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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212282
Party	Plaintiff Rowheels, Inc.
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Date	11/12/2013
Attachments	Response Brief to Applicant's Motion to Extend.pdf(20886 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of App. Serial No.: 85/797,689
Mark: ROWHEEL
Published: May 7, 2013

_____)	
Rowheels, Inc.)	
Opposer,)	
)	
v.)	Opposition No. 91212282
)	
ROTA Mobility Inc.)	
Applicant.)	
_____)	

RESPONSE TO APPLICANT’S MOTION TO EXTEND

Applicant has submitted a Motion to Extend Time (“Motion”) to answer the Notice of Opposition timely filed by the Opposer, and served on the Applicant, on September 3, 2013. Opposer was served with this Motion by the Trademark Trial and Appeal Board (“Board”) on October 29, 2013. Opposer timely files this Response to Applicant’s Motion. For the reasons set forth below, Opposer requests that the Board deny Applicant’s Motion

I. Applicant did not Demonstrate Good Cause for the Requested Extension

In its motion, Applicant sets forth two reasons why the extension of time is needed: (1) Applicant/Defendant needs additional time to investigate the claim; and (2) Applicant/Defendant needs additional time to confer with counsel. Contrary to Applicant’s belief, these conclusory statements do not demonstrate good cause. Nor do the facts support the statements in this case.

A. Applicant’s Conclusory Allegations

Applicant claims that its two stated reasons for seeking an extension of time are sufficient to show good cause under the standard set forth in TBMP §509.01(a). However, TBMP §509.01(a) makes it clear that “[a] motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension...” Applicant has not offered any facts or information, aside from conclusory statements that it needs additional time to investigate the claims and confer with counsel. The Board has repeatedly failed to grant a motion to extend when the moving party does not provide detailed facts explaining the need for an extension. *See, SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1373 (TTAB 2001) (denying the motion because moving party did not provide “detailed facts” explaining their inaction); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) (motion denied because “ cursory or conclusory allegations...that are not otherwise supported by the record, will not constitute a showing of good cause”); and *Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1860-1761 (TTAB 1999) (“sparse motion” containing “very little information” upon which the Board could find good cause was denied).

Similar to the cases cited above, Applicant’s motion is sparse and devoid of detailed information about the reasons why an answer was not timely filed. Applicant does not provide factual details supporting its claims of needing additional time to investigate and confer. Without specific factual details, Applicant has not met its burden of establishing good cause for the requested extension. “The presentation of one’s arguments and authority should be presented thoroughly in the motion or the opposition brief thereto.” *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

Applicant has only provided conclusory statements as to why an extension of time is necessary. These statements do not comply with the requirements stated in TBMP §509.01(a) for showing good cause in a motion to extend.

B. Applicant's Own Lack of Diligence

Applicant has not provided evidence, as required by TBMP §509.01(a), that the failure to timely respond to the Notice of Opposition was due to no fault of its own. TBMP §509.01(a) states that "...a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefore."

Applicant alleges that it needs an additional 90 days (nearly three times the allotted period to answer) to investigate the claim and confer with counsel, but has not explained why it was unable to do those things in the appropriate response period. "[T]he moving party has the burden of persuading the Board that it was diligent in meeting its responsibilities" *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). The Motion, as filed, does not meet the Applicant's burden of persuasion required by the Board. Applicant's Motion contains no evidence that the delay was not caused by Applicant's own lack of diligence.

Applicant's Motion fails to make the required showing of good cause because (1) it does not set forth, in sufficient detail, the facts that constitute good cause and (2) it does not demonstrate that the motion is necessitated by reasons beyond its control. In light of the above, Opposer requests the Board deny Applicant's Motion.

II. Applicant Had Sufficient Time to Review and Confer

Applicant bases its Motion on the need for additional time to investigate the claim and confer with counsel. Opposer set forth above the reasons why the Motion does not comply with the requirements of TBMP §509.01(a). Opposer further submits that Applicant had adequate time to review and confer.

Opposer filed a 90 Day Request for Extension of Time to Oppose for Good Cause on June 5, 2013. In accordance with 15 U.S.C. §1063, the Board would have notified Applicant of the extension request and the Board's order granting the extension. Therefore, Applicant was aware of a potential opposition, by Opposer, at least four months before the answer was due. This provided Applicant with more than enough time to engage counsel and investigate Opposer.

Opposer timely filed a Notice of Opposition prior to the end of the 90 day period, on September 3, 2013. Opposer properly served Applicant via First Class Mail. The Board set an answer deadline of October 13, 2013, 40 days after service by mail. Applicant had ample opportunity, from the time of service until the answer deadline, to investigate and confer with counsel about the claims raised in the Notice of Opposition. From the date of Opposer's extension request, Applicant had over four months to investigate and confer with counsel over the potential claims, and then the actual claims raised in the Notice of Opposition. Why the Applicant needs, or would be justified in receiving over seven months to do so is not clear.

III. Conclusion

According to TBMP §509.01(a), the Board will "scrutinize carefully" any motion to extend time. *See also, Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ 2d 1758, 1760 (TTAB 1999). Opposer submits that Applicant's Motion cannot withstand such careful scrutiny. TBMP §509.01(a) is clear in the requirements for a motion to extend. The motion "...must set forth with particularity the facts said to constitute good cause..." and the moving party must also show that

the motion is not due to its “own lack of diligence”. Applicant has not met either requirement. As set forth in more detail, above, Applicant has neither (1) submitted detailed factual information to support its alleged claims of good cause; nor (2) provided evidence that extension is needed due to reasons outside of its control. Opposer has timely filed and served all required documents such that, without additional factual details, Opposer submits Applicant has had sufficient time to review and confer with counsel about the claims raised in the Notice of Opposition. In view of this, Opposer requests that the Board deny Applicant’s Motion.

Respectfully submitted,
FOLEY & LARDNER LLP

Date: November 12, 2013

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the RESPONSE TO APPLICANT'S MOTION TO EXTEND was deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to:

ROTA Mobility Inc.
16548 Oleander Ave.
Los Gatos, California 95032-3532

Dated: November 12, 2013

Signed: /Dayna. M. Frenkel/
Dayna M. Frenkel