

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

Mailed: September 29, 2011

Opposition No. 91197479

Faronics Corporation

v.

Aristocrat Technologies  
Australia Pty Ltd

**M. Catherine Faint,  
Interlocutory Attorney:**

On September 28, 2011 the Board held a telephone conference involving James E. Shlesinger, counsel for Faronics Corp., and Lauren Krupka, counsel for Aristocrat Technologies Australia Pty Ltd. Before the Board was opposer's motion to extend discovery, filed August 26, 2011. The motion is contested.

The Board carefully considered the arguments raised by counsel for both parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations.

The parties stipulated to an extension of time which the Board granted on March 3, 2011. On July 6, 2011, opposer filed a motion to extend time for thirty days. Opposer did not allege that the motion was consented, but the Board mistakenly

granted the motion as consented on July 14, 2011. Applicant filed no response to that motion or order. On August 26, 2011, three days before expert disclosures were due and well before the close of discovery, opposer sought an additional extension of thirty days, alleging essentially the same reasons as those underlying the July 6, 2011 motion to extend, namely the press of other litigation. Further, opposer's counsel states that, absent extraordinary circumstances, he will not seek additional extensions of the deadline for discovery.

The Board applies the "good cause" standard in determining motions to extend time. In *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992), the Board stated, "the Board 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."

We do not find on the facts presented here that opposer is guilty of negligence or bad faith, and there has been no abuse of the privilege of extensions. The press of other litigation, where the attorney has otherwise been diligent, has been found to constitute good cause. *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383-84 (TTAB 2001) (press of other litigation may constitute good cause to extend).

Accordingly, the Board's order of July 14, 2011 is vacated, but the July 6, 2011 motion to extend time is hereby

granted as conceded. Opposer's August 26, 2011 motion to extend discovery is granted to the extent that dates are reset as set out below.

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|---|------------|
| Expert Disclosures Due                  | 9/28/2011  |
| Discovery Closes                        | 10/28/2011 |
| Plaintiff's Pretrial Disclosures        | 12/12/2011 |
| Plaintiff's 30-day Trial Period Ends    | 1/26/2012  |
| Defendant's Pretrial Disclosures        | 2/10/2012  |
| Defendant's 30-day Trial Period Ends    | 3/26/2012  |
| Plaintiff's Rebuttal Disclosures        | 4/10/2012  |
| Plaintiff's 15-day Rebuttal Period Ends | 5/10/2012  |

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.

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