

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: October 21, 2015

Opposition No. 91204122

Empire State Building Company L.L.C.

v.

Michael Liang

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

On October 21, 2015, the Board held a telephone conference involving Eric J. Shimanoff, Atty., counsel for Opposer Empire State Building Co., LLC, and David Yan, Atty., counsel for Applicant Michael Liang.

Applicant's trial brief was due October 9, 2015. By its order of October 16, 2015, the Board had previously granted Applicant's counsel an extension until October 20, 2015 to file a trial brief in this case. That extension caused a resetting of the due date for Opposer's reply brief.

On October 19, 2015, Opposer's counsel filed a motion to extend the due date for Opposer's reply trial brief due to the press of other litigation and a previously scheduled vacation that had been set based on the original briefing schedule. Opposer's counsel sought an extension until November 16, 2015 to file its reply trial brief. During the teleconference, Opposer's counsel amended his request to an extension of three weeks

due to the frequent re-scheduling that has been necessitated by Applicant's requests for further extensions of time.<sup>1</sup>

On October 20, 2015, instead of filing a trial brief, Applicant's counsel filed a response in opposition to Opposer's motion to extend, and a separate motion seeking to further extend Applicant's due date for its trial brief by an additional 28 days until November 17, 2015. As grounds for the extension, Applicant's counsel stated he was out of the office October 17-18, 2015 to travel to Pompano Beach, FL to represent a client there, and raised for the first time that he was lead counsel for an unrelated 10-day jury trial set in the United States District Court for November 2, 2015 until November 13, 2015.

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 standard for extending time is found in Fed. R. Civ. P. 6(b)(1), which reads in pertinent part:

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

- (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires....

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; and a party moving to extend time must demonstrate

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<sup>1</sup> Also during the teleconference, Opposer requested copies of testimony from Applicant, which Applicant's counsel stated he would provide electronically immediately after the teleconference.

that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. *See* TBMP §509.01(a) (2015). Ordinarily, 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. *American Vitamin Prods., Inc. v. Dow Brands Inc.*, 22 USPQ2d 1316 (TTAB 1992).

In this instance, the Board finds Applicant's counsel has failed to present good cause for the lengthy extension sought. Applicant has been aware for some time of the trial schedule set in this case and has waited until the last minute to raise the press of other litigation. Applicant has also been granted several prior extensions in this case, and the Board noted in a prior order that Applicant's counsel was inattentive to the schedule governing this proceeding.<sup>2</sup>

In view thereof, Applicant is **granted** an extension until November 2, 2015 to file its trial brief, if any.

If Applicant files its trial brief, Opposer is **granted** an extension until November 23, 2015 to file its reply brief.

***Schedule***

Brief (if any) for party in position of defendant shall be due: November 2, 2015

Reply brief (if any) for party in position of plaintiff shall be due: November 23, 2015

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<sup>2</sup> 23 TTABVUE 7 (March 26, 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 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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