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

Proceeding	91184197
Party	Plaintiff United Parcel Service of America, Inc.
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Attachments	Motion to Extend Testimony Periods.pdf ( 5 pages )(16122 bytes )

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

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UNITED PARCEL SERVICE OF AMERICA, INC., :  
Opposer, :  
v. : Opposition No. 91184197  
POWERTECH INDUSTRIAL CO. LTD., :  
Applicant. :  
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**OPPOSER’S MOTION TO EXTEND TESTIMONY PERIODS**

Pursuant to Section 2.116(a) of the Trademark Rules of Practice and Rule 6(b) of the Federal Rules of Civil Procedure, Opposer United Parcel Service of America, Inc. (“Opposer”) respectfully requests that the Board extend the testimony periods in this proceeding by thirty (30) days. Opposer requests that the extension, if granted, be set to run from the date on which the Board decides this motion.

Section 2.116(a) of the Trademark Rules of Practice provides that “except as otherwise provided, and wherever applicable and appropriate, procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure.” Rule 6(b) of the Federal Rules of Civil Procedure is therefore applicable to the instant matter. Rule 6(b) provides, in part:

When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires . . . .

“In determining a motion to extend time, the Board must look to whether the moving party has shown good cause therefor.” Sunkist Growers, Inc. v. Benjamin Ansehl Co., 229 U.S.P.Q. 147,

149 (T.T.A.B. 1985). As stated in American Vitamin Products Inc. v. Dow Brands Inc., 22 U.S.P.Q.2d 1313, 1315 (T.T.A.B. 1992), “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.”

The time for Opposer’s testimony period has not elapsed. This motion is timely filed while Opposer’s testimony period -- set to close on June 23, 2009 -- remains open. Moreover, Opposer has not abused the privilege of extensions. This is Opposer’s first request for an extension of time without Applicant’s consent.<sup>1</sup> The lone previous extension of time in this proceeding was sought with the consent of both parties, and for the purpose of resetting the schedule to reflect Applicant’s need for extra time to respond to Opposer’s discovery requests.<sup>2</sup>

Good cause exists for the requested extension of the testimony periods. This extension is requested in order to allow Opposer the opportunity to complete the taking of its testimony and presentation of its evidence. Opposer has been diligent in preparing its case. Opposer has filed a Notice of Reliance contemporaneously herewith. However, Opposer mistakenly believed that additional time was available in Opposer’s present testimony period. Due to this inadvertent administrative error and scheduling issues, Opposer has not yet taken all of the testimony that it

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<sup>1</sup> Opposer has contacted Applicant regarding the requested extension. Applicant’s counsel is attempting to contact his client regarding the instant motion. However, Applicant’s counsel has not yet been able to obtain word from his Taiwan-based client regarding this motion. Thus, Applicant has not refused to give its consent to the extension of time Opposer seeks through this motion. Applicant has simply been unable to respond in time, thereby rendering this motion necessary.

<sup>2</sup> Applicant apparently did not receive discovery requests served by Opposer in January 2009. When this situation was discovered in March 2009 -- after the close of discovery -- Opposer agreed to provide duplicate copies of Opposer’s discovery requests and to allow Applicant additional time to respond. The parties cooperated to reset the testimony periods to facilitate this post-discovery period activity.

seeks to present in this proceeding.

In addition, Opposer has just recently learned of additional grounds for opposition through information disclosed by Applicant in discovery responses served after the close of discovery. In view of this new information, Opposer is filing contemporaneously herewith a Motion to Amend the Notice of Opposition. Opposer therefore also seeks additional time to take testimony related to this new basis for opposition. The Board's attention in this regard is respectfully directed to said Motion to Amend the Notice of Opposition for additional detail.

Finally, Opposer respectfully submits that there would be no prejudice to Applicant resulting from the requested short extension. Applicant will have a full and fair opportunity to present its case in opposition. In contrast, denial of this motion would work an extreme hardship on Opposer. Without the requested relief, Opposer will effectively suffer deprivation of the opportunity to take a testimonial deposition or depositions of witnesses and rely upon the same at trial. Opposer would also lose the chance to present testimony regarding the recently-discovered additional basis for opposition. Opposer submits that such a result is not in accord with the liberal spirit of the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

Because the extension will not negatively affect the merits of this proceeding but rather will insure that this opposition is presented on a complete and fair record, and because Opposer has not been negligent, acted with bad faith, or abused the privilege of extensions, the Board should grant this motion. Accordingly, Opposer respectfully requests the entry of an order extending the testimony periods for thirty (30) days from the date on which the Board decides this motion.

Dated: June 23, 2009

Respectfully submitted,

/Stephen M. Schaetzel/

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing Opposer's Motion to Extend Testimony Periods was served this day via electronic mail, pursuant to agreement, addressed to:

Morton J. Rosenberg  
ROSENBERG, KLEIN AND LEE  
rkl@rklpatlaw.com

This 23rd day of June, 2009.

/Stephen M. Schaezel/  
Stephen M. Schaezel