

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

EJW

Mailed: August 28, 2014

Opposition No. 91207836

Volvo Trademark Holding AB

v.

Wolvol Inc

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up for consideration of Opposer's fully briefed motion (filed June 19, 2014) for a ninety-day extension of its testimony period.

As a preliminary matter, Opposer's consented motion filed May 8, 2014, to reopen the discovery period is granted. See Trademark Rule 2.127(a). Accordingly, discovery and trial dates in this proceeding are considered to have been reset in accordance with Opposer's consent motion.

In view of the foregoing order, Opposer's testimony period was set to close on September 2, 2014, thus, the testimony period would have opened on August 4, 2014. See Trademark Rule 2.121(c). However, in its June 19th motion, Opposer requests that its testimony period be reset to accommodate the schedule of its testimonial witness who will be unavailable (due to travel) during the months of July and August, and who will also be traveling for business during the month of September. In further support of its motion,

Opposer explains that this is only its first request for an extension of the trial dates in this proceeding; and that its prior request for an extension of time was so that it could conduct additional discovery if necessary in connection with Applicant's late discovery responses.

In opposition, Applicant argues that when Opposer requested that the discovery period be reopened, it should have been aware of the schedules of Opposer's employees, that the proceeding is threatening Applicant's business, and that it will be prejudiced by the proposed unreasonable delay of the proceeding, which Opposer initiated.

In reply, Opposer reiterates that good cause exists for the extension given that its witness is not available during the current testimony period and further points out that the proceeding has previously been delayed by Applicant's failure to respond to Opposer's discovery requests, which required Opposer to file a motion to compel.

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 TBMP § 509 (2014) and cases cited therein. The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the motion sets forth with particularity facts that constitute good cause for the requested extension, *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQd 1479, 1480 (TTAB 2000), and the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See*,

e.g., *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1375 (TTAB 2001); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000); and *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (TTAB 1992).

The Board finds that Opposer has set forth good cause for the requested extension of time insofar as it has explained with particularity facts which support the request, that is, facts which illustrate Opposer's inability to conduct its testimonial deposition during its previously reset trial period. Further, there is no indication in the record that Opposer has been guilty of negligence or bad faith, or that the privilege of extensions has been abused. Finally, insofar as Applicant has not alleged that witnesses or evidence will become unavailable due to the passage of time, or that it has suffered any other substantial prejudice, Applicant has not established that it will be prejudiced by the change in the trial schedule. *Cf. Pratt v. Philbrook*, 109 F.3d 18 (1st Cir. 1997); *Paolo's Associates Ltd. Partnership v. Bodo*, 21 USPQ2d 1899, 1904 (Comm'r 1990). In view of the foregoing, Opposer's motion for an extension of ninety-days to its testimony period is **granted**. *See* Fed. R. Civ. P. 6(b); Trademark Rule 2.116(a). Accordingly, trial dates are reset as shown in the schedule set forth in Opposer's motion, which, for the parties' convenience, is set forth below:

Plaintiff's Pretrial Disclosures	10/17/2014
Plaintiff's 30-day Trial Period Ends	12/01/2014
Defendant's Pretrial Disclosures	12/16/2014
Defendant's 30-day Trial Period Ends	01/30/2015
Plaintiff's Rebuttal Disclosures	02/14/2015
Plaintiff's 15-day Rebuttal Period Ends	03/16/2015

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. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

