

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: August 16, 2007

Opposition No. 91162370  
Opposition No. 91162469  
Opposition No. 91164615  
Opposition No. 91165285  
Opposition No. 91165465

DE BOULLE DIAMOND & JEWELRY, INC.

v.

DE BEERS LV LTD

**Cheryl Butler, Attorney, Trademark Trial and Appeal Board:**

In an order dated July 13, 2007, the Board, among other things, granted opposer's motion to reopen testimony (only)<sup>1</sup> and reset trial dates, with opposer's first testimony period to close on September 15, 2007. The Board, in granting the motion to reopen, found that opposer was unaware of the Board's July 26, 2006 order which granted applicant's then-pending motion to compel as conceded and reset discovery and trial dates.

On August 9, 2007, opposer filed a motion for summary judgment. Trademark Rule 2.127(e)(1) provides, in relevant part, that "... a motion for summary judgment ... should be filed prior to the commencement of the first testimony period, as originally set or as reset, and the Board, in its discretion, may deny as

untimely any motion for summary judgment filed thereafter." See also TBMP §528.02 (2d ed. rev. 2004).

It is true that the first testimony period technically opened once in this case. However, consistent with the Board's determination in its July 13, 2007 order that opposer was unaware of the schedule set in the July 26, 2006 order, the Board finds opposer's present motion for summary judgment to be timely filed. Moreover, to any extent doubt about the timeliness of the summary judgment motion remains, the Board exercises its discretion under Trademark Rule 2.127(e) to consider the motion.

In order to avoid any confusion arising from the question of the timeliness of opposer's motion and any resulting prejudice to applicant, applicant is allowed until **THIRTY DAYS** from the mailing date of this order to file a response on the merits to opposer's motion for summary judgment.<sup>2</sup> Opposer's reply, if any, is to be filed in accordance with Trademark Rule 2.127(e)(1).

Proceedings otherwise are suspended pending disposition of the motion for summary judgment. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d).

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<sup>1</sup> Opposer also requested a reopening of discovery. However, as discussed more fully in the July 13<sup>th</sup> order, because the parties had already exchanged discovery requests, the Board elected not to reopen discovery.

<sup>2</sup> Thus, if applicant has already filed a response, or anticipates doing so, objecting to the timeliness of the motion, such response will not be considered.