

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

Mailed: June 5, 2008

Opposition No. 91175280

MAGNADYNE CORPORATION

v.

MOVIEVISION, INC.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

In accordance with the institution order dated January 24, 2007, opposer's first testimony period was set to close on November 10, 2007. This case now comes up on opposer's fully briefed motion, filed November 8, 2007, to extend its testimony period.

In support of its motion, opposer argues that it seeks the extension to accommodate the travel schedule of its witness. Opposer indicates that it sought applicant's consent to the requested extension but applicant was unable to provide opposer "an answer to accept or deny this extension request."

In response, applicant argues that opposer has "consistently requested extensions" when "answers are due," while applicant has always respected the due dates. Applicant states that it denied its consent to opposer's extension request.

In reply, opposer points out that applicant's response was untimely; that its sought extension will not cause applicant any

prejudice; that it noticed the deposition for December 13, 2007 but applicant indicated it would not be able to participate (due to a recent automobile accident involving its principle); and that opposer agreed to reschedule at a mutually agreeable time.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause, and a motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension. See Fed. R. Civ. P. 6(b)(1). See also *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). The Board will review carefully any such motions in determining whether good cause has been shown, including the diligence of the moving party, and whether the moving party is guilty of negligence or bad faith and whether the privilege of extensions has been abused. *Id.* See also *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (TTAB 1992).

In this case, the reason opposer seeks the extension is a scheduling conflict. There have been no prior extensions of the schedule sought by either party.¹ There is no evidence that opposer is guilty of negligence or acting in bad faith inasmuch as opposer sought applicant's consent and further sought to take the deposition shortly after its testimony period was scheduled to close.

¹ The parties may have provided extensions to each other with respect to discovery responses. Any such extensions, appropriately, did not impact otherwise the schedule in this case.

In view thereof, for good cause shown, opposer's motion to extend it testimony period is granted.

Discovery and trial dates are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close	July 30, 2008
30-day testimony period for party in position of defendant to close:	September 28, 2008
15-day rebuttal testimony period to close:	November 12, 2008

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.
