

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

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Mailed: March 18, 2014

Opposition No. **91213487**

Blackbird Technologies, Inc.

v.

Allen-Vanguard Corporation

**Yong Oh (Richard) Kim, Interlocutory Attorney:**

This matter comes up on applicant's motion (filed December 23, 2013) seeking an extension of time to file its answer and on opposer's motion (filed February 11, 2014) seeking default judgment for applicant's failure to answer. Applicant's motion is contested.

By the Board's institution order of November 14, 2013, applicant's time to answer was set to December 24, 2013. On December 23, 2013, applicant filed an unconsented motion seeking a thirty-day extension of time to answer the notice of opposition. As reason therefor, applicant represents that its counsel "has been in touch with Applicant for the purpose of preparing answers and has initiated the process" but contends that "the resources and personnel required by Applicant in order to comply with the December 24, 2013 deadline ... are presently unavailable and will only be available after the

upcoming Christmas and New Year's holidays" and that applicant "sought the consent of Opposer's Counsel but such consent was declined on December 20, 2013." *Motion for 30 Day Extension of Time*, pp. 1-2 (emphasis in original).

Opposer, however, argues against any such extension, contending that the motion lacks "detailed facts that constitute good cause" and "amounts to no more than Applicant's admission that it was negligent and that it was not diligent in meeting its responsibilities." *Motion to Oppose Applicant's Motion*, p. 3.

Fed. R. Civ. P. 6(b)(1)(A) requires a showing of good cause to extend a prescribed period prior to its expiration. The Board is generally liberal in granting extensions of time before the period has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ 2d 1313 (TTAB 1992). Here, the motion is applicant's first request for an extension so there is no concern that the privilege of extensions has been abused. As to the question of negligence or bad faith, it appears that applicant attempted to secure opposer's consent to an extension on December 18, 2013 (almost one week prior to the deadline), and that the parties held "multiple phone calls" regarding the extension but that opposer ultimately "decided to withhold its

consent" which resulted in the present motion for extension.

*Motion to Oppose Applicant's Motion*, pp. 1-2.

Under such circumstances, it cannot be said that applicant was negligent or acted in bad faith and the Board will not presume as such simply because opposer believes applicant's stated reasons for an extension lacks detail or has changed. Applicant was evidently aware of its time for answer and contacted opposer almost one week prior to the deadline and engaged in multiple communications with opposer over the next two days to secure opposer's consent to the extension. Such actions demonstrate neither negligence nor bad faith. It should be added that opposer's reliance on *National Football League, NFL Properties LLC v. DNH Management, LLC*, 85 USPQ2d 1852 (TTAB 2008) and *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999) is misplaced as the considerations in those cases (relating to the close of discovery) differ from the considerations in this case (relating to the close of pleadings). Indeed, as the law favors deciding cases on their merits and considering that this proceeding remains in its early stages, the considerations herein favor the granting of an extension.

In view thereof, applicant's motion to extend its time to answer is hereby **GRANTED** and applicant is allowed until **APRIL**

18, 2014, to serve and file its answer to the notice of opposition.<sup>1</sup> Remaining dates are **RESET** as follows:

Time to Answer	4/18/2014
Deadline for Discovery Conference	5/18/2014
Discovery Opens	5/18/2014
Initial Disclosures Due	6/17/2014
Expert Disclosures Due	10/15/2014
Discovery Closes	11/14/2014
Plaintiff's Pretrial Disclosures Due	12/29/2014
Plaintiff's 30-day Trial Period Ends	2/12/2015
Defendant's Pretrial Disclosures Due	2/27/2015
Defendant's 30-day Trial Period Ends	4/13/2015
Plaintiff's Rebuttal Disclosures Due	4/28/2015
Plaintiff's 15-day Rebuttal Period Ends	5/28/2015

**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 taking of testimony. Trademark Rule 2.125.

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

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<sup>1</sup> Accordingly, opposer's motion (filed February 11, 2014) for entry of default judgment is moot and will be given no further consideration.