

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

Baxley

Mailed: March 30, 2009

Opposition No. 91184415

Intuitive Surgical, Inc.

v.

Da Vinci Center, L.L.C.

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of applicant's motion (filed March 27, 2009) to extend its time in which to serve discovery responses. Opposer has filed a brief in response.

In support of its motion, applicant contends that it needs an extension of time to April 10, 2009 to serve discovery responses because its attorneys' firm is in the midst of a "major restructuring" affects its entire intellectual property practice and that opposer's attorney would only agree to extend applicants time to so serve until April 1, 2009.

In opposition thereto, opposer contends that the Board should deny applicant's motion because applicant is seeking to extend its time in which to serve discovery responses past the date by which opposer must serve pretrial disclosures without also asking that remaining dates be

extended. Opposer contends in addition that it has contacted applicant has unnecessarily delayed resolution of this proceeding by failing to respond to opposer's efforts regarding settlement of this case.

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). Further, the Board expects parties to cooperate in the discovery process and looks with disfavor on those who do not. See TBMP Section 408.01 (2d ed. rev. 2004).

The Board finds that the restructuring of applicant's attorneys' law firm constitutes good cause for the brief extension sought.¹ Further, extending applicant's time in which to serve discovery responses is likely to result in more thoroughly prepared responses, thus minimizing the

¹ Opposer contends that applicant failed to engage in settlement discussions. However, while the Board strongly encourages such discussions, a party is not required to discuss settlement. Unless the Board suspends a proceeding, the parties should presume that a case will move forward under the operative discovery and trial schedule.

need for supplementation thereof. See Fed. R. Civ. P. 26(e); Trademark Rule 2.120(e)(1).

In view thereof, the motion to extend is granted. Applicant is allowed until April 10, 2009 to serve responses to opposer's written discovery requests.

To eliminate any potential prejudice to opposer, the Board, in exercising its inherent authority to control the scheduling of cases on its docket, elects to reset trial dates to allow opposer ample time in which to review opposer's discovery responses prior to serving pretrial disclosures. Dates herein are reset as follows.

Plaintiff's Pretrial Disclosures	5/10/09
Plaintiff's 30-day Trial Period Ends	6/24/09
Defendant's Pretrial Disclosures	7/9/09
Defendant's 30-day Trial Period Ends	8/23/09
Plaintiff's Rebuttal Disclosures	9/7/09
Plaintiff's 15-day Rebuttal Period Ends	10/7/09

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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.