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

Mailed: November 17, 2006

Opposition No. 91169590

Scott Elliot

v.

Vantage Technologies Knowledge Assessment, LLC

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

In accordance with the institution order dated March 8, 2006, discovery closed on September 24, 2006. On October 4, 2006, the Board suspended proceedings pending disposition of applicant's motion, filed September 26, 2006, to compel responses to applicant's discovery requests; and granted the parties' stipulation to take the discovery depositions of Mr. Elliot after the close of discovery and on September 27 and 29, 2006.

In support of its motion, applicant argues that it served its first set of interrogatories and first request for documents and things on August 17, 2006; that it granted opposer a one-week extension on or about September 15, 2006; and that applicant has not served responses. Applicant indicates that responses to it written discovery requests are necessary for its preparation for the depositions of Mr. Elliot and further requests that the Board reset a time for the depositions.

Opposer has not filed a response to applicant's motion to compel.

Accordingly, applicant's motion to compel is granted as conceded.[1] *See* Trademark Rule 2.127(a). Moreover, opposer, by failing to timely respond to the discovery requests, has forfeited its right to object to the requests on their merits.[2] *See Envirotech Corp. v. Compagnie Des Lampes,* 219 USPQ 448 (TTAB 1979). Thus, opposer is allowed **thirty days** from the mailing date of this order to respond to applicant's outstanding first set of interrogatories and first request for production of documents and things. The deposition of Mr. Elliot is to be rescheduled between **forty days** and **sixty days** from the mailing date of this order.

Testimony is rescheduled as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	**CLOSED**
30-day testimony period for party in position of plaintiff to close	March 15, 2007
30-day testimony period for party in position of defendant to close:	May 14, 2007
15-day rebuttal testimony period to close:	June 28, 2007

[1] While applicant's motion has been granted as conceded, applicant is reminded that it did not include a statement of its good faith effort to resolve the discovery dispute or recite circumstances indicating that a good faith effort had, in fact, been undertaken. *See* Trademark Rule 2.120(e); and TBMP §523.02 (2d ed. rev. 2004). Had applicant's motion been contested, it may have been denied for failure to comply with the special requirement of Trademark Rule 2.120(e).

[2] Opposer is not required to produce privileged documents or provide privileged information, as its right to claim privilege has not been waived. *See e.g., American Standard, Inc. v. Pfizer*, 3 USPQ2d 1817 (Fed. Cir. 1987). However, where a claim of privilege is invoked, the invoking party must make the claim expressly and provide a description or privilege log, unless the parties otherwise agree

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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