

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

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Mailed: March 9, 2009

Opposition No. 91179480

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Plasti-Fab Ltd.

v.

Kobelco Construction

Machinery Co., Ltd.

Linda Skoro, Interlocutory Attorney

This case comes up on opposer's motion to compel discovery responses, filed November 26, 2008. The motion is unopposed.

The substance of opposer's motion to compel is that discovery was timely served on applicant on September 2, 2008, consisting of the first set of interrogatories, request for production of documents, and requests for admissions; that having received no response other than an unconsented request to extend the time to answer, opposer's counsel notified applicant by email that its testimony

period was about to open¹ and it needed to file this motion to compel. As of the date of filing of this motion, applicant has not provided responses or requested a further extension of time to serve responses.

In that applicant did not oppose this motion, it is granted. Trademark Rule 2.127(a). Applicant shall respond to opposer's interrogatories and request for production without objection. Applicant has **thirty** days from the date hereof to fully answer the outstanding discovery. Any unanswered requests for admissions are deemed admitted. If applicant fails to comply with this order, opposer is free to file a motion for the entry of default judgment under Trademark Rule 2.120(g)(1).

Accordingly, discovery is closed, and trial dates are reset as follows:

30-day testimony period for party in position of plaintiff to close:	May 8, 2009
30-day testimony period for party in position of defendant to close:	July 7, 2009
15-day rebuttal testimony period for plaintiff to close:	August 21, 2009

¹The better practice is for counsel to contact the other party and make a good faith effort to resolve the dispute or extend the trial dates to allow more time to resolve the dispute before coming to the Board.

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 Rule 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>