

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

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Mailed: August 21, 2012

Opposition No. 91204512

EventForce, Inc

v.

Salesforce.com, Inc.

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of applicant's motion (filed August 3, 2012) for a two-week extension of time to serve its responses to opposer's written discovery requests which opposer served on July 24, 2012. The motion has been fully briefed.¹

Analysis

A party may file a motion for an enlargement of the time in which an act is required or allowed to be done. If the motion is filed prior to the expiration of the period as originally set or previously reset, the motion is a motion to extend, and the moving party need only show good cause for the requested extension. See Fed. R. Civ. P. 6(b).

¹ The Board, in its discretion, and to avoid delay to this proceeding, considers the merits of applicant's motion prior to the time for filing a reply brief thereon. See TBMP § 502.02(b) (3d ed. rev. 2012); Cf. TBMP § 502.06(a) (3d ed. rev. 2012); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

A party moving to extend time must demonstrate that the requested extension 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 (3d ed. rev. 2012). The party retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. See *National Football League v. DNH Mgt. LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). The movant must state with particularity the facts said to constitute good cause for the requested extension of time; mere conclusory allegations lacking in factual detail are insufficient. See *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999).

Applicant sets forth with factual detail the reasons for its request, including primarily a long-planned family vacation. This indicates that the request is not necessitated by applicant's own lack of diligence or inattentiveness to this proceeding. Moreover, regarding timing, applicant sought opposer's consent to the requested extension within only one week after opposer served the discovery, applicant's requesting counsel had recently entered his appearance in this proceeding, and applicant moved the Board for an extension long before the August 23, 2012 due date for its discovery responses. Thus, applicant has not acted with unreasonable delay, and in general, the Board acknowledges that a party's ability to

prepare responses can vary with circumstances. Finally, applicant supports its motion with a declaration of its counsel, Mr. Slafsky, setting forth a summary of the circumstances, as well as communications between counsels on this matter.

In opposing the motion, opposer asserts, inter alia, that it is entitled to timely discovery, in particular with respect to information provided by applicant in its initial disclosures, a copy of which opposer filed as an exhibit concurrently with its brief on the motion. Opposer argues that there is danger of prejudice to it by any delay in receiving applicant's responses; opposer does not, however, articulate any specific prejudice that said delay would create, such as the inability to identify witnesses or to secure evidence. It further argues that applicant is represented by a large law firm, and that only Mr. Slafsky asserts that he is unavailable to prepare the discovery responses. Finally, opposer included in its response a contingent motion, seeking an extension of its time to September 12, 2012 to respond to applicant's discovery requests, asserting that such extension would avoid the inequitable result and tactical benefit of allowing applicant to receive responses prior to producing its own responses to opposer.

Regarding opposer's brief opposing the motion, it is generally improper for a party to file a "contingent" motion.

Moreover, the Board's procedures governing inter partes discovery matters are clear that there is no concept of priority in regard to serving discovery, taking depositions or responding to discovery. See TBMP § 403.03 (3d ed. rev. 2012). Nevertheless, applying the same good cause standard governing motions to extend, opposer has set forth with specificity reasonable concerns regarding the progression of discovery, and the disadvantage that it perceives may result, in view of applicant's requested extension.

On balance, and having considered all of the circumstances presented in the record, the Board finds that applicant has demonstrated good cause for the extension of time it seeks. Accordingly, applicant's motion to extend is granted, and applicant is allowed until September 6, 2012 in which to serve responses to opposer's discovery requests.

Furthermore, opposer has shown good cause for the extension it seeks, its motion is granted, and opposer is allowed until September 12, 2012 in which to serve responses to applicant's discovery requests.

The Board trusts that no further contested discovery related matters will arise in this proceeding, and that the parties will fully cooperate in completing discovery. See TBMP §§ 401.06 and 408.01 (3d ed. rev. 2012).

Schedule

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Expert disclosure deadline, close of discovery, and trial periods remain as set by the Board in the March 30, 2012 order instituting this proceeding.