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EXPRESS MAIL LABEL NO.: ET 346770944 US

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

In the matter of Application Serial No. 75/845,350, INTELLIWEAR  
Published in the *Official Gazette* on October 30, 2001



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 MARK D. TANNEN, :  
 :  
 Opposer, :  
 :  
 vs. :  
 :  
 JAY MACK, :  
 :  
 Applicant. :  
 -----X

12-23-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #79

Opposition No. 91 151109

12-23-2002  
U.S. Patent & TMO/TM Mail Rcpt Dt. #79

**OPPOSER'S MOTION TO EXTEND  
TERMS FOR DISCOVERY AND TESTIMONY**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and in accordance with the *Trademark Trial and Appeal Board Manual of Procedures* §509, Opposer, Mark D. Tannen d/b/a American Intellware, in the above-captioned opposition proceeding respectfully moves the Trademark Trial and Appeal Board ("Board") for an order extending the discovery, testimony and trial dates by a period of ninety (90) days in accordance with the following schedule:

- The period for discovery to close : April 3, 2003
- Testimony Period for the Party  
in Position of Plaintiff to Close : July 2, 2003  
(Opening thirty days prior thereto)
- Testimony Period for the Party  
in Position of Defendant to Close : August 31, 2003  
(Opening thirty days prior thereto)
- Rebuttal Testimony Period to Close : October 15, 2003  
(Opening fifteen days prior thereto)

SAD

On April 26, 2002, Applicant filed and served its Answer and Motion for Summary Judgment. Pursuant to Trademark Rule 2.127(d), 37 C.F.R. § 21.27(d), the Board will suspend proceedings pending the disposition of a motion for summary judgment or any motion which is potentially dispositive of a proceeding. On October 7, 2002, Opposer filed a motion to extend discovery and trial dates that was unopposed.

The Board has not yet suspended proceedings and discovery is set to close on January 3, 2002. Opposer requires discovery so that he may affirmatively plead his case, pursue this opposition and have a trial on the merits. Accordingly, on December 18, 2002, Opposer's counsel proposed that the parties extend the discovery, testimony and trial dates in this matter. In a December 20, 2002 email, Applicant, through its attorneys, refused to consent to any extension of discovery, testimony or trial periods, but stated that he would not submit a formal opposition to this motion.

Opposer intends to pursue discovery and requires additional time to take discovery in this matter. In view of the pending motion, however, Opposer refrained from serving any document requests, interrogatories or notices of deposition believing the more prudent approach would be to await the Board's decision, as it may narrow certain issues in this case. This motion is made in good faith and without any intention of causing a delay but rather, to allow further time to complete discovery and ready for trial following the disposition of the motion pending before the Board.

**WHEREFORE**, for the reasons stated and the good cause shown herein, Opposer, by its counsel, respectfully requests that the discovery, testimony and trial dates be extended for a period of ninety (90) days each in accordance with the above schedule.

Respectfully submitted,

BAKER BOTTS L.L.P.

Dated: December 23, 2002

By: \_\_\_\_\_

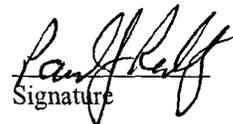
  
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Attorney for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee Service" in an envelope with sufficient postage addressed to:  
BOX TTAB NO FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive, Arlington, Virginia 22202-3513

Paul J. Reilly  
Attorney Name

December 23, 2002  
Date of Deposit

  
Signature

December 23, 2002  
Date of Signature

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing, **OPPOSER'S MOTION TO  
EXTEND TERMS FOR DISCOVERY AND TESTIMONY**, was served on Applicant's  
attorneys of record via the United States Postal Service as First Class Mail, in an envelope with  
sufficient postage, addressed to following:

Robert T. Daunt, Esq.  
Mark W. Good, Esq.  
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215 W. Franklin Street, 4th Floor  
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on December 23, 2002.

By:   
Paul J. Reilly