

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: December 10, 2014

Opposition No. 91215843

Minto Sabal Bay, LLC

v.

Collier's Reserve Country Club, Inc.

Jennifer Krisp, Interlocutory Attorney:

This opposition proceeding is before the Board for consideration of applicant's November 17, 2014 motion for an extension of time to answer the notice of opposition. The motion is fully briefed.¹

In accordance with the Board's June 24, 2014 order, applicant was allowed until November 15, 2014 to file its answer. On November 17, 2014, applicant filed an unconsented motion seeking a ninety-day extension of time to file its answer, and requesting the resetting of all pending deadlines. By application of Trademark Rule 2.196, applicant's motion is deemed timely filed prior to the end of the prescribed period to take action, and is therefore a motion to extend.

Analysis

¹ The Board, in its discretion, and to avoid further delay to this proceeding, considers the merits of the motion prior to the time for filing a reply brief thereon. See TBMP § 502.02(b) (2014); Cf. TBMP § 502.06(a) (2014); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

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 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 (2014).* 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.*

Applicant moves for a ninety-day extension of time to answer, such that its answer would be due February 15, 2015. In its motion, applicant sets forth with

reasonable specificity the reasons for its request, namely, that it is reviewing a settlement draft received from opposer, that matters affecting applicant's filing may be decided at an upcoming meeting of its board, and that certain events that are confidential in nature (and therefore unspecified in the record) may influence the feasibility of settlement.

Opposer contests the motion insofar as applicant requests an extension of ninety days. It argues that a sixty-day extension would be more appropriate, citing prior suspensions for settlement, and asserting, inter alia, that applicant has had several months to consider the settlement proposal, ceased all communication with opposer, and did not confer with opposer before filing the pending motion.

The Board finds that the record overall does not indicate that applicant's need for an extension was necessitated by its own lack of diligence or unreasonable delay, and does not indicate avoidance of, indifference to or inattentiveness to this proceeding. 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 now acting or has previously acted in bad faith.

The parties stipulated to earlier suspension periods; thus, the total delay has not been singularly due to applicant. The delay that has been occasioned by applicant's motion is not of such a nature or length as to prejudice opposer's ability to take discovery, formulate its case, or prepare and put on its evidence.

Finally, it is the policy of the law to decide cases on their merits. *Cf.* TBMP § 312.02 (2014).

Upon consideration of all of the circumstances presented on the record, the Board finds that applicant has fulfilled the minimal good cause standard that is required in order to be granted an extension of time in which to file an answer.

Regarding the length of the requested extension, under the circumstances of this proceeding, an additional ninety days is an inordinate period of time to provide to applicant to file an answer. In general, an extension of this length is not in proportion to the time the Board normally deems to be sufficient to prepare, file and serve a responsive pleading. Particular to this proceeding, the notice opposition is not of such length or nature that an additional ninety days is required, and this is not the first extension of time that applicant has effectively had in this proceeding since the initial due date of May 19, 2014. Absent a clear showing of sincere, mutual, active and ongoing settlement efforts on the part of both parties, applicant's unilateral request for three additional months is unreasonable.

In view of these circumstances, applicant's motion to extend is granted as modified. Specifically, applicant's motion is granted to the extent that it is allowed an extension of forty-five days; under this ruling, applicant is now allowed until December 30, 2014 in which to file its answer.

The Board will entertain no further unconsented motion to extend the time to answer.

Schedule

Proceedings are resumed. Conferencing, disclosure, discovery and trial dates are reset as follows:

Deadline for Required Discovery Conference	1/29/2015
Discovery Opens	1/29/2015
Initial Disclosures Due	2/28/2015
Expert Disclosures Due	6/28/2015
Discovery Closes	7/28/2015
Plaintiff's Pretrial Disclosures	9/11/2015
Plaintiff's 30-day Trial Period Ends	10/26/2015
Defendant's Pretrial Disclosures	11/10/2015
Defendant's 30-day Trial Period Ends	12/25/2015
Plaintiff's Rebuttal Disclosures	1/9/2016
Plaintiff's 15-day Rebuttal Period Ends	2/8/2016

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.