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

Proceeding	91213057
Party	Plaintiff Hybrid Athletics, LLC
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Attachments	Opposition to Motion to Extend Discovery.pdf(38638 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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<b>HYBRID ATHLETICS, LLC,</b>	:	
	:	
<b>Opposer,</b>	:	<b>Opposition No. 91213057</b>
	:	
<b>v.</b>	:	
	:	
<b>HYLETE LLC,</b>	:	
	:	
<b>Applicant.</b>	:	

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**HYBRID ATHLETICS, LLC’S OPPOSITION TO APPLICANT’S  
MOTION TO EXTEND DISCOVERY PERIOD**

Opposer Hybrid Athletics, LLC (“Hybrid”) submits this Opposition to Applicant Hylete LLC’s (“Hylete”) Motion to Extend Discovery Period, dated January 2, 2015. Hybrid opposes the thirty (30) day extension of the discovery period requested by Hylete. This request comes from a party who has never fully participated in discovery.

Hylete’s failure to produce documents and otherwise participate in the discovery process forced Hybrid to file a Motion to Compel (Doc. No. 08) on May 21, 2014. On July 4, 2014, the Board issued an order granting Hybrid’s Motion to Compel (Doc. No. 10) and gave Hylete thirty (30) days to serve its responses to Hybrid’s document requests and interrogatories. Hylete did not comply with this order. Hybrid then filed a Motion for Sanctions and Entry of Judgment to which the Board, on November 18, 2014, granted in part. (Doc. No.15) The Board imposed upon Hylete an estoppel sanction, advising Hylete that “it cannot submit at trial or rely on as evidence at trial, any information or document that were the subject of Opposer’s discovery requests, but which were not served on Opposer prior to the filing of Opposer’s motion for sanction.”

In view of Hylete's disregard for discovery and its failure to demonstrate good cause for extending discovery, the Board should deny the Motion to Extend the Discovery Period.

### **Argument**

A motion to extend must state with particularity the facts that constitute good cause for the requested extension and mere conclusory statements will not be sufficient. TBMP §509.01(a). Good cause may be found if the moving party has not been guilty of negligence or bad faith or the privilege has not been abused. The movant must also show that it was diligent during the relevant period of time. *Am. Vitamin Products, Inc. v. DowBrands Inc.*, 22 U.S.P.Q.2d 1313, 1314 (T.T.A.B. 1992). Here, Hybrid objects to Hylete's motion to extend on the grounds that it is insufficient to show cause why relief should be granted to a party that failed to comply with discovery in the past.

While Hylete claims that the purpose of its request is "limited" in nature, it does not indicate the discovery it seeks or any areas in which it believes further investigation would be necessary. If Hylete is granted an extension of time, their open-ended discovery could become quite burdensome and costly for Hybrid who has already supplied Hylete with proper discovery. Regardless of Hybrid's discovery at issue in Hylete's motion, none of its previously served discovery was ever objected to nor did Hylete ever request additional documents or schedule depositions. Hylete had ample time to pursue follow-up discovery and if it truly had been diligent, it would have done so. Moreover, while Hylete complains of Hybrid's last document production, that production merely contained numerous screenshots of public websites and approximately 350 email chains having approximately 360 attachments, the majority of which

were product images and invoices. Hylete has certainly completed review of this production by now and has not contacted Hybrid about any alleged “deficiencies.”

Still further, the mere statement in Hylete’s motion that it was “diligent during discovery” is insufficient, especially when the Board’s prior order demonstrates the contrary. Hylete’s current request for an extension is unreasonable due to its negligence and inactivity in the past and is merely an attempt to delay the substantive resolution of this matter.<sup>1</sup>

Hylete’s failures and delays in the case so far have already forced Hybrid to engage in motion practice resulting in extra costs and legal fees due to Hylete’s failure to participate in discovery. Hybrid has done nothing but try to move forward in this opposition in the most efficient manner, yet Hylete continues to obstruct such path, either by its lack of participation in discovery or by it now urging the Board to extend discovery. Either way, substantial delays have occurred.

Hylete also mentions that the “previous delays” were caused by “previous counsel.” However, Hylete’s motion to extend was signed by the same counsel it has had from the beginning. The incompetent handling of this matter has caused enough delay and costs for Hybrid. Hybrid therefore believes discovery should close so that this matter can move forward.

### **Conclusion**

Based upon Hylete’s prior discovery history, Hybrid hereby objects to Hylete’s motion to extend on the grounds that it is insufficient to show cause why relief should be granted to a party

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<sup>1</sup> This is a recurring pattern with Hylete, which refused to produce discovery based on the confidentiality of its responses, despite the Board’s Standing Protective Order being of Record. (Doc. No. 08).

that failed to comply with discovery in the past. Hybrid respectfully requests that the Board not grant Hylete's motion for an extension and that discovery should close.

HYBRID ATHLETICS, LLC

January 22, 2015

/s/ Wesley W. Whitmyer, Jr.

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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO EXTEND was served by first class mail, postage prepaid on the Correspondent for the Applicant as follows:

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January 22, 2015  
Date

/s/ Jessica L. White  
Jessica L. White