

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

Mailed: February 9, 2012

Opposition No. 91200643

Dille Family Trust

v.

Nowlan Family Trust

Ann Linnehan, Interlocutory Attorney
571-272-3946

This case now comes up for consideration of opposer's motion (filed November 18, 2011) to extend its deadline for responding to applicant's discovery requests by sixty days and to extend the discovery and trial periods in this proceeding. Opposer states that its discovery responses were due November 19, 2011. Applicant filed a brief in response to the motion.

In support of its motion, opposer states that there are numerous records in various locations which must be organized, boxed, and sent to opposer's counsel for review in order to respond to the requests; that a new trustee for opposer was appointed on July 1, 2011; that in order to respond to discovery, the trustee has requested that various relevant individuals with information which would possibly

be the subject matter of discovery provide the discovery; that the records, documents, and documentary material are numerous and extensive and are currently being collected; and that the primary individual who is in possession of a majority of the records resides and is situated in Chicago and this individual is currently the primary care taker of her husband who has experienced a life-threatening medical crisis. Opposer seeks a sixty-day extension of its time to respond to the discovery requests and a resetting of all the remaining dates in this proceeding.

In response, applicant argues that it was willing to provide an additional 14 day extension to opposer for the discovery responses but "was unwilling to grant a further extension of time because of its experiences with Registrant in a recently concluded cancellation proceeding (No. 92051659)." In such response, applicant later states that while it was unwilling to grant a sixty-day extension it nevertheless will not object to opposer's request provided that the Board order that opposer respond to the discovery by January 18, 2012, as requested by opposer, and that the trial and discovery deadlines be reset as requested by opposer.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. R. Civ. P. 6(b); TBMP Section 509.01 (3d ed. 2011).

The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

After reviewing the parties' arguments and keeping in mind the Board's liberal application of the Rule 6(b) standard, the Board finds that the circumstances herein are appropriate for granting opposer's motion to extend time to the extent modified herein. In particular, the Board finds that opposer's efforts to organize and completely respond to the discovery requests, the appointment of a new trustee, and the personal crisis of the primary individual who is in possession of the majority of the records constitutes good cause for granting the extension sought. In addition, the Board finds that there is no evidence of negligence or bad faith on the part of opposer and opposer has not abused the privilege of extensions.

In view thereof, opposer's motion to extend time, including its time to respond to applicant's requests for discovery, is hereby granted.

Due to the Board's delay in handling this motion and the Board's uncertainty as to whether opposer went ahead and served its responses by January 18, 2012, the Board finds it

appropriate to reset opposer's deadline for responding to applicant's discovery requests to **March 6, 2012**.¹ While this does not accord opposer a sixty-day extension of time from the date of this order, it does allow opposer sufficient time to respond to such requests (if it has not done so already) and accounts for the time which has now passed since the motion was filed. All other remaining dates are reset as follows:

Expert Disclosures Due	5/6/2012
Discovery Closes	6/5/2012
Plaintiff's Pretrial Disclosures	7/20/2012
Plaintiff's 30-day Trial Period Ends	9/3/2012
Defendant's Pretrial Disclosures	9/18/2012
Defendant's 30-day Trial Period Ends	11/2/2012
Plaintiff's Rebuttal Disclosures	11/17/2012
Plaintiff's 15-day Rebuttal Period Ends	12/17/2012

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 of completion of the 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.

¹ The better practice would have been for the parties to request a telephone conference on this motion given the time sensitive nature of the motion and opposer's offer to consent to the motion if the Board ordered that opposer respond to the requests by January 18, 2012 (which now has not happened). See TBMP Section 502.06 (3d ed 2011).