

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

Mailed: October 21, 2009

Opposition No. 91179897

Information Builders, Inc.

v.

Bristol Technologies, Inc.

**George C. Pologeorgis, Interlocutory Attorney:**

This case now comes up for consideration of opposer's motion (filed September 10, 2009) to extend opposer's testimony period and all subsequent trial dates accordingly. The motion is fully briefed.

The Board, in its discretion, suggested that the issues raised in opposer's motion should be resolved by telephonic conference as permitted by TBMP § 502.06 (2<sup>nd</sup> ed. rev. 2004). The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a telephone conference at 10:00 a.m. Eastern time on Tuesday, October 20, 2009. The conference was held as scheduled among Howard Mandelbaum, as opposer's counsel, Roger Belfay, as applicant's counsel, and the above signed, as a Board attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations:

**Opposer's Motion to Extend Testimony Period**

Opposer's motion to extend its testimony period and all subsequent trial dates is **granted** to the extent noted below.

As background, opposer's testimony period, as last reset, opened on August 14, 2009 and was set to close on September 13, 2009. In support of its motion, opposer contends that opposer's counsel contacted applicant's counsel on August 19, 2009 to arrange mutually convenient dates for the testimony of opposer's president. Opposer further asserts that during the course of the conversation opposer's counsel inquired as to whether applicant was interested in discussing settlement of this case and suggested that the principals of both parties speak directly to which applicant's counsel stated that it would need to consult with his client.

In a subsequent telephone conversation, applicant's counsel stated that his client was not interested in speaking with opposer but was willing to entertain terms for

settlement to be communicated between the attorneys. In response, opposer's counsel suggested that an amendment to applicant's identification of goods could potentially settle this case to which applicant's counsel responded that he needed to consult with his client inasmuch as applicant's counsel did not have sufficient knowledge regarding applicant's goods. Having not heard from applicant's counsel regarding a possible amendment to applicant's identification of goods, opposer contends that its counsel contacted applicant's counsel on September 8, 2009 to ascertain whether he had obtained the requested information about the nature of applicant's goods. During this telephone conversation, applicant's counsel stated that his client was not interested in amending the identification of goods and would only settle the matter for a cash payment of \$200,000 to which opposer's counsel responded that his client was not willing to make the requested payment and therefore the opposition would have to be tried. To that end, opposer's counsel requested a 30 day extension of opposer's testimony period to which applicant's counsel stated that he needed to consult with his client. On September 10, 2009, applicant's counsel contacted opposer's counsel to inform opposer that applicant was not willing to consent to an extension of opposer's testimony period.

To prevail on its motion, opposer must establish good cause for the requested extension of time. Moreover, opposer must demonstrate that the requested extension is not necessitated by opposer's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted. See Fed. R. Civ. P. 6(b)(1); TBMP § 509.01 (2<sup>nd</sup> ed. rev. 2004).

Based on the record, the Board finds that, although it would have been a better practice for opposer's counsel to seek suspension of these proceedings or an extension of opposer's testimony period at the time settlement discussions commenced between the parties, opposer has nonetheless demonstrated good cause for its request to extend its testimony period. It is clear that the parties were conducting bilateral settlement discussions with a possibility of settling this case and, therefore, it was reasonable for opposer to infer that the shift to settlement negotiations between the parties resulted in an expectation that testimony would not proceed as scheduled. Moreover, the Board finds that any prejudice to applicant resulting from granting opposer's motion to extend would be *de minimus* in nature, i.e., a slight delay in the proceedings. Further, the Board finds that opposer has not abused its extension privileges since this is opposer's first request to extend in this case. Finally, the Board finds that

opposer's requested extension was not necessitated by any lack of diligence on the part of opposer.

In view of the foregoing, opposer's motion to extend its testimony period is **granted** to the extent that opposer is afforded a limited twenty-five day testimony period as set forth below inasmuch as opposer did not take any action regarding its testimony obligations until five days in its testimony period.

Proceedings herein are resumed. Discovery is closed. Trial dates, beginning with the close of opposer's testimony period, are reset as follows:

<b>DISCOVERY PERIOD TO CLOSE:</b>	<b>CLOSED</b>
Testimony period for party in position of plaintiff to close: (opening <b>twenty-five</b> days prior thereto)	<b>11/30/2009</b>
Testimony period for party in position of defendant to close:(opening thirty days prior thereto)	<b>1/29/2010</b>
Rebuttal testimony period to close: (opening fifteen days prior thereto)	<b>3/15/2010</b>

As a final matter, it is noted that opposer's amended notice of opposition contains an allegation of fraud as a ground for opposing registration of applicant's mark. Although the allegation of fraud was made prior to the August 31, 2009 decision of *In re Bose Corp.*, \_\_\_ F.3d \_\_\_, 91 USPQ2d 1938 (Fed.

Cir. 2009), opposer is advised that any determination of the merits of its alleged ground of fraud (whether upon motion for summary judgment or at final decision) will be in accordance with *In re Bose Corp.*, which clarified the standard for proving fraud in cases before the United States Patent and Trademark Office.<sup>1</sup>

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<sup>1</sup>This discussion of fraud is merely advisory. The Board makes no determination herein as to the merits of opposer's ground of fraud, the merits of any other ground for opposition, or the sufficiency of any of the allegations in the amended notice of opposition.