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

Mailed: April 29, 2010

Opposition No. 91190278

NAC Harmonic Drive, Inc.

v.

Harmonic Drive L.L.C.

Robert H. Coggins,
Interlocutory Attorney:

On April 23, 2010, opposer filed a motion to supplement its March 22, 2010 reply brief in support of its motion for summary judgment. Opposer's supplement is based on Requests for Admissions served on applicant on March 22, 2010, which requests opposer alleges have been automatically admitted under Fed. R. Civ. P. 36(a)(3) for applicant's failure to answer.

Proceedings were suspended on January 14, 2010, pending disposition of opposer's motion for summary judgment. As discussed in the March 9, 2010 telephone conference with the parties, the Board noted that the suspension of proceedings tolled the time for either party to respond to any outstanding discovery requests. By way of its motion to supplement, opposer argues that the suspension does not apply to newly or

later served discovery requests that opposer believes are germane to the motion for summary judgment. Opposer is mistaken. Upon the suspension of proceedings by the Board, the only way for any discovery to continue after suspension is by way of a motion –filed by the party opposing the motion for summary judgment- under Fed. R. Civ. P. 56(f). Opposer, as the party moving for summary judgment, may not invoke Rule 56(f). In the instant case, it is opposer –as the movant itself- who seeks additional discovery to support its motion for summary judgment based on applicant's objections in applicant's brief in opposition to the motion for summary judgment; however, neither the Trademark Rules nor the Federal Rules of Civil Procedure provide for such a maneuver. Indeed, opposer has cited no authority for its actions.

Moreover, permitting opposer to supplement its reply brief with a paper filed thirty days after the reply was due would effectively extend opposer's time in which to file a reply brief.[1] Trademark Rule 2.127(e)(1) prohibits the extension of time in which to file a reply brief.

Accordingly, opposer's motion to supplement is denied and will be given no further consideration.

Inasmuch as the motion for summary judgment is fully briefed, the parties should not file any further papers in

[1] As noted in the Board's March 10, 2010 order, opposer's reply was due March 24, 2010.

this case until the motion for summary judgment is determined.[2] The motion for summary judgment will be taken up in due course.

[2] The Board exercises its discretion to determine the April 23rd motion prior to the time in which applicant may file a brief in opposition thereto. Inasmuch as the Board determines the motion to supplement herein, applicant should not file a brief in opposition thereto.