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

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| Proceeding | 91162370 |
| Party | Plaintiff<br>De Boulle Diamond & Jewelry, Inc. |
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| Submission | Other Motions/Papers |
| Filer's Name | Scott T. Griggs |
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| Signature | /Scott Griggs/ |
| Date | 01/24/2008 |
| Attachments | Amended Motion for Extension of Time.pdf ( 7 pages )(23108 bytes ) |

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

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| DE BOULLE DIAMOND & JEWELRY, INC., | |
| Opposer, | Consolidated Opposition No.: 91162370 |
| v. | Opposition No.'s: 91162370<br>91162469<br>91164615<br>91165285<br>91165465 |
| DE BEERS LV LTD., | |
| Applicant. | |

OPPOSER'S AMENDED MOTION FOR EXTENSION OF TIME TO FILE (1) REPLY BRIEF TO APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT, (2) RESPONSE IN OPPOSITION TO APPLICANT'S CROSS-MOTION FOR SUMMARY JUDGMENT, AND (3) MOTION TO STRIKE APPLICANT'S EVIDENCE IN RESPONSE AND OPPOSITION TO OPPOSER'S MOTION FOR SUMMARY JUDGMENT AND APPLICANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

Opposer De Boulle Diamond & Jewelry, Inc. ("Opposer" and/or "De Boulle"), hereby files this Amended Motion for extension of time to file its (1) Reply Brief to Applicant's Response in Opposition to Opposer's Motion for Summary Judgment, (2) Response in Opposition to Applicant's Cross-Motion for Summary Judgment, and (3) Motion to Strike Applicant's Evidence in Response and Opposition to Opposer's Motion for Summary Judgment, and Applicant's Cross-Motion for Summary Judgment, and in support of same will respectfully show:

1. De Boulle filed a Motion for Summary Judgment in this proceeding on August 9, 2008 (the "Motion for Summary Judgment").

2. By Order dated August 16, 2007, the Board granted Applicant an additional period of time until September 15, 2007, to file a response to the Motion for Summary Judgment.

3. On September 12, 2007, Applicant De Beers LV Ltd. ("Applicant" and/or "De Beers"), pursuant to an agreement with De Boulle, filed a Stipulated Motion for Extension of Time to Respond to Opposer's Motion for Summary Judgment, further enlarging the time for De Beers to respond to the Motion for Summary Judgment until September 30, 2007[1].

4. On September 17, 2007, De Beers filed Motion to Request Discovery Pursuant to Fed. R. Civ. P. 56(f) (the "Motion to Request Discovery"), in lieu of a response to the Motion for Summary Judgment.

5. By Order dated December 5, 2007, the Board denied the Motion to Request Discovery, and once more granted Applicant an additional period of time until January 4, 2008, to file a response to the Motion for Summary Judgment.

6. On January 4, 2008, De Beers filed Applicant's Cross-Motion Motion for Summary Judgment and Response in Opposition to Opposer's Motion for Summary Judgment (collectively the "Opposition"). The Opposition *inter alia* includes Declarations by Hamida Belkadi and Darren W. Saunders in support thereof (the "Evidence in Opposition").

7. De Boulle has the following deadlines in this regard (the "Deadlines"):

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[1] Opposer had previously by Stipulation Regarding Motion to Extend Discovery and Testimony Periods, filed March 2, 2006, also agreed to extensions to the Discovery and Testimony Periods requested by the De Beers in this case.

(a) Opposer's Reply Brief to Applicant's Response in Opposition to Opposer's Motion for Summary Judgment, is currently due in this matter on January 24, 2008[2] (the "Reply Brief");

(b) Opposer's Response in Opposition to Applicant's Cross-Motion for Summary Judgment, is currently due in this matter on February 8, 2008[3] (the "Cross-Motion Response"); and

(c) Opposer's Motion to Strike Applicant's Evidence in Response and Opposition to Opposer's Motion for Summary Judgment, and Applicant's Cross-Motion for Summary Judgment, is currently due in this matter on February 8, 2008[4] (the "Evidence Objection") (the Reply, Cross-Motion Response, and Evidence Objection are collectively hereinafter referred to as the "Reply").

8. Counsel for De Boulle has diligently proceeded to conduct the research and analysis, gather evidence in rebuttal, and perform the work required prepare the Reply, and present an adequate and appropriate response to the extensive evidence and authorities presented by the Opposition and Evidence in Opposition. Because of the prior professional commitments of counsel for De Boulle, his extremely busy patent and trademark practice and schedule, and the complexity and extent of the work required to prepare and file the Reply, De Boulle will not be able to complete the task in time to file the Reply by the Deadlines.

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[2] *See* 37 CFR §§ 2.127(e)(1), 2.119(c); TBMP 502.02(b)
[3] *Id.*
[4] *See* TBMP 506.02

9. The Board, on motion for good cause, may extend the deadline to file the Reply. *See Fed. R. Civ. P.* 6(b) and *TBMP* § 509 (Motion to Extend Time; Motion to Reopen Time). Excusable neglect "seems to require a demonstration of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in the rules." *Dominic v. Hess Oil V.I.Corp.*, 841 F.2d 513, 517 (3d Cir. 1988) (*citing Wright & Miller*) (quotations in the original). *See also Winters v. Teledyne Movible Offshore, Inc.*, 776 F.2d 1304, 1306 (5th Cir. 1985) (Without attempting a rigid or all-encompassing definition of "good cause," it would appear to require at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice, and some showing of "good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified" is normally required).

10. De Boulle will respectfully show the Court that good cause exist to permit De Boulle an additional period of time, until February 4, 2008, to file its Reply, which it respectfully seeks by this Motion. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) ("good cause" means scheduling deadlines cannot be met despite party's diligence).

11. This Motion is mode not for delay only but so that justice may be served.

WHEREFORE Opposer, De Boulle Diamond & Jewelry, Inc., respectfully prays that the Board grant it an additional period of time, until February 4, 2008, to file Opposer's (1) Reply Brief to Applicant's Response in Opposition to Opposer's Motion for Summary Judgment, (2) Response in Opposition to Applicant's Cross-Motion for

Summary Judgment, and (3) Motion to Strike Applicant's Evidence in Response and Opposition to Opposer's Motion for Summary Judgment, and Applicant's Cross-Motion for Summary Judgment, in this proceeding, and that the Board grant it such other and further relief, legal and equitable, general and special, to which De Boulle may show itself justly entitled.

This the 24th day of January, 2008.

Respectfully submitted,

/Scott Griggs/

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COUNSEL FOR OPPOSER

CERTIFICATE OF CONFERENCE

On January 23, 2008, the undersigned conferred with Darren W. Saunders, and Vincent P. Rao, counsel for Applicant regarding the extension requested by this Motion. They advised that they would have to obtain their client's approval for the eleven (11) day extension requested. They subsequently never responded although undertaking that they would do so.

/Scott Griggs/

Scott T. Griggs
Reg. No. 48,331; Counsel for Opposer

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document upon counsel of record (1) by electronic mail on this the 24th day of January, 2008 and (2) by mailing a true copy thereof, through the United States Mail, first class, postage prepaid, on this the 24th day of January, 2008, and addressed as follows:

"Saunders, Darren W." darren.saunders@klgates.com
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