

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

CME

Mailed: May 20, 2014

Opposition No. 91208923

Mt. Eden Organics, Inc.

v.

Native Nutrients

Christen M. English, Interlocutory Attorney:

This case now comes up on Opposer's oral motion to allow Opposer's attorney to attend via telephone the trial deposition of one of Opposer's witnesses. On May 16, 2014, at Opposer's request, the Board held a teleconference with the parties to hear Opposer's oral motion and Applicant's opposition thereto, at which Matthew Swyers appeared on behalf of Opposer, and Paul de Almeida appeared on behalf of Applicant. Interlocutory Attorney Christen English conducted the teleconference on behalf of the Board.

Opposer has noticed the trial deposition of a witness for May 22, 2014 at 10 a.m. PST in Eureka, California. Opposer's counsel is located in Raleigh, North Carolina. To save time and money, Opposer seeks to attend the deposition via telephone. In opposition to the motion, Applicant argues that (i) Eureka, California is a remote location and inconvenient for Applicant's counsel (located in Encino, California) to travel to, (ii) Applicant will be

disadvantaged if its counsel does not attend the deposition in-person, (iii) it would be unfair for Applicant's counsel to attend the deposition in-person while Opposer's counsel participates by telephone, and (iv) there may be technical difficulties if Opposer's counsel is permitted to participate in the deposition via telephone.

“On stipulation of the parties, or on motion granted by the Board, a deposition may be taken or attended by telephone or other remote means.” TBMP § 703.01(h) (3d ed. rev.2 2013). “Leave to take telephonic depositions should be liberally granted in appropriate cases.” *Hewlett-Packard Co. v. Healthcare Personnel Inc.*, 21 USPQ2d 1552, 1552-53 (TTAB 1991) (granting request to attend trial deposition by telephone, and noting that trademark rules do not specifically provide for or prohibit depositions by telephone and that federal court practice favors use of technological benefits).

The Board finds that the convenience and cost savings to Opposer's counsel by attending the deposition via telephone outweigh any inconvenience or harm that Applicant has alleged, particularly because Opposer has agreed to move the trial deposition to Santa Cruz, California, which Applicant's counsel has identified as a more convenient location than Eureka, California. Opposer's counsel also has agreed that, in advance of the deposition, he will provide to Applicant's counsel the exhibits Opposer plans to use in the deposition. For these reasons, Opposer's motion is **GRANTED**.

Dates remain as set in the Board's order of December 6, 2013.