

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

Mailed: January 20, 2010

Opposition No. 91173105

Honda Motor Co., Ltd.

v.

Michael Dalton

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of applicant's motion (filed January 4, 2010) to be heard on opposer's request for judicial notice or alternative motion to expand applicant's page limit and reset reply brief and rebuttal brief. The motion has been fully briefed.

Opposer filed a notice of reliance on September 14, 2009, and filed its main brief on the merits of its case on November 13, 2009. By the Board's December 15, 2009 order, the time for applicant to file his brief was extended and reset to January 4, 2010. On said due date for his brief, January 4, 2010, applicant filed the instant motion.

In its motion and reply brief in support thereof, applicant asserts that opposer, in its notice of reliance, "has requested an alleged Judicial Notice, at the last hour during and beyond the scope of rebuttal," and that "the Judicial Notice was a surprise." By way of its motion, it appears that applicant seeks 1) a hearing on its motion with respect to

opposer's notice of reliance and request for judicial notice of certain evidence, and 2) a resetting of remaining briefing dates upon completion of said hearing; or in the alternative, 1) a ten-day extension of time in which to file his brief, and 2) an extension of the page limit applicable to his brief, "by an estimated 10 pages," in order to permit a sufficient number of pages so as to respond to opposer's request for judicial notice.

In opposition to applicant's motion, opposer asserts that the request that the Board take judicial notice of certain evidence was timely inasmuch as the request was made during opposer's assigned testimony period by way of its timely notice of reliance, pursuant to Trademark Rule 2.122(c), and that, in view thereof, no "surprise" or action "at the last hour" occurred. Opposer further argues that it is inappropriate for applicant to request a hearing inasmuch as any procedural or substantive objections a party has to evidence should be presented to the Board at trial. Opposer also asserts that the circumstances presented by applicant provide no justification for an extension of the Board's established page limit for final briefs, and that this proceeding does not present issues that are of such complexity that they cannot be adequately addressed within the page limits set forth in Trademark Rule 2.128(b).

Turning to the merits of applicant's motion, it is initially noted that applicant's repeated assertions that opposer's notice was submitted "at the last hour" are

unfounded. Opposer's fifteen-day testimony period in which to present evidence in rebuttal was, as indicated by the Board in its May 27, 2009 order, reset to close on September 14, 2009. Opposer filed its notice of reliance on that date, and was under no statutory or procedural obligation to file or serve its notice of reliance sooner than the assigned closing date of its rebuttal testimony period. See Trademark Rule 2.121(b)(1).

To the extent that applicant seeks leave of the Board to file a main brief which exceeds the page limit set forth in Trademark Rule 2.128(b), applicant's motion is denied. Applicant has failed to set forth facts and circumstances which demonstrate a compelling need to file an overlength brief, or which otherwise warrant deviation in this proceeding from the statutory page length. Inasmuch as this proceeding involves a record that is not exceedingly voluminous, and does not entail an inordinate number of grounds for opposition and/or defenses thereto, this is a proceeding wherein neither party should find that the page limits for their briefs do not suffice.¹ See, e.g., *United Foods Inc. v. United Air Lines Inc.*, 33 USPQ2d 1542, 1543 (TTAB 1994).

Insofar as applicant requests a hearing on the issues presented in his motion, said request is denied. An oral hearing on a motion is only held by order of the Board, it is the practice of the Board to deny requests for an oral

¹ Evidentiary objections that may properly be raised in a party's brief on the case may instead be raised in an appendix or by way of a separate statement of objections, and the appendix or separate statement is not included within the page limit set forth in Trademark Rule 2.128(b). See TBMP § 801.03 (2d ed. rev. 2004).

hearing on a motion unless it is necessary to clarify the issues to be decided, and the Board rarely grants such requests. Arguments on a motion should be adequately presented in the briefs thereon. See TBMP § 502.03 (2d ed. rev. 2004).²

Inasmuch as applicant's request for a hearing on its motion has been denied, its request for a resetting of remaining briefing dates "upon completion of said hearing" is likewise denied.

Applicant's request for a ten-day extension of time in which to file his brief on the case is noted. Inasmuch as applicant has met the minimal standard for an extension, that is, inasmuch as applicant has demonstrated good cause therefor, applicant's request is granted. See TBMP §§ 509.01 and 509.01(a) (2d ed. rev. 2004). Furthermore, the Board notes the passage of time during the briefing period, and the need to avoid prejudice to either party at this stage of the proceeding. In view thereof, the due date for applicant's brief is hereby reset to ten (10) days from the mailing date of this order. In accord with Trademark Rule 2.128(a)(1),

² Furthermore, to the extent that applicant's motion raises evidentiary issues, applicant's motion is based, in part, on substantive grounds, and determination of such issues is deferred until final hearing. See *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992) (whether notice of reliance sought to introduce improper rebuttal evidence deferred); *M-Tek Inc. v. CVP Systems Inc.*, 17 USPQ2d 1070, 1073 (TTAB 1990) (questions of admissibility of documentary exhibits based on hearsay and lack of authentication deferred until final decision). See also TBMP §§ 707.02 and 532 (2d ed. rev. 2004). It is the policy of the Board not to read trial testimony or examine other trial evidence

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opposer's rebuttal (reply) brief, if any, shall be due no later than fifteen (15) days after the due date of applicant's brief.

prior to final deliberations in a proceeding. See TBMP § 707.02(c) (2d ed. rev. 2004).