

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

Baxley

Mailed: November 20, 2009

Opposition No. 91181621

StonCor Group, Inc.

v.

Les Pierres Stonedge Inc.

Andrew P. Baxley, Interlocutory Attorney:

Pursuant to the Board's July 8, 2009 order, opposer's brief on the case is due November 21, 2009. On November 13, 2009, opposer filed a motion to extend the due date for such brief by forty-five days to January 5, 2010. Applicant filed a brief in response thereto.

Opposer contends in its brief in support of its motion that it needs the requested extension because its attorney has been involved in a "hotly contested" patent infringement suit in the United States District Court for the Eastern District of Pennsylvania since the end of opposer's rebuttal testimony period in this case, which commenced in August 2009 and has consumed a "very, very substantial" amount of his time over the last two months. In the patent infringement suit, the judge recently ordered a sixty-day discovery period directed only to issues of jurisdiction and venue, which is due to expire on November 27, 2009. Given

the press of the patent infringement suit, opposer contends that its attorney has not had sufficient time to prepare opposer's brief on the case herein and thus requests a forty-five day extension of the due date for that brief. In support of its motion, opposer submitted a declaration from its attorney.

In response, applicant contends that the requested extension is clearly excessive because other attorneys from opposer's attorney's firm have appeared on behalf of both opposer in this case and opposer's attorney's client in the patent infringement suit. Accordingly, applicant contends that any extension should be limited to thirty days. In support of its brief, applicant included a filing from the patent infringement suit which includes three attorneys' names in the signature block for opposer's attorney's firm and a copy of the docket history of the patent infringement suit.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. R. Civ. P. 6(b)(1). Ordinarily, the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1316 (TTAB 1992). The

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press of other litigation generally constitutes good cause for an extension. See *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383-84 (TTAB 2001).

The Board finds that, under the circumstances, there is good cause for the forty-five day extension that opposer seeks. A review of the record herein indicates that opposer's attorney signed the notice of opposition and all of opposer's briefs in connection with motions in this case. Inasmuch as opposer's attorney appears to have overseen the entire prosecution of this opposition, it is entirely reasonable for opposer's attorney to prepare opposer's brief on the case herein and to be allowed ample to so prepare following the November 27, 2009 close of the aforementioned discovery period in the patent infringement suit.¹ Even if other attorneys from opposer's attorney's firm have appeared on opposer's behalf herein, the Board is unwilling to presume that those attorneys are as knowledgeable of the record in this case as opposer's attorney and that those attorneys would not need additional time to become fully familiar with the record of this case prior to preparing opposer's brief on the case.

¹ Moreover, if the Board were to grant the thirty day extension that applicant contends is appropriate, applicant could be shortchanged on its own briefing period because nine days of applicant's briefing period would be in the time between Christmas Eve and New Year's Day.

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In view thereof, opposer's motion to extend the due date for its brief on the case by forty-five days is granted. Such brief is due by **January 5, 2010**. Pursuant to Trademark Rule 2.128(a)(1), applicant's brief on the case is due by **February 4, 2010**, and opposer's reply brief is due by **February 19, 2010**.