ESTTA Tracking number: **ESTTA271044**
Filing date: **03/10/2009**

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

Proceeding	91173105
Party	Plaintiff Honda Motor Co., Ltd.
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Date	03/10/2009
Attachments	DEALERDASHBOARD Opp.pdf (10 pages)(383879 bytes)

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

In the Matter of Application Serial No. 78/339,571
Published: May 30, 2006 at TM 674
Mark: DEALERDASHBOARD

HONDA MOTOR CO., LTD.,	)	Opposition No. 91/173,105
	)	
Opposer,	)	
	)	
v.	)	
	)	
MICHAEL DALTON,	)	
	)	
Applicant	)	
	)	

OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO STRIKE TRIAL TESTIMONY AND EVIDENCE

Applicant's motion to strike the trial testimony of Cyndee Mangham and accompanying exhibits lacks merit and should be denied in its entirety.

Honda Motor Co., Ltd.'s ("Opposer") testimony period opened on July 28, 2008. Unable to complete its testimony within the prescribed thirty day period, Opposer moved to extend its testimony period by 60 days. Determining that Opposer had demonstrated good cause for the extension, the Board granted Opposer's motion and extended the open testimony period by 60 days. *See* TTAB Order, mailed August 20, 2008, attached hereto as Exhibit 1.

One week following the Board's order, Opposer provided Applicant with reasonable notice that Ms. Mangham's deposition had been rescheduled to September 16, 2008. Ms. Mangham's deposition took place on September 16, 2008, during which time, Opposer introduced into the record several documents pursuant to TBMP § 703.01(a). As Applicant

never served document requests, Opposer was under no obligation to disclose these documents prior to its testimony period.[1]

Applicant seems to misconstrue Opposer's original motion. That the Board reset the time in which the testimony period closed does not equate to the Board resetting the time in which the testimony period opened. To the contrary, the whole point of the motion was for Opposer to receive more time to complete its testimony, not to delay the commencement of the testimony period. Moreover, all documents offered into evidence via the Notice of Reliance and during Ms. Mangham's deposition were properly submitted further to the TBMP. There simply is no justification to strike either the testimony or the documentary evidence.

Accordingly, Opposer respectfully requests that the Board deny Applicant's motion in its entirety.

Date: March 10, 2009

Respectfully submitted,

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[1] Opposer was not required to submit initial disclosures because the opposition was instituted prior to November 1, 2007.

Certificate of Service

I hereby certify that a true and complete copy of the foregoing Opposition to Applicant's Motion to Strike Trial Testimony and Evidence has been served on by e-mail and first class mail to:

Michael Dalton
Box 18137
670 Northland Blvd.
Cincinnati, OH 45218-0137

Dyan Finguerra-DuCharme

EXHIBIT 1

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

Mailed: August 20, 2008

Opposition No. 91173105

Honda Motor Co., Ltd.

v.

Michael Dalton

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for determination of opposer's motion (filed July 29, 2008) to extend time for testimony period. The motion is fully briefed.

By operation of the Board's February 29, 2008 order, opposer's assigned thirty-day testimony period was set to close on August 28, 2008. Applicant filed its motion on July 29, 2008. Accordingly, we treat opposer's motion as captioned, namely, as a motion for an extension of time.

Pursuant to Fed. R. Civ. P. 6(b), made applicable to Board proceedings by operation of Trademark Rule 2.116(a), 37 CFR § 2.116(a), a party may file a motion for an enlargement of the time in which an act is required or allowed to be done. If the motion is filed prior to the expiration of the period as originally set or previously extended, the motion is a motion to extend, and the moving party need only show good cause for the requested extension.

See TBMP § 509.01 (2d ed. rev. 2004). A motion to extend must set forth with particularity the facts said to constitute the requisite good cause, and must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time allotted therefor. If a motion to extend the time for taking action is denied, the time for taking such action may remain as previously set. *See* TBMP § 509.01(a)(2d ed. rev. 2004).

Turning to the merits of opposer's motion, said motion sets forth with sufficient particularity the facts asserted in support thereof. Specifically, opposer states that primary counsel was on medical leave for several weeks immediately prior to the opening of the testimony period, that both primary counsel and opposer's main witness have anticipated and experienced scheduling difficulties, and that opposer sought applicant's consent for the requested extension immediately upon determining that it could not complete its testimony within the prescribed period.

With respect to whether opposer's request for an extension of its testimony period is necessitated by its own lack of diligence, applicant asserts that opposer has been aware of the trial schedule since February 29, 2008, that opposer has made a last minute request of the Board, that opposer failed to demonstrate that it has "exhausted all

remedies to compel testimony" of its witness, that opposer failed to identify its key witness, that opposer's claim of medical leave is "less than genuine," and that opposer's request is "one of convenience and not good cause." Inasmuch as the Board does not consider the filing of a motion to extend at the commencement of an assigned period to constitute a last minute request, does not require the movant for an extension of a testimony period to exhaust all remedies to compel testimony, and does not require that the movant identify its key witness to prevail on such a motion, we note, but find unpersuasive, applicant's arguments. Moreover, the record fails to support either a conclusion that opposer's assertion of medical leave is less than sincere, or a determination that opposer's request is merely for its own convenience.

The Board finds it relevant that opposer assessed its ability to depose its witness prior to or at the start of its testimony period, sought the consent of applicant upon determining that it could not complete its testimony as assigned, and filed its motion at the commencement of its testimony period. Accordingly, the underlying facts indicate that opposer's motion has not been necessitated by its own lack of diligence.

With respect to whether opposer acted with unreasonable delay, we find, for reasons similar to those noted above,

that neither opposer's actions during its assigned testimony period, nor its filing of a motion to extend have effectuated a delay that is unreasonable. Opposer requests one sixty-day extension, and provides ample support therefor. The motion under consideration does not present a scenario in which the record is devoid of explanation, or in which the movant did not decide until the close or near close of its assigned period to file a motion to extend. *Cf. Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542 (TTAB 2001) (petitioner, without explanation, waited until final day of its testimony period to request extension); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ 1848 (TTAB 2000) (defendant's counsel knew that defendant would not be able to comply with its required deadline, but waited until penultimate day of response period to file a motion to extend). To the contrary, here, opposer moved promptly by filing its request on the day its testimony period commenced, and this is its first such request.

On balance, the Board finds that opposer's motion demonstrates good cause for the extension requested. In view thereof, opposer's motion to extend time for testimony period is granted.

The trial schedule is reset as indicated in opposer's motion, namely, as follows:

30-day testimony period for party in position of plaintiff to close:	**10/27/08**
30-day testimony period for party in position of defendant to close:	**12/26/08**
15-day rebuttal testimony period to close:	**02/09/09**

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 upon request filed as provided by Trademark Rule 2.129.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242 FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any

protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address: http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm