

ESTTA Tracking number: **ESTTA189467**

Filing date: **01/29/2008**

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

Proceeding	91162370
Party	Defendant De Beers LV Ltd
Correspondence Address	Vincent P. Rao, II Kirkpatrick & Lockhart Preston Gates Ellis, LLP 599 Lexington Avenue New York, NY 10022-6030 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Vincent P. Rao
Filer's e-mail	vincent.rao@klgates.com, nytrademarks@klgates.com
Signature	/vincent p. rao/
Date	01/29/2008
Attachments	Applicant's Response to Opposer's Amended Motion for Extension of Time.pdf (3 pages)(178181 bytes)

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

De Boulle Diamond & Jewelry, Inc.,	:	
	:	
Opposer,	:	Consolidated Opposition No.: 91162370
	:	Opposition Nos. 91162370
v.	:	91162469
	:	91164615
De Beers LV Ltd.,	:	91165285
	:	91165465
Applicant.	:	

**APPLICANT’S RESPONSE TO
OPPOSER’S AMENDED MOTION FOR EXTENSION OF TIME**

Opposer once again seeks to delay these proceedings – this time because its counsel is “extremely busy”. Amended Motion for Extension of Time at ¶8. Opposer argues that it can not meet the briefing deadlines imposed by the TTAB Rules because of its counsel’s busy “practice and schedule” and that this constitutes “good cause” to extend the deadline. *Id.* at ¶9.

The fact that a lawyer is busy is no excuse or justification for the extension of time now sought. In fact, Opposer’s argument is refuted by the authority cited in its motion:

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.

Id., citing *Winters v. Teledyne Movable Offshore, Inc.*, 776 F.2d 1304, 1306 (5th Cir. 1985) (emphasis added).

Clearly, merely being “busy” does not constitute excusable neglect and therefore, Opposer cannot show “good cause” for an extension of time. Moreover, Opposer has not specified any reasonable basis for non-compliance. Indeed, Opposer did not even submit an affidavit to explain precisely what other patent and trademark matters have kept its counsel from complying with its obligations herein.

These proceedings, initiated in September 2004, have been lingering on for years while Opposer has sought and received a number of last-minute extensions. This has caused excessive delay in determining De Beers’ right to obtain registration of its valuable marks and, contrary to Opposer’s claim, this delay is not in the interest of justice. Accordingly, Applicant De Beers respectfully urges the Board to deny the Opposer’s motion for extension of time so as to permit the Board to decide the parties’ pending motions for summary judgment.

Respectfully submitted,

DE BEERS DIAMOND
JEWELLERS LIMITED
(formerly DE BEERS LV LTD.)

Dated: January 29, 2008

By: _____



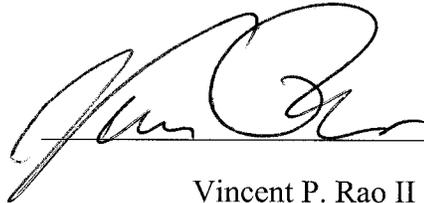
Darren W. Saunders
Mark I. Peroff
Vincent P. Rao II
Kirkpatrick & Lockhart Preston Gates Ellis LLP
599 Lexington Avenue
New York, NY 10022-6030
Tel: (212) 536-3900
Fax: (212) 536-3901

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that on the 29th day of January, 2008, I served a true and correct copy of the foregoing Applicant's Response to Opposer's Amended Motion for Extension of Time on attorneys for the Opposer at the address indicated below, by depositing said document in the United States mail, first-class postage prepaid:

Scott T. Griggs, Esq.
Griggs Bergen LLP
Bank of America Plaza
901 Main Street
Suite 6300
Dallas, Texas 75202

Dated: January 29, 2008



Vincent P. Rao II