

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

Mailed: January 18, 2012

Opposition No. 91198063

AlpinBreeze LLC

v.

Evertec Information
Technology Co., Ltd.

**Robert H. Coggins,
Interlocutory Attorney:**

On December 23, 2011, opposer filed a motion to compel discovery; and on January 6, 2012, applicant filed a combined brief in opposition thereto and cross-motion to compel. Before addressing the motions further, it is necessary to discuss the procedural history of this case.

Suspension

This opposition proceeding was filed and instituted on January 5, 2011. Shortly after an answer was filed, applicant's counsel filed an incomplete motion to withdraw as counsel of record, and, in view thereof, the Board suspended proceedings on April 8, 2011, to allow counsel time to perfect its motion to withdraw. Thereafter, counsel perfected the motion and applicant filed a statement that it would represent itself; however, inasmuch as applicant's

statement of self-representation did not indicate that applicant's new representative had the requisite authority to represent applicant, the Board continued the suspension of proceedings on May 4, 2011, and allowed applicant time in which to provide the new representative's authority.

Although applicant responded thereto sufficiently (i.e., by stating that applicant's representative is president of applicant), proceedings were never resumed by order of the Board.

Notwithstanding that proceedings remained suspended and that the parties should have waited for an order from the Board to resume proceedings, the parties appear to have continued with this case under the schedule set forth in the institution order. Opposer even filed (on November 7, 2011, after opposer had served discovery requests and applicant had responded thereto) a consented motion for a sixty-day extension of time which noted that the next scheduled deadline was the close of opposer's trial period. The motion to extend was filed via ESTTA and was granted by an automatically generated order which reset dates in accordance with the consented motion.

In view of the parties' actions and apparent belief that proceedings were no longer suspended, proceedings are resumed retroactively to May 16, 2011 -the filing date of applicant's pro se response. However, in view of opposer's

motion to compel, proceedings are re-suspended pending disposition of that motion. Trademark Rule 2.120(e)(2).

Opposer's Motion to Compel

Although opposer's motion to compel references Exhibit 5 in support of opposer's required good faith effort (see Motion, unnumbered p. 2¹), no such exhibit was attached to the motion. Moreover, in view of the circumstances of this case, where the parties appear to have continued with the trial schedule even though proceedings had not yet been resumed by the Board, opposer should affirmatively state whether, and when, it served initial disclosures upon applicant.²

Any further consideration of opposer's motion to compel is deferred until opposer files with the Board (and serves upon applicant) a copy of Exhibit 5 to the motion, and a statement of whether, and when, opposer served its initial

¹ Pursuant to Trademark Rule 2.126(a)(5), opposer should have numbered each page of its motion.

² The identification of these two issues should not be construed as the Board's wholesale acceptance of the substance of opposer's motion. For example, the Board notes opposer's stated failure in the motion (see Motion, unnumbered p. 6) to specifically address each of applicant's responses to the document requests, and opposer's request related to, but failure to fully address, Interrogatory Nos. 17-30 (see Motion, unnumbered pp. 2 and 7). Opposer is, of course, free to withdraw and/or revise its motion—especially in view of applicant's January 6, 2012 response thereto. Upon review of Exhibit 5, the Board will determine to what extent opposer did, in fact, make a good faith effort to resolve the specific issues raised in the motion to compel; and upon review of opposer's statement of its service of initial disclosures, the Board will determine whether opposer's discovery requests were premature.

disclosures on applicant. Opposer is allowed January 27, 2012, in which to provide such exhibit and statement, failing which the motion to compel will be given no further consideration.³

Applicant's Cross-Motion to Compel

Trademark Rule 2.120(e)(1) requires that a motion to compel discovery be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party the issues presented in the motion but has been unable to reach agreement. Applicant's cross-motion fails to include the required statement. In fact, applicant fails to allege any conferences, correspondence, or other steps it has taken to resolve its discovery dispute with opposer. It therefore appears that applicant has made no effort (other than filing the motion to compel) to resolve its discovery dispute with opposer.⁴ In view thereof, applicant's cross-motion to compel is denied without prejudice.

³ January 27, 2012, is also the deadline for opposer's reply in support of its motion, if a reply is to be filed. See Trademark Rules 2.127(a) and 2.119(c).

⁴ It also appears that applicant served its discovery requests late (i.e., after the close of the discovery period).