

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

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Mailed: July 18, 2007

Opposition No. 91167207

Ms. Anita Dhaliwal

v.

DVD WORLD Pictures Corp.

By the Board:

This case now comes up on opposer's motion (filed July 20, 2006) for reconsideration of the July 18, 2006 Board order denying opposer's motion for summary judgment as untimely inasmuch as the motion was filed on the opening day of opposer's testimony period. Although applicant has not filed a response to opposer's motion, the Board, in its discretion, will not treat opposer's motion as conceded but will determine opposer's motion for reconsideration on its merits.

A request for reconsideration under Trademark Rule 2.127(b) provides an opportunity for a party to point out any error the Board may have made in considering the matter initially. It is not to be a reargument of the points presented in the original motion or response thereto, nor is it to be used to raise new arguments or introduce additional evidence. Rather, the motion should be limited to a

demonstration that based on the facts before it and the applicable law, the Board's ruling is in error and requires appropriate change. TBMP § 518 (2d. ed. rev. 2004).

Upon careful consideration of opposer's arguments on reconsideration, the Board is not persuaded that there was any error in the prior decision.

In this case, in accordance with the institution order of October 29, 2005, the first 30-day testimony period was set to close on August 15, 2006. In other words, the first testimony period opened on Monday, July 17, 2006. Neither party sought an extension of the testimony periods prior to the opening thereof. Thus, the first testimony period opened as originally set. Opposer filed her motion for summary judgment on the opening day of her testimony, i.e., July 17, 2006. Trademark Rule 2.127(e)(1), however, provides, in pertinent part, "[a] motion for summary judgment, if filed, 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."

Opposer argues, however, that since the last day to file her motion for summary judgment fell on Sunday, July 16, 2006, opposer believed she had until Monday, July 17, 2006 to file her motion for summary judgment under the

provisions of Trademark Rule 2.196. Alternatively, opposer requests that the Board use its discretionary authority to entertain opposer's one-day late filing of its motion for summary judgment under Trademark Rule 2.127(c).

Opposer has misconstrued the application of Trademark Rule 2.196. Said rule, which addresses the timeliness of a filing when the expiration of a date set to act falls on a Saturday, Sunday or Federal Holiday, states as follows:

Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or regulation by or under this part or taking any action or paying any fee in the Office falls on a Saturday, Sunday or Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday or a Federal Holiday.

Trademark Rule 2.196, however, has no effect on the opening of opposer's testimony period. The Board sets the closing date for discovery and the closing date for the testimony periods and, in doing so, schedules an interval between the closing of the discovery period and the opening of the first testimony period. This interval, during which neither party is required to file anything or take action with the Board, provides adequate time for preparing for trial and for filing any pre-trial motions, including a motion for summary judgment. *See Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 63 Fed. Reg. 48088 (1998). If opposer was worried about the timeliness of its motion for summary judgment, it could have moved to extend

the closing date of its testimony period. Opposer, however, chose not to do so.

In view of the foregoing, opposer's request for reconsideration is denied and the Board's July 18, 2006 order stands as issued.

Proceedings herein are resumed and trial dates are reset as follows:

DISCOVERY TO CLOSE:	<b>CLOSED</b>
Thirty-day testimony period for plaintiff to close:	<b>September 20, 2007<sup>1</sup></b>
Thirty-day testimony period for defendant to close:	<b>November 19, 2007</b>
Fifteen-day rebuttal testimony period For plaintiff to close:	<b>January 3, 2008</b>

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only

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<sup>1</sup>The Board notes that opposer's testimony period, although reset by the instant order, nonetheless had already opened for one day. Accordingly, any future motions for summary judgment filed by opposer would be deemed untimely under Trademark Rule 2.127(e), despite the resetting of opposer's testimony period.

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upon request filed as provided by Trademark Rule 2.129.