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

Proceeding	91213573
Party	Plaintiff The BioSolve Company
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Submission	Motion to Compel Discovery
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Date	07/23/2014
Attachments	Motion to Compel-Motion to Extend Discovery & Trial Dates.pdf(182351 bytes)

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

THE BIOSOLVE COMPANY)	
)	Opposition No.
)	
Opposer)	MARK: BIO-SOL
)	
vs.)	
)	Serial No. 85/893,885
BIOCENOSIS SOLUTIONS, INC.)	
)	Published in the Official
)	Gazette on September 24, 2013
Applicant)	
)	
)	

OPPOSER'S COMBINED MOTION TO COMPEL

AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, The BioSolve Company ("Opposer") respectfully moves the Board for an order compelling Applicant Biocenosis Solutions, Inc. ("Applicant") to respond to Opposer's First Set of Interrogatories and Opposer's First Request for Production of Documents without objections.

In Addition, Opposer requests an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow-up discovery if

necessary. Opposer also requests that the testimony period be re-set to follow close of discovery.

Such an order is appropriate because Applicant has failed to respond to Opposer's Interrogatories and Document Requests. Counsel for Opposer has made good faith efforts requesting Applicant to respond but, to date, such efforts have been unsuccessful.

I. BACKGROUND

Opposer originally served Applicant with the First Set of Interrogatories on February 3, 2014, the answers to which were due on March 3, 2014. As of the date of this motion no answers, objections, or otherwise have been received by Opposer.

Opposer originally served Applicant with the Request for the Production of Documents and Things on January 29, 2014, the answers to which were due on February 29, 2014. As of the date of this Motion no answers, objections, or otherwise have been received by Opposer.

Although the parties themselves have attempted to reach an agreement, no acceptable terms have been reached. Discovery is scheduled to close on July 28, 2014.

II. MOTION TO COMPEL

A. Opposer Has Made a Good Faith Effort to Obtain Responses From Applicant

In accordance with Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the motion. Specifically, Opposer has given Applicant ample time to respond to the Requests. As detailed above, Applicant has not responded at all to Opposer's discovery requests.

B. Applicant Forfeited its Rights to Object

The Trademark Trial and Appeal Board Manual of Procedures ("TBMP") provides that a party which fails to respond to discovery, interrogatories or document requests during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its rights to object to discovery on the merits. See TBMP §§403.03 and 407.01, citing *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303 (TTAB 1987).

Applicant's discovery responses were due, on or before February 29, 2014 and March 3, 2014. Accordingly, Opposer

respectfully requests that the Board order Applicant to fully respond to Opposer's First Set of Interrogatories and First Requests for the Production of Documents without objections within twenty days from the mailing date of the Board's order to this motion.

III. MOTION TO EXTEND

In accordance with Fed. R. Civ. P.6(b), Opposer hereby moves the Board for a thirty (30) day extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow up discovery if necessary. Opposer also requests an extension of the testimony periods.

Opposer also made good faith effort to resolve this matter before filing motion to compel by calling and discussing the same with Applicant's attorney. Applicant, on the other hand, has had over four (4) months in which to respond to discovery, but has done nothing.

Opposer does not seek an extension of time for purposes of delay. It is requested that the limited thirty (30) day extension run from the date of service of Applicant's discovery responses as ordered by the Board. Opposer also requests an

extension of the testimony period to follow the re-set discovery period.

IV. CONCLUSION

For the reasons stated above, Opposer respectfully requests that the Board grant Opposer's motion to compel and order Applicant to respond to Opposer's First Set of Interrogatories and Opposer's First Request for the Production of Documents without objections within twenty (20) days from the mailing date of the Board's ruling on the motion. Opposer also respectfully requests that the Board grant Opposer's motion for an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery response as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer requests that the extension run from the date of service of Applicant's discovery responses as ordered by the Board, and that the discovery period be otherwise closed. Opposer requests that the testimony period be re-set to follow close of discovery.

Respectfully submitted,

THE BIOSOLVE COMPANY
By its Attorneys,

DATE: July 23, 2014

/John H. Pearson, Jr./
JOHN H. PEARSON, JR.
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CERTIFICATE OF MAILING

I hereby certify that this Opposer's Combined Motion to Compel and Motion to Extend Discovery and Trial Dates regarding Application Serial No. 85/893,885 is being filed online with the Trademark Trial and Appeal Office on July 23, 2014 and by mailing and emailing a copy to Applicant's attorney, Annette P. Heller, Esq., Heller & Associates, 400 Chesterfield Ctr., Suite 400, Chesterfield, Missouri 63017-4800.

/John H. Pearson, Jr./
JOHN H. PEARSON, JR.

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