr55748.pdf)); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003) ([www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf](http://www.uspto.gov/web/offices/com/sol/notices/68fr48286.pdf)).
- The second edition (June 2003) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [www.uspto.gov/web/offices/dcom/ttab/tbmp/](http://www.uspto.gov/web/offices/dcom/ttab/tbmp/).