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

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|------------------------|---|
| Proceeding | 91200643 |
| Party | Defendant Nowlan Family Trust |
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| Signature | /John J. O'Malley/ |
| Date | 01/13/2014 |
| Attachments | Response to Motion to Extend Discovery.pdf(72553 bytes) |

TRADEMARK

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

In the Trademark Opposition of:

Mark: BUCK ROGERS
Serial No.: 77/650,082
Filed: January 15, 2009

Opposition No. 91200643

Dille Family Trust,
Opposer

v.

Nowlan Family Trust,
Applicant

APPLICANT’S RESPONSE TO MOTION TO EXTEND DISCOVERY PERIOD

Applicant, Nowlan Family Trust, (hereinafter “Applicant”), hereby responds to Opposer, Dille Family Trust’s (hereinafter “Opposer”) Motion to Extend the Discovery Period.

Opposer has failed to show good cause supporting extension of the discovery period, and Applicant respectfully submits that Opposer’s Motion should be denied accordingly. Opposer’s instant Motion represents its fifth request for an extension of the discovery period. Applicant consented to Opposer’s four earlier extension requests, and has been exceedingly reasonable and accommodating throughout the course of discovery in the subject proceedings in an effort to drive the matter

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Certificate of Mailing and Service

I hereby certify that this correspondence is filed online via ESTTA to: Trademark Trial and Appeal Board on January 13, 2014.

January 13, 2014
Date of Signature
2842940-1

s/John J. O'Malley
John J. O'Malley

towards a fair and expedient resolution. However, Opposer has not reciprocated such efforts, and its latest extension request represents nothing more than an attempt to unreasonably delay proceedings to Applicant's detriment.

The grounds cited in support of Opposer's request, namely, an inability to conduct discovery depositions, do not constitute good cause in accordance with established U.S. trademark law. When a motion to extend the discovery or testimony periods is filed before the expiration of the period as originally set or previously extended, as is the case here, the moving party needs to show good cause why the requested extension should be granted. Fed. R. Civ. P. 6(b). The Board will generally deny a motion to extend where a party waits until the end of the discovery period in order to take discovery. *Anheuser-Busch, Inc. v. Cold Steel, Inc.*, 1998 TTAB LEXIS 492 (TTAB Dec. 1, 1998). "Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period." *Luehrmann v. Kwik Kopy*, 2 USPQ2d 1305 (TTAB 1987); *see also* TBMP § 403.04. A party that waits until the waning days of the discovery period to serve interrogatories, requests for production of documents and things, and/or request or otherwise conduct depositions will not be heard to complain when it needs an extension of the discovery period in order to take "follow-up" discovery. *Id.*

Discovery opened in the instant proceeding over two years ago on September 20, 2011. Opposer could have conducted discovery depositions at any point in time over the last two years, but failed to do so. In spite of obtaining four previous extensions, Opposer never took advantage of the additional time granted. Instead,

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Opposer continued to employ dilatory tactics and waited until the very close of discovery, December 26, 2013, to file its instant Motion. Opposer's only grounds for seeking a fifth extension request, as expressly outlined in its Motion, are that it "has been unable to conduct discovery depositions." It is unfathomable how Opposer has been "unable to conduct discovery depositions" when it has had over two years to do so. Such delay in seeking deposition testimony simply does not constitute good cause warranting the grant of a fifth extension request. *See, e.g., Leuhrman*, 2 USPQ2d at 1305. In accordance with existing law, therefore, Opposer's extension request lacks any legitimate good cause and will only serve to unnecessarily delay proceedings and prejudice Applicant if granted.

In view of the foregoing, Applicant respectfully requests that Opposer's Motion be denied. In the event that the Board decides to grant Opposer's Motion, Applicant requests that the discovery deadline be extended and all subsequent dates be reset accordingly for both parties, including Applicant.

Respectfully submitted,

NOWLAN FAMILY TRUST

Date: January 13, 2014

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

In the Trademark Opposition of:

Mark: BUCK ROGERS
Serial No.: 77/650,082
Filed: July 12, 2011

Opposition No. 91200643

Dille Family Trust,
Opposer

v.

Nowlan Family Trust,
Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicant's Response to Motion to Extend Discovery Period was served on Applicant's Attorney of Record by electronic and first-class mail, postage pre-paid, to the following:

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Date: January 13, 2014

By: s/John J. O'Malley
John J. O'Malley, Esquire