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

Proceeding	91184529
Party	Plaintiff Georgia-Pacific Consumer Products LP
Correspondence Address	Charlene R. Marino Kilpatrick Stockton, LLP 1100 Peachtree Street, Suite 2800 Atlanta, GA 30309 UNITED STATES cmarino@kilpatrickstockton.com
Submission	Motion to Extend
Filer's Name	Charlene R. Marino
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Signature	/Charlene R. Marino/
Date	01/21/2009
Attachments	GP Motion to Extend Discovery.pdf ( 16 pages )(497912 bytes )

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

GEORGIA-PACIFIC CONSUMER  
PRODUCTS LP,

Opposer,

v.

GLOBAL TISSUE GROUP, INC.

Applicant.

Opposition No.: 91184529

Serial No.: 77/364,616

**OPPOSER'S MOTION TO EXTEND DISCOVERY PERIOD**

OPPOSER GEORGIA-PACIFIC CONSUMER PRODUCTS LP ("Georgia-Pacific") moves the Board pursuant to Fed. R. Civ. P. 6(b) and TBMP § 509.01(a) to extend the current discovery schedule for sixty (60) days for the reasons set forth below. Georgia-Pacific has conferred with Applicant regarding this motion, and Applicant does not consent to the proposed extension.

Good cause exists for the requested extension because:

- (1) This is the first request either party has made to extend discovery;
- (2) the parties have not completed discovery because of a dispute over access to confidential documents, which is the subject of a Motion for Protective Order currently pending before the Board;
- (3) Georgia-Pacific only recently retained new counsel that was not previously involved in the case; and
- (4) Applicant has indicated that its witnesses are not available for deposition until after the current close of discovery.

## FACTUAL BACKGROUND

Georgia-Pacific filed this Opposition on June 11, 2008, and the Board issued a case schedule setting the close of discovery for February 16, 2009. This is the first request to extend the discovery period by either party.

Both parties served and responded to written Interrogatories and Requests for Production of Documents in November 2008. No documents have been exchanged, however, due to an ongoing dispute between the parties regarding attorney access to certain documents. That dispute is the subject of a pending Motion for Protective Order, which was filed on January 16, 2009. Until that Motion is resolved, the parties cannot effectively exchange many of the key documents in the case, which, in turn, prevents the depositions from proceeding.

Since this matter was initiated in June of last year, Georgia-Pacific was represented by Hunton & Williams. On December 12, 2008, Georgia-Pacific filed a Notice of Appearance and Substitution of Counsel appointing Kilpatrick Stockton LLP as new counsel in this matter. Kilpatrick Stockton had not previously been involved in this case, and, with the intervening holidays, its efforts in completing discovery have been delayed.

On January 8, 2009, Georgia-Pacific noticed the depositions of Applicant's President and a corporate representative under Fed. R. Civ. P. 30(b)(6) to take place on January 28-29, 2009. *See* Notices of Deposition attached as **Exhibit A**. Counsel for Applicant advised that the noticed deponents would not be available to sit for depositions until the last two weeks in February, after the discovery deadline is set to expire. *See* correspondence attached as **Exhibit B**. Despite the unavailability of the deponents, Applicant has refused to consent to an extension of the discovery period. *See id.*

## CITATION OF AUTHORITY

A party moving for an extension of the discovery period need only show “good cause” for the requested extension. TBMP § 509.01. Moreover, “a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefore.” TBMP § 509.01(a). “Ordinarily, the Board is liberal in granting extensions of time requested before the period of time has elapsed, as long as the moving party has not been guilty of negligence and bad faith and the privilege of extensions is not abused.” *Mattel, Inc. v. Super Duper, Inc.*, 2005 WL 1505382, \*3, No. 91159957 (T.T.A.B. June 21, 2005) (granting motion to extend discovery where movant had requested discovery prior to expiration of discovery period).

Good cause exists to extend the discovery period in this case due to (1) Georgia-Pacific’s recent substitution of counsel; and (2) the unavailability of Applicant’s witnesses to be deposed. Georgia-Pacific has at all times acted diligently throughout the discovery period in exchanging written discovery and timely noticing the depositions of Applicant’s witnesses within the discovery period. But, due to the scheduling conflicts of Applicant’s witnesses, as well as a short delay necessitated by Georgia-Pacific’s substitution of counsel, Georgia-Pacific will be unable to complete discovery prior to the expiration of the current discovery schedule. This is Georgia-Pacific’s first request for an extension of time, and it is not for the purposes of delay but to allow Georgia-Pacific the time to complete the discovery necessary for it to carry its burden of proof in this Opposition. A denial of this request would severely prejudice Georgia-Pacific, particularly where the need for the extension is caused in part by the unavailability of Applicant’s own witnesses to be deposed within the discovery period. *See Physicians Formula*

*Cosmetics, Inc. v. Small Giant, LLC*, 2003 WL 21678400, \*3-4 (T.T.A.B. June 30, 2003)

(granting motion to extend where witnesses could not be deposed within the discovery period).

### CONCLUSION

For these reasons, Georgia-Pacific respectfully requests that its Motion to Extend the Discovery Period be granted, and that all current discovery deadlines, from Expert Disclosures forward,<sup>1</sup> be extended for a period of sixty (60) days.

This 21<sup>st</sup> day of January, 2009.

/s/ Charlene R. Marino

R. Charles Henn Jr.

Charlene R. Marino

KILPATRICK STOCKTON LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Telephone: (404) 815-6500

Facsimile: (404) 815-6555

Attorneys for Opposer Georgia-Pacific  
Consumer Products LP

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<sup>1</sup> The deadline for Expert Disclosures was set for January 17, 2009, which due to the intervening weekend and federal holidays, is January 21, 2009.

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GLOBAL TISSUE GROUP, INC.

Applicant.

Opposition No.: 91184529  
Serial No.: 77/364,616

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, January 21, 2009, a copy of this paper has been served upon Applicant, by email and by U.S. mail, to Applicant's current identified counsel, as set forth below:

Andrew B. Katz  
Chernow Katz, LLC  
721 Dresher Road, Suite 1100  
Horsham, Pennsylvania 19044  
akatz@chernowkatz.com

/s/ Charlene R. Marino  
Charlene R. Marino

# **EXHIBIT A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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**NOTICE OF RULE 30(b)(6) DEPOSITION**

Notice is hereby given that pursuant to Fed. R. Civ. P. 26 and 30(b)(6) and TBMP Rule 404.5, Opposer GEORGIA-PACIFIC CONSUMER PRODUCTS, LP (“Opposer”) will take the deposition of Applicant GLOBAL TISSUE GROUP, INC. (“Applicant”) at the offices of Applicant, 1101 Lakeland Avenue, Bohemia, New York 11716, on **January 28, 2009, at 9:00 a.m.** and continuing from day to day until complete. The deposition will be by oral examination, with a written stenographic and videographic record made thereof, and shall be taken before an officer authorized to administer oaths.

Applicant is directed to designate one or more officers, directors, or representatives to testify regarding following topics (using the definitions contained in Opposer’s First Set of Interrogatories to Applicant):

1. Applicant’s corporate structure, including present and former parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as Applicant’s present and former officers, directors, principal owners, and principal shareholders.
2. Applicant’s conception, creation, selection, design, and decision to adopt or use the QUILTY mark.

3. Applicant's actual or intended use of the QUILTY mark in commerce in the United States for all goods described in Application Serial No. 77/364,616.
4. Applicant's actual or intended sales or shipments of any products under the QUILTY mark.
5. Actual or planned advertising, marketing, or promotion of any products under the QUILTY mark.
6. Product packaging (actual or planned) bearing the QUILTY mark.
7. The actual or intended pricing of all goods offered under the QUILTY mark.
8. The annual or budgeted gross revenue Applicant has received or anticipates receiving for all goods sold under the QUILTY mark.
9. Applicant's actual or intended target customer base for any products sold under the QUILTY mark.
10. The channels through which Applicant offers for sale or intends to offer for sale any products under the QUILTY mark.
11. The actual, planned, or potential retail outlets for any products sold or intended to be sold under the QUILTY mark.
12. Any private label agreements or license agreements that Applicant has or is considering pertaining to products offered for sale under the QUILTY mark.
13. Applicant's knowledge of Opposer's QUILTED NORTHERN marks, including Opposer's advertising, marketing, promotion, and sale of products under the QUILTED NORTHERN marks.

14. Applicant's knowledge of any third-party use of the words "Quilt," "Quilty," or "Quilted" in connection with the sale of paper products, whether as a trademark or in a descriptive sense.
15. Any trademark searches or clearance opinions that Applicant conducted or reviewed pertaining to the selection of the QUILTY mark.
16. Applicant's Responses to Opposer's First Request for Production of Documents (including all documents produced), and Applicant's Responses to Opposer's First Interrogatories.
17. The affirmative defenses set forth in Applicant's Answer to Notice of Opposition and Affirmative Defenses.

Applicant is requested to provide Opposer's counsel with written notice, at least five (5) business days in advance of the deposition, of the name and employment position of each designee who consents to testify on behalf of Applicant, and the subject matter categories as to which each designee has agreed to testify.

This 8th day of January, 2009.



R. Charles Henn Jr.  
Charlene R. Marino  
KILPATRICK STOCKTON LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309-4530  
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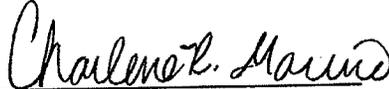
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Andrew B. Katz  
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Horsham, Pennsylvania 19044  
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Charlene R. Marino

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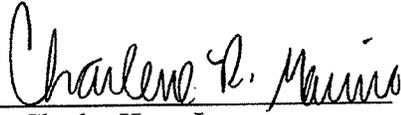
Serial No.: 77/364,616

**NOTICE OF DEPOSITION**

TO: Mr. Freydoun Elhekaveh  
c/o Chernow Katz, LLC  
721 Dresher Road, Suite 1100  
Horsham, Pennsylvania 19044

Notice is hereby given that pursuant to Fed. R. Civ. P. 26 and 30 and TBMP Rule 404, Opposer GEORGIA-PACIFIC CONSUMER PRODUCTS, LP ("Opposer") will take the deposition of Mr. Freydoun Elhekaveh at the offices of Applicant, 1101 Lakeland Avenue, Bohemia, New York 11716, on **January 29, 2009, at 9:00 a.m.** and continuing from day to day until complete. The deposition will be by oral examination, with a written stenographic and videographic record made thereof, and shall be taken before an officer authorized to administer oaths.

This 8th day of January, 2009.



R. Charles Henn Jr.

Charlene R. Marino

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Andrew B. Katz  
Chernow Katz, LLC  
721 Dresher Road, Suite 1100  
Horsham, Pennsylvania 19044  
akatz@chernowkatz.com

  
Charlene R. Marino

# **EXHIBIT B**

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**From:** Andrew B. Katz [mailto:akatz@chernowkatz.com]  
**Sent:** Wednesday, January 21, 2009 2:37 PM  
**To:** Marino, Charlene  
**Subject:** RE: GA Pacific v. GTG; TTAB Opp. No. 91184529

Charlene—

I cannot agree to extend the entire discovery period at this time. I will agree at this time to extend discovery for sixty days for the limited purpose of taking the two noticed depositions.

I will return your call around 3 pm.

Regards

Andy

**Andrew B. Katz**  
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---

1/21/2009

**From:** Marino, Charlene [mailto:CMarino@kilpatrickstockton.com]  
**Sent:** Wednesday, January 21, 2009 2:11 PM  
**To:** Andrew B. Katz  
**Cc:** Henn, Charlie  
**Subject:** RE: GA Pacific v. GTG; TTAB Opp. No. 91184529

Andy,

In light of the fact that your clients are not available to be deposed until late February, please advise if you will agree to a 60-day extension of the discovery period.

Thanks,  
Charlene

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**From:** Andrew B. Katz [mailto:akatz@chernowkatz.com]  
**Sent:** Wednesday, January 14, 2009 6:33 PM  
**To:** Marino, Charlene  
**Subject:** RE: GA Pacific v. GTG; TTAB Opp. No. 91184529

Charlene—

You have no right to withhold confidential documents from us at this time or otherwise make their release contingent on our agreement to language which varies from the Board's standard protective order. I have agreed to keep the materials marked confidential in accordance with the Board's standard protection and your attempt to withhold those documents unless we amend the standard protective order is an inappropriate ploy to force negotiation to something for which you are not entitled. If we do not receive all of the responsive documents (including those designated as confidential, trade secret or commercially sensitive) then we will immediately move to compel production of those documents.

Also, in light of your email below, I suggest that you revisit the draft I provided to you in which GTG reasonably consented to access to confidential materials by certain designated in-house counsel of GA Pacific. GTG objected to such access to trade secret and commercially sensitive data and GTG stands by that objection. If you are insisting to in-house GC access to confidential data, we have already agreed to that—at least until such time as you reject that offer and move the Board for further expansion of the protective order. If you want to seek further expansion of the Board's standard protective order, that is your right. GTG will oppose it.

As to the timing for the depositions, the last two weeks of February would generally be available for the depositions, as both Mr. Elhekaveh and the Rule 30(b)(6) designee, Mr. Philip Shaoul, will be available then. The extent to which GTG is agreeable to extending discovery and for what purposes is, at this time, unknown and depends significantly on the GA Pacific's responses and production to GTG's discovery requests. Certainly, at a minimum, we will not act to preclude you from taking the depositions that you timely requested.

Respectfully,

Andy

**Andrew B. Katz**  
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