

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

Mailed: August 15, 2013

Opposition No. 91204897

Opposition No. 91204941

John G. Marino

v.

Laguna Lakes Community
Association, Inc.

**George C. Pologeorgis,
Interlocutory Attorney:**

These consolidated proceedings now come before the Board for consideration of (1) opposer's second revised combined motion (filed April 28, 2013) to compel and to test the sufficiency of admission responses, and (2) opposer's motion to extend the close of discovery by sixty days also filed on April 28, 2013. Applicant filed timely responses to both motions on May 1, 2013.

Opposer's Combined Motion To Compel And To Test Sufficiency of Admission Responses

We first turn to opposer's second revised combined motion to compel and test sufficiency of admission responses. As with his two previously filed motions to compel, opposer has once again failed to comply with Board rules regarding discovery motions. In this instance, opposer has failed to identify with any specificity in his motion papers which requests for written discovery and which requests for admission are in dispute. Opposer merely states that he seeks an

order overruling objections to each of opposer's discovery requests and seeking full and complete responses to the same. The fact that opposer seeks relief as to every single discovery request demonstrates that opposer has failed to demonstrate a good faith effort to narrow the parties' alleged discovery disputes prior to seeking Board intervention. As the Board held in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986), "inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery [as is the case here] which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number." Based upon the record, opposer has failed to follow the process set forth in *Sentrol* by seeking relief as to every single written discovery request propounded. Further, while opposer states in his combined motion that his counsel sent several emails to opposing counsel in an attempt to resolve the parties' discovery dispute, opposer failed to include such emails in his motion papers to evidence his good faith effort to resolve the parties' dispute prior to seeking Board intervention.

In view thereof, opposer's second revised motion to compel and to test the sufficiency of admission responses is **DENIED** without prejudice for failing once again to comply with Board rules and procedure.¹

The Board is thoroughly displeased with opposer and his counsel with the amount of discovery motions filed in this consolidated case which do not comply with Board rules and procedure. This has not only delayed this matter but has wasted both the Board's and applicant's time and resources. In view thereof and in an exercise of our inherent authority to sanction and to control our docket, the Board imposes on opposer the requirement that to the extent opposer intends to file another discovery motion in this matter, opposer's counsel must first telephonically contact the assigned interlocutory attorney to this case, i.e., George C. Pologeorgis at 571-272-9659, with applicant's counsel on the line, so that the Board may independently ascertain whether the filing of such a discovery motion is appropriate under Board rules and regulations. If opposer fails to contact the assigned interlocutory attorney, as directed above, prior to filing another discovery motion, such motion will be summarily denied.

¹ The irony is not lost on the Board by opposer's additional request for attorneys' fees as a sanction, as well as additional undisclosed sanctions, for applicant's alleged failure to comply with Board rules when opposer himself has repeatedly failed to do so. Notwithstanding, opposer's request for attorneys' fees and undisclosed sanctions is also denied. To the extent opposer files any future motion in these consolidated proceedings which requests attorneys' fees as a sanction, the Board will summarily deny the motion inasmuch as the Board has repeatedly reminded opposer that such sanctions are unavailable.

Opposer's Motion to Extend Discovery

For the reasons set forth below, opposer's motion to extend discovery by sixty days is **DENIED**.

As background, per the Board's November 9, 2012, order, discovery was set to close in these consolidated proceedings on May 7, 2013. Opposer served his first set of interrogatories, first request for document production and first requests for admission upon applicant on January 15, 2013. Applicant served its responses to the aforementioned written discovery on February 12, 2013.

Opposer moved to compel discovery on March 12, 2013, as well as on April 22, 2013, but each motion was denied without prejudice by the Board for failing to comply with Board rules and procedures regarding discovery motions.

We now turn to opposer's motion to extend. In support thereof, opposer argues that his extension request is warranted due to the actions of opposing counsel and applicant. Specifically, opposer maintains that he has scheduled the discovery depositions of applicant's corporate representative and several of applicant's board members for May 2, 2013, but applicant's counsel has indicated that these individuals are not available and the parties have not yet been able to coordinate dates where both sides are available prior to the close of discovery, as last reset. Opposer further maintains that it would hamper opposer's efforts to take the discovery depositions in this matter where, as here, applicant has not furnished full and complete responses to opposer's written discovery. Additionally, opposer contends that, even when the aforementioned

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depositions are taken, opposer may require additional discovery in the form of other depositions or written discovery. Finally, opposer argues that, once the discovery depositions of applicant's corporate representative and board members are taken, opposer may require having the Board allow the discovery deposition of applicant's counsel, Donna Flammang.

In response, applicant contends that, with time running out in the discovery period, opposer unsuccessfully attempts to the point the finger to applicant to obscure his own failure to initiate discovery earlier in this consolidated case. Applicant also maintains that, when given the opportunity to take the discovery depositions required by opposer on April 18, 2013, the time originally noticed by opposer, opposer's counsel caused further delay by unilaterally cancelling the depositions. In view of the foregoing, applicant argues that any alleged delay is solely the result of opposer's failure to initiate discovery earlier in these consolidated proceedings, and not the actions of applicant or applicant's counsel. Notwithstanding the foregoing, applicant also requests that opposer's motion to extend should be denied as moot because applicant has agreed to produce for oral deposition on May 6, 2013 the following individuals: (1) applicant's 30(b)(6) witness; (2) Patrick Tardiff, the president of applicant's board of directors; and (3) Bob Hajicek, the treasurer of applicant's board of directors.

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." *See Fed. R. Civ. P.*

6(b) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 509 (3d ed. rev. 2 2013) and cases cited therein. 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. Moreover, opposer must demonstrate that the requested extension is not necessitated by opposer’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted. Further, the moving party retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *See Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147 (TTAB 1985).

The Board recognizes that this is opposer’s first request to extend any deadline in this consolidated case and that the extension privilege has not been abused by opposer. There is also no evidence of bad faith on the part of opposer in requesting the extension. Nonetheless, after considering the entire record and the parties’ arguments, the Board finds that opposer has not made the minimum showing necessary to establish good cause to support an extension of the discovery period for any length of time.

Opposer’s principal argument in support of his motion to extend the discovery period is that he requires taking the discovery depositions of applicant’s corporate representatives and current board members but has

been unable to do so, in part, because applicant has failed to provide full and complete responses to opposer's written discovery. Opposer's failure to obtain full and complete responses to his written discovery earlier in the discovery period is of no one's fault other than opposer's. By repeatedly filing motions to compel which did not comply with Board rules and procedure, opposer cannot now be heard to complain that he was unable to obtain the written discovery he needed in order to take the discovery depositions in this consolidated case. Further, opposer could have noticed the discovery depositions he believed were necessary much earlier in the discovery period, but opposer chose not to so. In fact, it was opposer not applicant who caused a delay in discovery by canceling depositions already agreed upon by applicant.

Accordingly, we find that the reasons for opposer's delay in seeking an extension of the discovery period is the result of opposer's own lack of diligence and therefore do not constitute good cause in extending discovery at this juncture of the case.

In view thereof, opposer's motion to extend discovery by sixty days is

DENIED.²

² It is unclear from the record whether any depositions took place on May 6, 2013, as referenced by applicant in its response to opposer's motion to extend. Accordingly, applicant's request to deny opposer's motion to extend as moot cannot be given any consideration. However, to the extent these depositions did not take place as a result of opposer's actions, the Board's decision in denying opposer's motion to extend would be further substantiated.

Trial Schedule

These consolidated proceedings are hereby resumed. Discovery is open to the extent noted below. Trial dates are reset as follows:

Discovery Closes ³	8/26/2013
Plaintiff's Pretrial Disclosures Due	10/10/2013
Plaintiff's 30-day Trial Period Ends	11/24/2013
Defendant's Pretrial Disclosures Due	12/9/2013
Defendant's 30-day Trial Period Ends	1/23/2014
Plaintiff's Rebuttal Disclosures Due	2/7/2014
Plaintiff's 15-day Rebuttal Period Ends	3/9/2014

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 the taking of testimony. Trademark Rule 2.125.

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

³ The Board notes that, in response to opposer's motion to compel, applicant requested that the Board enter a sanction against opposer by closing discovery in this matter. The Board further notes, however, that approximately a week of discovery remained at the time opposer filed his motion to compel. In view thereof, the Board finds that applicant's request for sanctions in the form of closing discovery is unwarranted and is therefore denied.