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

Proceeding	91179897
Party	Defendant Bristol Technologies, Inc.
Correspondence Address	ROER L. BELFAY 829 TUSCARORA AVE SAINT PAUL, MN 55102-3931 UNITED STATES rogerbelfay@rogerbelfay.com
Submission	Opposition/Response to Motion
Filer's Name	Roger Belfay
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Signature	/yaflebregor/
Date	09/29/2009
Attachments	applicantsdeclaration090929.pdf (2 pages)(29040 bytes) applicantsmemo090929.pdf (4 pages)(68145 bytes)

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

-----X

Information Builders, Inc.
Opposer,

Opposition No. 91179897

V.

Serial No. 78954755

Bristol Technologies, Inc.,
Applicant

-----X

Declaration of Roger L. Belfay in support of Applicants
Memorandum of Law in Opposition to Opposer's motion to
Extend Opposer's Testimony Period

Roger L. Belfay declares as follows:

1. Opposer filed a motion to extend Opposer's Testimony Period on September 10, 2009, supported by Opposer's contemporaneously filed Declaration of Howard F. Mandelbaum.

2. No conversation with Mr. Mandelbaum stated or proposed any specific time, place, or date for the taking of any deposition.

3. No conversation with Mr. Mandelbaum identified any witness, party, or other person to be deposed.

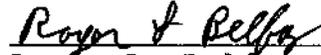
4. In the conversation of August 19, 2009 I proposed to Mr. Mandelbaum that I would consider appearing at any deposition he might propose via telephone, depending on the circumstances.

5. Mr. Mandelbaum said "That had been done before." which I took to mean such participation would be acceptable.

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6. In the conversation of August 19, 2009, I stated that I would contact Applicant, but cautioned that due to the nature of Applicant's employment communications often do not "turn around" as quickly as I might like.

Bristol Technologies, Inc.



Roger L. Belfay
Attorney for Applicant
829 Tuscarora Avenue
Saint Paul, Minnesota 55102
651-222-2782

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing declaration of Roger L. Belfay in Opposition to Opposer's Motion to Extend Opposer's Testimony Period has been forwarded, this September 29, 2009 by first class mail to

Howard F. Mandelbaum
222 Bloomingdale Road
Suite 203
White Plains, NY 10605



Roger L. Belfay, Attorney at Law

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APPLICANT'S MEMORANDUM OF LAW AND FACTS IN OPPOSITION TO
OPPOSER'S MOTION TO EXTEND OPPOSER'S TESTIMONY PERIOD

The "Mere existence of [settlement] negotiations or proposals, without more, would not justify petitioner's delay in proceeding with testimony." *Fairline Boats, PLC v. New Howmar Boats Corp.*, 59 U.S.P.Q.2d 1479 (2000).

"Generally, the safest course of action for a party in pursuit of settlement is immediately to seek the adverse party's permission to file a consented motion to suspend the proceeding." *Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 U.S.P.Q.2d 1925 (2000). "No other action more readily clarifies the status of the case; no other motion better protects the parties." *Id.* "The movant who relies on oral communications or on unilateral or unsolicited offers of settlement, even if written, runs the risk of losing to the non-movant who denies that it had agreed, by word or deed, to what would have amounted to a suspension of the proceeding." *Id.*

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New Howmar Boats is right on point to the present situation. In *New Howmar* the Board denied the petitioner's motion for an extension of time period for testimony on the grounds for failure to show good cause.

In *New Howmar* the movant and the non-movant disagreed on the existence of any settlement offer during the testimony period. However, the Board categorically stated that even if the parties were really negotiating on a settlement of the matter, **the mere existence of settlement negotiations during the testimony does not justify a delay in testimony.**

Similarly in *ASI Instruments*, the movant in his motion for extension states that "applicant has yet to respond to opposer's offer of settlement..." *Id.* The Board in this case frames the issue as whether the movant would have reasonably concluded from the assurances or actions of the non-movant that the movant need not go forward with the testimony. By finding that the non-movant neither provided any assurances nor performed any actions to have led the movant to reasonably believe that he did not need to move forward with the testimony, the Board has clearly established a benchmark for establishing good cause when the movant attempts to make an "ongoing settlement" argument.

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This board's order of April 14, 2009 set Opposer's testimony period to start on August 14, 2009 and end on September 13, 2009. Opposer's attorney waited some 127 (One hundred twenty-seven) days from the board's order and 5 days into the testimony period before first contacting the applicant's attorney. In this very first contact, the opposer's attorney steered the conversation to a settlement discussion.

Applying the *ASI Instruments* standard, Applicant's attorney did not give any assurances by words or deeds that could have led the opposer's attorney to reasonably believe that the opposer needs to quit working on the testimony because a settlement is forthcoming. Further, Applicant's attorney forewarned Opposer's attorney that due to Applicant's primary occupation, communications are sometimes delayed.

If Opposer's attorney was in good faith hoping for a settlement offer from applicant's attorney, he should not have waited until 5 days before the end of the testimony period to call to follow up on the settlement offer. Given these dates, Opposer's attorney wasted 20 days in hopes for a settlement offer, when he could have been working on testimony during this period.

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In summary, the opposer's attorney has failed to show "good cause" as established by *Fairline Boats, PLC v. New Howmar Boats Corp.* for extension of the time for Opposer to take testimony as established by the Board.

Bristol Technologies, Inc.

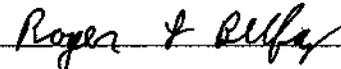


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