

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

Baxley

Mailed: October 10, 2015

Opposition No. 91217589

Rhythm Holding Limited

v.

J & N Sales, LLC

Andrew P. Baxley, Interlocutory Attorney:

On October 5, 2015, Opposer filed a request for clarification of the Board's October 2, 2015 suspension order, wherein the Board indicated that the suspension did not toll time to serve responses to discovery requests that were served prior to the filing of Applicant's request for reconsideration. In particular, Opposer sought a determination as to whether the Board's suspension order tolled Applicant's time to respond to discovery requests that Opposer served on September 28, 2015, the same day as the filing of the request for reconsideration. Applicant filed a brief in response thereto.

The filing of the request for reconsideration did not, by itself, operate to suspend this case. Rather, dates continued to run until the suspension order was issued. *See* TBMP § 510.03(a) (2015). Because a suspension pending disposition of motion to compel does not toll time to respond to timely served discovery requests (*see* Trademark Rule 2.120(e)(2)), a suspension pending disposition of a request for reconsideration of a decision on a motion to compel also does not toll time to respond

to timely served discovery requests. Further, the request for reconsideration and the discovery requests at issue are treated as having been served at the same instant. *Cf. 3PMC, LLC v. Huggins*, 115 USPQ2d 1488, 1489 (TTAB 2015) (Board treats documents filed on the same day as being at the same instant). In addition, because the certificate of service of the request for reconsideration indicates that it was served by mail, the Board presumes that Opposer did not receive the request for reconsideration until after Opposer served its discovery requests. Based on the foregoing, and consistent with Rule 2.120(e)(2), the Board finds that the suspension order does not toll Applicant's time to respond to those discovery responses.

In view of the foregoing, the second sentence of the October 2, 2015 order is modified as follows: delete "filing of the request for reconsideration" and substitute "close of discovery." To eliminate any potential confusion caused by such modification, Applicant is allowed until thirty days from the mailing date set forth in this order to serve responses to the discovery requests that Opposer served on September 28, 2015. *See* Trademark Rule 2.120(a)(3).