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

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated
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Date	08/26/2008
Attachments	Motion to Resume Proceedings.pdf (3 pages)(73256 bytes) Memorandum in Support of Opposer's Motion to Resume Proceedings.pdf (4 pages)(107659 bytes)

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

BRINK'S NETWORK, INCORPORATED)
)
) Opposer)
)
 v.) Opposition No. 91164764
)
 BRINKMANN CORPORATION)
)
) Applicant)

MOTION TO RESUME PROCEEDINGS

Opposer, Brink's Network, Incorporated, respectfully moves the Board to resume proceedings in the above-captioned opposition. The grounds for this motion are as follows:

- (1) On August 12, 2008, Opposer filed a motion for summary judgment seeking the dismissal of the laches defense asserted by Applicant, Brinkmann Corporation.
- (2) Subsequently, on July 19, 2008, the Board entered an Order pursuant to Rule 2.127(d) of the Trademark Rules of Practice suspending proceedings pending a decision on Opposer's motion for summary judgment.
- (3) Under Rule 2.127(d), a suspension of proceedings is required "[w]hen any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, *or any other*

motion which is potentially dispositive of a proceeding”

(Emphasis added).

- (4) The predicate for the suspension of proceedings provided for in Rule 2.127(d) is the filing of a motion, such as a motion for summary judgment directed to the merits of the proceeding, which is potentially dispositive of the proceeding.
- (5) In the present context, however, Opposer’s motion is directed only to the affirmative defense of laches. Accordingly, that motion is not potentially dispositive of the present opposition proceeding.

For the reasons stated above, Opposer respectfully requests that proceeding be resumed. A memorandum in support of the foregoing motion is submitted herewith.

BRINK’S NETWORK, INCORPORATED

Date: August 26, 2008

By: Nancy S. Lapidus

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Resume Proceedings was served on the following counsel of record for Applicant by Federal Express, with confirming service by depositing the same in the U.S. Mail, first class mail postage prepaid, this 26th day of August, 2008:

Gary A. Clark, Esq.
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MEMORANDUM IN SUPPORT OF OPPOSER'S
MOTION TO RESUME PROCEEDINGS

I. INTRODUCTION

This matter is before the Board on the motion of Opposer, Brink's Network, Incorporated, to resume proceedings in the above-captioned opposition.

II. BACKGROUND OF MOTION

On August 12, 2008, Opposer filed a motion for summary judgment seeking the dismissal of the laches defense asserted by Applicant, Brinkmann Corporation. As a result of the filing of that motion, the Board entered an Order on August 19, 2008, pursuant to Rule 2.127(d) of the Trademark Rules of Practice that suspended proceedings pending a decision on Opposer's motion for summary judgment.

As discussed more fully below, Opposer respectfully submits that a suspension of proceedings under Rule 2.127(d) is not appropriate in this context.

III. ARGUMENT

Rule 2.127(d) provides in pertinent part that proceedings shall be suspended “[w]hen any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, *or any other motion which is potentially dispositive of a proceeding*” (Emphasis added). The predicate for the suspension of proceedings mandated by Rule 2.127(d) is the filing of a motion -- such as a motion for summary judgment directed to the merits of the proceeding -- that is potentially dispositive of the proceeding. The policy reason for the suspension mandated by Rule 2.127(d) is to avoid the parties and the Board expending time and effort on matters, including discovery, which may be rendered moot if a case-dispositive motion is granted. In particular, judicial economy is served by not requiring responses to previously-served discovery, especially when the responses are not needed to address a motion which may be dispositive of the case. See T. Jeffrey Quinn, "Discovery Safeguards In Motions for Summary Judgment: No Fishing Allowed," 80 *Trademark Rep.* 413, 418-419 (1990).

However, Opposer's recently-filed motion for summary judgment seeks only a dismissal of Applicant's unfounded laches defense. Accordingly, because the grant or denial of that motion will not be dispositive of the proceeding, the necessary predicate for a Rule 2.127(d) suspension of proceedings is lacking. See *SDT Inc. v. Patterson Dental Co.*, 30 USPQ2d 1707 (TTAB 1994) (Rule 2.127(d) would not be invoked as a result of opposer's non-dispositive motion for

leave to amend the notice of opposition). Under the present circumstances, there is no need for a suspension of proceedings because Opposer's motion for summary judgment is not potentially dispositive.

IV. CONCLUSION

For the reasons stated above, the present motion should be granted and proceedings should be resumed.

BRINK'S NETWORK, INCORPORATED

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