

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

Lykos

Mailed: December 14, 2009

Opposition No. 91188993

Rolex Watch U.S.A., Inc.

v.

AFP Imaging Corporation

Angela Lykos, Interlocutory Attorney

This case now comes before the Board for consideration of opposer's motion (filed November 25, 2009) to extend the parties' deadline for making expert disclosures as well as all subsequent dates in this proceeding. The motion is fully briefed.

The Board suggested having a telephone conference to resolve the pending motion. The conference took place on Monday, December 14, 2009 at 10 a.m. EST among Gary Krugman and Beth Frenchman as counsel for opposer, Norman Zivin as counsel for applicant, and the undersigned, as the Board attorney responsible for resolving interlocutory disputes in this proceeding.

According to the current case schedule, expert disclosures were due on December 2, 2009 and discovery closes January 1, 2010. As grounds for the extension request, opposer argues that under the current case

schedule, the deadline for making expert disclosures is prior to applicant's discovery deposition which is to take place tomorrow on December 15, 2009. Opposer contends that it needs additional time after the taking of the applicant's deposition to determine whether retention of an expert is required. Opposer also argues that in light of the upcoming holiday season, it may need additional time for follow-up discovery after the taking of applicant's discovery deposition. Opposer maintains that this is not an instance where it waited until the waning days of the discovery period to serve written discovery requests, insofar as its first requests were served in June 2009.

Applicant contends that it has previously consented to two 30-day extensions of time for making expert disclosures and for the close of discovery, and that opposer should not be permitted to rely on the holiday season as a justification for an extension request. Applicant also argues that since the involved application is based on Section 1(b), opposer does not need any further discovery, and that opposer should not be permitted any additional extensions.

In reply, opposer maintains that the two prior extensions were necessary in part to accommodate the schedule of applicant's deponent, and that the fact that this accommodation resulted in the deposition being

scheduled one week prior to the Christmas holiday should not prejudice opposer in its desire to take follow-up discovery or make its decision regarding the retention of an expert. In support thereof, opposer notes that it first contacted applicant on October 27, 2009 requesting that applicant provide convenient dates for the discovery deposition, and that applicant only offered dates subsequent to the close of discovery (December 7 - 14, 2009).

During the conference, counsel for applicant informed counsel for opposer and the Board that due to a medical emergency, applicant's deponent will not be able to appear for the deposition tomorrow.

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the time period is "good cause." See Fed. R. Civ. P. 6(b) and TBMP § 509 (2d ed. rev. 2004) and authorities cited therein. The Board generally 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, e.g., *American Vitamin Products Inc., v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992); and *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147 (TTAB 1985).

After careful review of the record and consideration of the parties' arguments made during the telephone conference,

the Board finds that the extension request is warranted. It is apparent that the prior extension requests and the delay were due in part to accommodate the scheduling of applicant's deponent. Opposer offered applicant the courtesy of scheduling the deposition of applicant's principal at a time convenient for applicant and counsel for applicant, and applicant only offered dates subsequent to the close of discovery. The desire to take follow-up discovery and decision regarding the retention of an expert in this case constitute proper justifications for the extension request, especially in light of the fact that opposer filed its motion on November 25, 2009, well prior to the close of discovery as previously reset. Moreover, as a practical matter, in light of the fact that applicant's deponent will not be able to appear tomorrow, opposer is entitled to an extension.

In addition, the record shows no evidence of negligence or bad faith on the part of opposer. Furthermore, the Board notes that opposer has not abused the privilege of extensions as this is its first request for an extension during the course of this proceeding. However, given that applicant has previously agreed to two extension requests, opposer will not be permitted any further extensions (unless an extension is consented or stipulated

to by applicant or applicant's witness is unable to appear due to medical issues).

In view of the foregoing, opposer's motion to extend is granted. Dates are reset as follows:

Expert Disclosures Due	1/28/10
Discovery Closes	2/27/10
Plaintiff's Pretrial Disclosures	4/13/10
Plaintiff's 30-day Trial Period Ends	5/28/10
Defendant's Pretrial Disclosures	6/12/10
Defendant's 30-day Trial Period Ends	7/27/10
Plaintiff's Rebuttal Disclosures	8/11/10
Plaintiff's 15-day Rebuttal Period Ends	9/10/10

The Board expects that the parties will be able to arrange a mutually convenient time for the discovery deposition to take place prior to the due date for expert disclosures as reset above.

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.