

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: November 10, 2014

Opposition No. 91206212

Carefusion 2200, Inc.

v.

entrotech, inc.

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

This case now comes before the Board for consideration of (1) Opposer's motion (filed October 17, 2014) for reconsideration of the Board's October 7, 2014, order, and (2) Opposer's alternatively construed renewed motion (filed October 17, 2014) to extend the close of discovery. Applicant filed a timely response to Opposer's motions on November 3, 2014.

The Board, in its discretion, suggested that the issues raised in Opposer's motions should be resolved by telephonic conference as permitted by TBMP § 502.06 (2014). The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a telephone conference at 4:00 p.m. Eastern time on Friday, November 7, 2014. The conference was held as scheduled among Mary True, as counsel for Opposer, Erin Hickey, as counsel for

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Applicant, George C. Pologeorgis, as the Board attorney responsible for resolving the pending motions considered herein.

The Board carefully considered the arguments raised by the parties during the telephone conference, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. Based upon the foregoing information, the Board makes the following findings and determinations:

Background

On October 7, 2014, Applicant filed a consented motion to extend the close of discovery up to, and including, April 7, 2015 and to reset all subsequent trial dates accordingly. In support of its consented motion to extend, Applicant contended that the parties have been unable to complete discovery in this matter. At the time Applicant filed its consented motion to extend discovery was set to close in this case on December 8, 2014.

By order dated October 7, 2014, the Board denied Applicant's consented motion to extend the close of discovery because the Board found that, since discovery in this case was already open for over two years, the parties had ample time to complete discovery during this time. By the same order, the Board advised the parties that the Board would not entertain any further requests to extend the close of discovery, whether consented to or not.

Opposer's Motion for Reconsideration of the Board's October 7, 2014, Order

The Board first turns to Opposer's motion for reconsideration of the Board's October 7, 2014, order. In support of its motion, Opposer sets forth (1) various arguments as to why an extension of the close of discovery is warranted, and (2) the steps Opposer has previously taken in its attempts to complete discovery in this proceeding.

The premise underlying a request for reconsideration is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. *See* TBMP § 518 and authorities cited therein. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. *See Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate change. *See Steiger Tractor Inc. v. Steiner Corp.*, 221 USPQ 165 (TTAB 1984), *different results reached on reh'g*, 3 USPQ2d 1708 (TTAB 1984).

In this case, the Board, based upon the record before it at the time Applicant filed its consented motion to extend, did not err in denying Applicant's consented motion. The Board has the inherent discretion to manage its docket accordingly, *see Carrini, Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067 (TTAB 2000), and based on the record before it found it

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unnecessary to extend further the close of discovery in this matter. Moreover, Opposer, in support of its motion for reconsideration, advanced arguments that were not previously set forth in Applicant's consented motion to extend filed on October 7, 2014. It is inappropriate to use a request for reconsideration as an opportunity to present new arguments.

In view thereof, Opposer's motion for reconsideration of the Board's October 7, 2014, order is hereby **DENIED**.

Opposer's Construed Renewed Motion To Extend

Although the Board has denied Opposer's motion for reconsideration, the Board has nonetheless construed Opposer's motion, in the alternative, as a renewed motion to extend the close of discovery. Based upon Opposer's motion papers, it appears that Opposer requests that the close of discovery be extended for two reasons: (1) to complete certain discovery depositions, and (2) to respond to Applicant's outstanding written discovery requests.

The Board initially finds that there is no need to extend the close of discovery in order for Opposer to respond to Applicant's outstanding discovery requests. *See* Trademark Rule 2.120(a)(3) and TBMP § 403.03. In other words, responses to discovery requests may be served even after the close of discovery, if timely served.

Accordingly, Opposer's construed renewed motion to extend is **DENIED** to the extent it seeks to extend the close of discovery in order to respond to Applicant's outstanding written discovery.

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With regard to the remaining basis for Opposer's construed motion to extend, i.e., completion of certain discovery depositions, the parties advised the Board during the telephone conference that the discovery deposition of Opposer's 30(b)(6) witness has already been scheduled for Friday, December 5, 2014 and the discovery deposition of Applicant's witness, John Halsey, has been scheduled for Friday, November 14, 2014. An issue, however, has arisen with regard to Applicant's witness, James McGuire, who had to postpone his discovery deposition due to another allegedly pressing matter.¹ Opposer has requested that, although Mr. Halsey's discovery deposition has already been scheduled and because Mr. McGuire is no longer available on the date previously scheduled for his deposition, that the discovery depositions of both Mr. Halsey and Mr. McGuire (who are both located in San Diego, California) occur during the same week in order to avoid the expense of traveling to San Diego on two different occasions. The Board finds Opposer's counsel's request reasonable.

In view of the foregoing, Opposer's construed renewed motion to extend is **GRANTED** to the extent that the close of discovery in this matter is extended until **December 22, 2014** for the sole purpose of allowing the orderly completion of the discovery depositions of Mr. Halsey and Mr.

¹ Mr. McGuire's discovery deposition had been scheduled for the same week of Mr. Halsey's November 14, 2014, discovery deposition.

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McGuire.² The Board **will not** entertain any further requests to extend the close of discovery, whether consented to or not.

Opposer's 30(b)(6) discovery deposition will proceed as scheduled, i.e., will take place on Friday, December 5, 2014. Applicant is allowed until **Tuesday, November 11, 2014** in which to advise the Board and Opposer's counsel the week (within the extension of time granted herein) when both Mr. McGuire and Mr. Halsey will be available for the respective discovery depositions. In turn, Opposer is allowed until **Thursday, November 13, 2014** to advise the Board and Applicant's counsel whether Opposer's counsel is available to take both the discovery depositions of Mr. Halsey and Mr. McGuire during the week proposed by Applicant. If Opposer's counsel is available on Applicant's proposed dates, then Opposer should re-notice these discovery depositions for such dates on the same day it advises its counsel's availability to take these depositions.

The Board expects that the parties will be able to schedule and complete the discovery depositions of both Mr. Halsey and Mr. McGuire within the extension of time granted by this order. To the extent the parties have not agreed upon dates for Mr. Halsey and Mr. McGuire discovery depositions by Friday, November 14, 2014, the parties must immediately (and no later than Monday, November 17, 2014) contact the assigned-interlocutory attorney telephonically with both counsel on the line for a follow-up telephone

² The parties are precluded from propounding any additional written discovery or noticing any new discovery depositions after December 8, 2014.

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conference to explain why the parties have been unable to agree upon dates for these discovery depositions.

Trial Schedule

Proceedings remain ongoing. As noted above, discovery is now set to close on **December 22, 2014** for the sole purpose of allowing the orderly completion of the discovery depositions of Mr. Halsey and Mr. McGuire. Discovery otherwise closes for all other purposes on December 8, 2014. Remaining trial dates are reset as follows:

Plaintiff's Pretrial Disclosures Due	2/5/2015
Plaintiff's 30-day Trial Period Ends	3/22/2015
Defendant's Pretrial Disclosures Due	4/6/2015
Defendant's 30-day Trial Period Ends	5/21/2015
Plaintiff's Rebuttal Disclosures Due	6/5/2015
Plaintiff's 15-day Rebuttal Period Ends	7/5/2015

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.