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

Mailed: November 13, 2013

Opposition No. 91212282

Rowheels, Inc.

v.

ROTA Mobility Inc.

Jennifer Krisp, Interlocutory Attorney:

This proceeding is before the Board for consideration of applicant's October 15, 2013 filing, an unconsented motion for a ninety-day extension of time to file an answer to the notice of opposition.[1] The motion has been fully briefed.[2]

Analysis

A party may file a motion for an enlargement of the time in which an act is required or allowed to be done. If the request is filed prior to the expiration of the period

[1] As noted in the October 29, 2013 order, applicant's filing does not include proof of service of a copy thereof on counsel for opposer, as required by Trademark Rules 2.119(a) and (b). The Board requires strict compliance with this requirement, and has the discretion to decline consideration of any future filing by applicant herein which does not comply with Trademark Rules 2.119(a) and (b).

[2] The Board, in its discretion, and to avoid further delay, considers the merits of applicant's motion prior to the time for filing a reply brief thereon. *See* TBMP § 502.02(b) (2013); *Cf.* TBMP § 502.06(a) (2013); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

as originally set or previously reset, the motion is a motion to extend, and the moving party need only show good cause for the requested extension. *See* Fed. R. Civ. P. 6(b).

A party moving to extend time must demonstrate that the requested extension is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. *See* TBMP § 509.01 (2013). 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 National Football League v. DNH Mgt. LLC,* 85 USPQ2d 1852, 1854 (TTAB 2008). The movant must state with particularity the facts believed to constitute good cause for the requested extension of time; mere conclusory allegations lacking in factual detail are insufficient. See *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999). Generally, the Board is liberal in granting extensions of time before the period to act has elapsed so long as the movant has not been guilty of negligence or bad faith, and the privilege of extensions is not abused. *See National Football League v. DNH Mgt. LLC,* 85 USPQ2d at 1854.

Here, applicant requests a ninety-day extension of time to file an answer, stating that it needs additional time to

investigate the claim, and needs additional time to confer with counsel.

Contesting the motion, opposer asserts, inter alia, that applicant has offered conclusory statements rather than detailed facts explaining the need for an extension, that applicant has had sufficient time to investigate the claim and to confer with counsel, and that the motion contains no evidence that the delay was not caused by applicant's own lack of diligence.

On this record, applicant provides some detail regarding its reasons for seeking an extension, and its motion, although brief, states with some particularity the facts underlying the request. The record does not suggest that applicant's need for an extension was necessitated by its own lack of diligence or unreasonable delay, and does not show indifference or inattentiveness to this proceeding. While opposer's arguments are noted, the record does not support a finding that applicant has been guilty of negligence in failing to file a timely answer, or that applicant is acting in bad faith or avoiding this matter. The Board encourages pro se parties to secure the services of trademark counsel.

The delay which has been occasioned by applicant's motion is not of such a length as to prejudice opposer's ability to formulate its case and to put on its evidence.

Finally, this is the first extension that applicant has sought in this proceeding.

Upon consideration of all circumstances presented on the record, the Board finds that applicant has satisfied the minimal good cause standard that is required in order to be granted a reasonable extension of time in which to file its answer. In view of this finding, applicant's motion to extend is granted, as modified (as further explained below).

Applicant's requested extension of ninety days is excessive, and is not in proportion to the time which the Board normally deems sufficient to prepare, file and serve an answer. The Board finds that an extension of thirty days from the mailing date of this order will allow applicant sufficient time to secure counsel and to prepare a pleading in defense of the notice of opposition; the Board notes that the notice of opposition was served on applicant over two months ago. Accordingly, time to answer, and disclosure, discovery and trial dates, are hereby reset as indicated below.

To preclude further delay, the Board will entertain no additional unconsented motion to extend applicant's time to file an answer.

Schedule

Time to Answer	**30 DAYS FROM MAILING DATE OF THIS ORDER**
Deadline for Discovery	**1/14/2014**

Conference	
Discovery Opens	**1/14/2014**
Initial Disclosures Due	**2/13/2014**
Expert Disclosures Due	**6/13/2014**
Discovery Closes	**7/13/2014**
Plaintiff's Pretrial Disclosures	**8/27/2014**
Plaintiff's 30-day Trial Period Ends	**10/11/2014**
Defendant's Pretrial Disclosures	**10/26/2014**
Defendant's 30-day Trial Period Ends	**12/10/2014**
Plaintiff's Rebuttal Disclosures	**12/25/2014**
Plaintiff's 15-day Rebuttal Period Ends	**1/24/2015**
	1/14/2014

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

Information for pro se party

A party may represent itself in this *inter partes* proceeding. However, while Patent and Trademark Rule 11.14 permits any entity to represent itself, it is strongly advisable for persons who are not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to

secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney, and as the impartial decision maker, the Board may not provide legal advice, though it may provide information as to purely procedure matters.

Any party who does not retain counsel should become familiar with the rules governing this proceeding, and may access useful legal resources, such as the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, from the Board's web page at http://www.uspto.gov/trademarks/process/appeal/index.jsp. Also available are links to TTABVUE, where one can view filings, proceeding history and status at http://ttabvue.uspto.gov/ttabvue, and to ESTTA, the Board's electronic filing system at http://estta.uspto.gov. All parties are encouraged to use ESTTA to submit filings. Furthermore, many Federal Rules of Civil Procedure govern the conduct of this proceeding.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent,* 81 USPQ2d 1212, n.2 (TTAB 2006).

As noted, Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served on the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Copies of all papers filed in this proceeding must be accompanied by a signed statement ("Certificate of Service") indicating the date, manner and to whom service was made.

The Board's September 3, 2013 order instituting this proceeding contains a vast amount of information regarding the parties' obligations and the manner in which this proceeding shall be conducted.