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

Proceeding	91221324
Party	Plaintiff Nintendo of America, Inc.
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Submission	Motion to Extend
Filer's Name	Katherine Keating
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Signature	/katherine keating/
Date	03/25/2016
Attachments	Mot to Extend Discovery.pdf(392482 bytes)

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

NINTENDO OF AMERICA INC.,

Opposer,

v.

MARIO JONES,

Applicant.

Opposition No. 91,221,324

Serial No.: 86/283,191

Mark: SUPAH MARRIO

Filed: May 16, 2014

Published: December 2, 2014

Classes: 41

**OPPOSER’S UNCONSENTED MOTION TO EXTEND
DISCOVERY PERIOD AND TRIAL DATES**

Pursuant to Fed. R. Civ. P. 6(b), 37 C.F.R. § 2.120(a), and TBMP § 509.01(a), Opposer Nintendo of America Inc. (“Nintendo”) hereby moves the Trademark Trial and Appeal Board for an order extending the discovery period and trial dates in the above-referenced opposition proceedings by 60 days. Applicant Mario Jones (“Applicant”) has not responded to Nintendo’s request for consent to the extension. Good cause for this extension exists based on the facts set forth below.

Nintendo served its first set of written discovery (interrogatories, requests for production, and requests for admission) on September 16, 2015. Applicant did not respond to the discovery requests or to Nintendo’s subsequent communications. On November 12, 2015, Nintendo filed a motion to compel responses to its first set of interrogatories and requests for production.

Applicant eventually provided discovery responses, and these proceedings resumed on January 28, 2016.¹

¹ These facts are set forth in more detail in Nintendo’s November 12, 2015 Motion for an Order Compelling Discovery Responses and supporting declaration (Doc. No. 10) and its December

On March 10, 2016, Nintendo sent Applicant an e-mail attempting to arrange a telephone call to discuss the opposition proceedings. Declaration of Christopher Parent (“Parent Decl.”) at ¶ 3. Because Applicant had not responded to communications from Nintendo’s outside counsel over the course of these proceedings, Nintendo had hoped that Applicant might be more receptive to communications directly from Nintendo. *Id.* at ¶ 2. Accordingly, the March 10 e-mail came directly from Nintendo’s Senior Counsel, Intellectual Property, Christopher Parent. *Id.* at ¶¶ 2-3. In the anticipated call with Applicant, Nintendo intended to discuss a potential resolution of the parties’ dispute and, if no resolution could be reached, to meet and confer about Applicant’s responses to Nintendo’s first set of written discovery and to discuss Applicant’s availability for a deposition. *Id.*

Mr. Parent followed the March 10 e-mail with a call on March 11 to the telephone number listed for Applicant in these proceedings, reaching a recorded message stating that the voice mailbox was full. *Id.* at ¶ 4. Mr. Parent sent another e-mail to Applicant on March 14, again trying to schedule a telephone call. *Id.* at ¶ 5. After receiving no response to his e-mails, Mr. Parent tried to reach Applicant by telephone at least three times on March 14 and 15. *Id.* at ¶ 6. Each time, Mr. Parent reached the same recorded message stating that Applicant’s voice mailbox was full, and Mr. Parent was unable to leave a message. *Id.*

Having been unable to reach Applicant, Nintendo served a second set of interrogatories and requests for production on March 16, 2016.

On March 22, 2016, Mr. Parent again e-mailed Applicant, explaining Nintendo’s interest in discussing a resolution to the opposition and the need, absent a mutually agreeable resolution, to discuss Applicant’s responses to Nintendo’s first set of written discovery and to schedule his

18, 2015 Notice Relating to Opposer’s Motion for an Order Compelling Discovery Responses and supporting declaration (Doc. No. 12).

deposition. *Id.* at ¶ 7. Nintendo also asked Applicant for his consent to an extension of the discovery period. *Id.* As of 4:00 p.m. P.D.T. on March 25, Applicant had not responded to Mr. Parent's March 22 e-mail or any of Mr. Parent's prior communications. *Id.* at 8.

Nintendo has diligently prosecuted this opposition. This extension request is necessitated by Applicant's unresponsiveness, which has caused delays and made it difficult to complete discovery. The requested extension might enable the parties to resolve their dispute without the expenditure of additional Board and party resources and, if not, will enable Nintendo to continue its attempts to meet and confer as to Applicant's responses to the first set of written discovery and to find a mutually acceptable date for Applicant's deposition. The requested extension will not prejudice Applicant and will not significantly delay these opposition proceedings.

For these reasons, Nintendo respectfully requests that the Board grant its motion and extend the deadlines in these proceedings as set forth below:

Event	Current Schedule	Proposed Schedule
Discovery Closes	3/29/2016	5/28/2016
Plaintiff's Pretrial Disclosures Due	5/13/2016	7/12/2016
Plaintiff's 30-day Trial Period Ends	6/27/2016	8/26/2016
Defendant's Pretrial Disclosures Due	7/12/2016	9/10/2016
Defendant's 30-day Trial Period Ends	8/26/2016	10/25/2016
Plaintiff's Rebuttal Disclosures Due	9/10/2016	11/9/2016
Plaintiff's 15-day Rebuttal Period Ends	10/10/2016	12/9/2016

Respectfully submitted,

BRYAN CAVE LLP

Dated: March 25, 2016

/katherine keating/

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**DECLARATION OF CHRISTOPHER PARENT IN SUPPORT OF OPPOSER'S
UNCONSENTED MOTION TO EXTEND DISCOVERY PERIOD AND TRIAL DATES**

I, Christopher Parent, declare as follows:

1. I am Senior Counsel, Intellectual Property, for Opposer Nintendo of America Inc. ("Nintendo"). I have personal knowledge of the facts set forth in this declaration and if called to do so, I could and would testify competently to such facts.

2. Nintendo has been and continues to be interested in discussing possibilities for resolving the parties' dispute. In the absence of a resolution, Nintendo needs to meet and confer with Mr. Jones about certain of his responses to Nintendo's first set of written discovery and also needs to determine his availability for a deposition. Throughout these opposition proceedings, Applicant Mario Jones has been difficult to reach and unresponsive to communications from Nintendo's outside counsel. We had hoped that Mr. Jones might be more receptive to communication directly from Nintendo.

3. On March 10, 2016, I sent an e-mail to Mr. Jones attempting to arrange a telephone call.

4. I followed up my March 10 e-mail with a call on March 11 to the telephone number listed for Mr. Jones in these opposition proceedings ((301) 593-8452). I reached a recorded message stating that the voice mailbox for the number was full, and I was unable to leave a message.

5. I sent another e-mail message to Mr. Jones on March 14, 2016, again trying to schedule a telephone call.

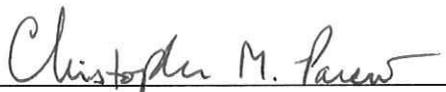
6. After receiving no response to my e-mails, I tried to reach Mr. Jones by telephone at least three times on March 14 and 15. Each time I reached the same recorded message stating that the voice mailbox was full, and I was unable to leave a message.

7. On March 22, 2016, I sent Mr. Jones a third e-mail message, explaining Nintendo's interest in discussing the opposition resolution and the need, absent a mutually agreeable resolution, to discuss his responses to Nintendo's first set of written discovery and to schedule his deposition. In this e-mail, I also asked Mr. Jones if he would agree to extend the discovery period.

8. As of the signing of this declaration on March 25, I have received no response to my e-mails to Mr. Jones.

I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

Dated: March 25, 2016



Christopher M. Parent

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER’S UNCONSENTED MOTION TO EXTEND DISCOVERY PERIOD AND TRIAL DATES and DECLARATION OF CHRISTOPHER PARENT IN SUPPORT OF OPPOSER’S UNCONSENTED MOTION TO EXTEND DISCOVERY PERIOD AND TRIAL DATES has been served on Applicant Mario Jones by sending for overnight delivery via FedEx on March 25, 2016 to the following address:

Mario Jones
355 Crescendo Way
Silver Spring, MD 20901-5020

Executed on March 25, 2016, at San Francisco, California.

/katherine keating/
Katherine Keating