

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

BUO

Mailed: January 17, 2014

Opposition No. 91200643

Dille Family Trust

v.

Nowlan Family Trust

Benjamin U. Okeke, Interlocutory Attorney:

Pursuant to the Board's order of August 7, 2013, discovery was set to close on August 28, 2013. On August 27, 2013, opposer filed, with applicant's consent, a motion for a thirty-day extension of dates, citing the parties' inability to take and complete depositions prior to the set discovery closure date. Opposer's motion was granted by the Board, and dates were reset, setting the close of discovery on September 27, 2013. The parties filed two subsequent motions citing the same difficulties, the first of which was granted by the Board.¹ Opposer's motion, filed November 26, 2013, seeking further extension, was not acted upon by the Board prior to the expiration of the time requested in the

¹ Opposer's motion, filed November 26, 2013, for further extension of time is noted, and is made moot by this order.

Additionally, opposer's appearance of counsel, filed, October 11, 2013, is noted and the Board's correspondence records have been updated to reflect the appearance.

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extension, and therefore the consent motion was implicitly granted, but is otherwise rendered moot by the passage of time.² By that motion, discovery was set to close on December 26, 2013.

Now before the Board is opposer's motion, filed December 26, 2013, to further extend the close of the discovery period and subsequent dates by thirty days. Applicant contests this motion, arguing that opposer has not established good cause for its inability to complete its discovery prior to the close of the allotted period.

Because opposer moved for an extension prior to the close of the discovery period, it need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a) (3d ed. rev.2 2013). Generally, "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." *Am. Vitamin Prods. Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1315 (TTAB 1992). However, opposer, as the moving party, "retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded

² The better practice would have been for the parties to request a telephone conference on this motion, or to alert the assigned Board interlocutory by telephone that such a motion had been filed, given the time sensitive nature of the motion and applicant's consent to the motion. See TBMP § 502.06 (3d ed. rev.2 2013).

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additional time." *Nat'l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

Here, opposer's extremely "sparse motion contains very little information upon which the Board could find good cause." *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999). Indeed, opposer has not explained why it cannot take and complete the depositions its seeks to conduct. In fact, opposer's inability over the past four months³ to take and complete these depositions, while filing three consecutive motions seeking extensions for this purpose, tends to illustrate an abuse of the privilege of extensions.

Therefore, inasmuch as this is opposer's fifth request to extend, and the eighth such motion filed in this proceeding, and there is evidence tending to indicate an abuse of the privilege of extensions, opposer has not established the requisite good cause and its motion is accordingly **DENIED**.

Discovery is now closed, and the case will promptly proceed to trial. Opposer is strongly advised to comply with Board instructions, including the schedule set by this order.

³ We also note that discovery in this proceeding opened September 20, 2011, over two years ago, a rather lengthy discovery period indeed. The Board granted opposer initial motion for extension for this reason, filed November 18, 2011, over applicant's contentions. The parties then filed three similar consent motions on March 19, 2012, April 17, 2012, and June 1, 2012, which were also granted, and greatly contributed to the length of this proceeding.

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Disclosure and trial dates are reset as follows:

Plaintiff's Pretrial Disclosures	2/9/2014
Plaintiff's 30-day Trial Period Ends	3/26/2014
Defendant's Pretrial Disclosures	4/10/2014
Defendant's 30-day Trial Period Ends	5/25/2014
Plaintiff's Rebuttal Disclosures	6/9/2014
Plaintiff's 15-day Rebuttal Period Ends	7/9/2014

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 taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.