ESTTA Tracking number: **ESTTA360829**
Filing date: **07/30/2010**

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

Proceeding	91191309
Party	Defendant ICI Services, LLC
Correspondence Address	THOMAS F. BERGERT WILLIAMS MULLEN, P.C. 321 E. Main Street, Suite 400 Charlottesville, VA 22902 UNITED STATES tbergert@williamsmullen.com
Submission	Opposition/Response to Motion
Filer's Name	Thomas F. Bergert
Filer's e-mail	ip@williamsmullen.com, prenie@williamsmullen.com, tbergert@williamsmullen.com
Signature	/Thomas F. Bergert/
Date	07/30/2010
Attachments	ResponsetoMotion-7-30-2010.pdf (4 pages)(86881 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application No. 77/592,570
Applicant: ICI Services Corporation
Mark: ici ICI SERVICES and design
Filed: October 14, 2008

David K. Aberizk, Opposer,	]	
v.	]	Opposition No. 91191309
ICI Services Corporation, Applicant,	]	Interlocutory Attorney: Jennifer Krisp

APPLICANT'S OBJECTION TO OPPOSER'S MOTION FOR 60 DAY EXTENSION OF DISCOVERY AND TRIAL DATES

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

On July 16, 2010 and two days before the close of discovery, Opposer submitted a motion to extend discovery and trial dates in the present proceeding. In its motion, Opposer correctly notes that Applicant served Opposer with its discovery requests on June 16, 2010. Opposer also served Applicant with its own Interrogatories and Requests for Production on June 25, 2010. Opposer later served Applicant with its own Requests for Admission on July 19, 2010 (the Monday after the July 18, 2010 closing discovery date).

Applicant submits that good cause has not been shown sufficient to grant Opposer's motion. Instead, Opposer has elected until very near the end of discovery to initiate discovery and file its motion to extend the discovery period. Such delay is not found to constitute good cause. See *National Football League v. DNH Mgmt, LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) ("When, as in this case, a party does not serve written discovery requests until the final

day of discovery and did not attempt to depose its adversary during the prescribed discovery period, a motion to extend discovery will ordinarily be denied.").

Applicant has not delayed in responding to discovery. Further, the deadlines for all of Applicant's responses are after the expiration of the discovery period. Thus, Opposer would not ordinarily be entitled to any further discovery even after receiving Applicant's responses. Opposer should not be rewarded for its own delay in taking discovery by being given extra time in which to conduct additional discovery.

Further, settlement discussions during the discovery period have been sporadic at best. Via counsel, Applicant provided Opposer with documentation on February 12, 2010 in an effort to initiate settlement discussions. Applicant's counsel checked with Opposer's counsel by e-mails on March 5, 2010 and April 8, 2010 to determine if Opposer wished to pursue settlement discussions further. Opposer's counsel responded by e-mail on April 8, 2010, indicating that he would be discussing parameters for settlement with his client and would respond "hopefully in the next week" with a more specific proposal. On May 14, 2010, Applicant's counsel again contacted Opposer's counsel for further information. On June 15, 2010, Opposer's counsel sought to discuss the matter further with Applicant's counsel, and around that time sought an extension on the discovery period. Thus, over the course of four months, very little dialogue on the issue of settlement occurred.

As previously stated to Opposer, Applicant welcomes the potential for settlement in this matter, and would be amenable to suspending the present proceeding if it appears settlement is within reach. Nevertheless, an extension on discovery is not the proper vehicle. Applicant does not wish to be subject to additional discovery-related costs and delays that it perceives to be unwarranted and caused simply by Opposer's own delay in taking discovery and/or pursuing settlement in this proceeding.

Notably, Opposer states that it will need additional time to gather appropriate documentation dating back over ten (10) years. However, the present motion is one to extend the discovery period, not one to extend its deadline for responding. In fact, Applicant has agreed to

allow Opposer additional time to provide responses to discovery. Nonetheless, Applicant does not agree to extend the discovery period, because doing so would prejudice Applicant and unjustly reward Opposer for its own delays.

Accordingly, Applicant respectfully requests that the Board deny Opposer's motion.

Respectfully submitted,
ICI Services Corporation, **Applicant**

Date: July 30, 2010

By: Thomas F. Bergert

Thomas F. Bergert, Esquire
Williams Mullen, P.C.
321 E. Main Street, Suite 400
Charlottesville, VA 22902
Telephone: (434) 951-5700
Facsimile: (434) 817-0977
Email: tbergert@williamsmullen.com
Counsel for Applicant

CERTIFICATE OF SERVICE

On July 30, 2010, a true and correct copy of the foregoing **APPLICANT'S OBJECTION TO OPPOSER'S MOTION FOR 60 DAY EXTENSION OF DISCOVERY AND TRIAL DATES** was duly served by first class mail, postage pre-paid, to counsel for Opposer:

Barry F. Soalt, Esq.
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101
619-238-1900

Thomas F. Bergert