

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

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Mailed: May 16, 2009

Opposition No. 91186154

Top Gun Intellectual  
Properties, LLC

v.

United IP, LLC

**Frances S. Wolfson, Interlocutory Attorney:**

On May 6, 2009, opposer filed a motion to compel applicant to respond to its first set of interrogatories and requests for production of documents and things.

Although the time for filing a response to the motion has not yet passed, the Board exercises its inherent authority to schedule the disposition of cases on its docket by deciding the motion at this time. *See Carrini Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067 (TTAB 2000); *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999).

The first inquiry the Board will make in determining whether to grant a motion to compel is whether the moving party has engaged in sufficient good faith efforts. *See Trademark Rule 2.120(e)*; *TBMP § 523.02* (2d ed. rev. 2004) and authorities cited in that section.

Here, opposer served its discovery requests on applicant on January 9, 2009. Applicant did not serve responses. In view thereof, on April 14, 2009, opposer sent a letter to applicant that stated that applicant was "in default on those discovery requests and all objections have been waived" and further demanded immediate responses to its discovery requests. On May 6, 2009, having had no reply to the letter, opposer filed this motion.

Greater efforts to secure discovery responses are required to fulfill the special requirements of Trademark Rule 2.120(e). While applicant has a duty to cooperate with opposer in producing discovery responses, it is incumbent on opposer to make a better effort to reach applicant, by correspondence or telephone, to discuss applicant's failure to respond. Only after two or more unsuccessful attempts to reach applicant, especially by telephone, should opposer determine that applicant has no intention of responding, and seek Board intervention.

Accordingly, opposer's motion to compel is denied without prejudice. Nonetheless, applicant is reminded of its duty to cooperate in the discovery process, and is advised that if proper discoverable matter is withheld from opposer, applicant will be precluded from relying upon such information at trial and from adducing testimony with regard thereto during its testimony period. See *Shoe Factory Supplies Co. v. Thermal*

*Engineering Company*, 207 USPQ 517 (TTAB 1980); *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895 (TTAB 1988).

The discovery period is reopened and dates, including disclosures, the close of discovery, and trial dates, are reset as indicated below.

Expert Disclosures Due	5/23/09
Discovery Closes	6/22/09
Plaintiff's Pretrial Disclosures Due	8/6/09
Plaintiff's 30-day Trial Period Ends	9/20/09
Defendant's Pretrial Disclosures Due	10/5/09
Defendant's 30-day Trial Period Ends	11/19/09
Plaintiff's Rebuttal Disclosures Due	12/4/09
Plaintiff's 15-day Rebuttal Period Ends	1/3/10

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