

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: March 2, 2016

Opposition No. 91223065

PN, LLC

v.

C2 Management Group LLC

George C. Pologeorgis,
Administrative Trademark Judge:

This case now comes before the Board for consideration of Applicant's motion (filed October 30, 2015) for reconsideration of the Board's September 30, 2015, order. Opposer filed a timely response to Applicant's motion on November 9, 2015.

Background

Applicant's involved application was published for opposition on April 7, 2015 making any potential filing of a notice of opposition due by May 7, 2015. On May 4, 2015, Opposer filed a request to extend its time to oppose Applicant's application by ninety days, by employing the Board's electronic filing system, i.e., ESTTA, on the ground that Opposer needed additional time to confer with its counsel regarding the potential opposition. On May 4, 2015, the Board granted Opposer's request for a 90-day extension thereby extending Opposer's time to file an opposition until August 5, 2015.

On August 1, 2015, Opposer filed a notice of opposition opposing registration of Applicant's mark solely on the ground of likelihood of confusion under Section 2(d) of the Trademark Act.

On August 6, 2015, Applicant filed a motion to dismiss this opposition for lack of jurisdiction on the basis that Opposer allegedly did not demonstrate good cause for its request to extend its time to oppose. By order dated September 30, 2015, the Board denied Applicant's motion to dismiss. In explaining its denial, the Board, *inter alia*, noted that when a party files a request to extend time that exceeds sixty days from the date of publication by employing ESTTA, as was the case here, the ESTTA filing system allows the potential opposer to choose from one of the following pre-populated grounds as support for its extension request:

Cause for Extension Request

You have requested an extension (or extensions) of time to oppose totalling more than 60 days from the date of publication. Such an extension may only be granted upon a showing of good cause.

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Good cause is established for this request because:

The potential opposer needs additional time to investigate the claim
The potential opposer needs additional time to confer with counsel
The potential opposer is engaged in settlement discussions with applicant
The potential opposer needs additional time to seek counsel to represent it in this matter
Other Please explain briefly in the space provided below

The Board further noted that by allowing a potential opposer to choose from one of the foregoing grounds for extension, the Board has predetermined that any one of these identified grounds constitutes good cause for an initial extension request to oppose that exceeds sixty days from publication. The Board additionally explained

that, by long-standing practice, a simple statement that the potential opposer needs additional time to investigate the claim or to confer with counsel is considered by the Board as establishing good cause for an extension of time to oppose. Finally, the Board held that because Opposer chose a ground that the Board has predetermined to constitute good cause for an initial extension request that exceeds sixty days and since Applicant failed to submit any evidence that would demonstrate that Opposer did not actually require the additional time to confer with its counsel or that Opposer sought the additional time for reasons other than conferring with its counsel, the Board found that Opposer had demonstrated sufficient good cause for its extension request. In view thereof, the Board denied Applicant's motion to dismiss for lack of jurisdiction.

Applicant's Motion for Reconsideration

The Board now turns to Applicant's motion for reconsideration of the Board's September 30, 2015, order. In support thereof, Applicant argues, *inter alia*, that (1) it was unaware of the factual and legal grounds provided by the Board when it issued its September 30, 2015, order and therefore this is the first opportunity for Applicant to address these factual and legal grounds; (2) Opposer did not provide the legal grounds upon which the Board based its September 30, 2015, order with its opposition to Applicant's motion to dismiss; (3) the Trademark Trial and Appeal Board Manual of Procedure ("TBMP") does provide that any extension of time up to ninety days can be met solely by asserting that a party needs to meet with counsel; and (4) the Board's adoption of predetermined grounds that establish good cause for

an extension of time that exceeds sixty days from publication violates the Administrative Procedures Act.

Decision

It has often been stated that the premise underlying a request for reconsideration under Trademark Rule 2.144 is that, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. *See* TBMP § 518 (2015) and authorities cited therein. The request may not be used to introduce additional evidence, nor should it be devoted simply to a reargument of the points presented in the requesting party's brief on the case. *See Amoco Oil Co. v. Amerco, Inc.*, 201 USPQ 126 (TTAB 1978). Rather, the request normally should be limited to a demonstration that, based on the evidence properly of record and the applicable law, the Board's ruling is in error and requires appropriate changes. *See Steiger Tractor Inc. v. Steiner Corp.*, 221 USPQ 165 (TTAB 1984), *different results reached on reh'g*, 3 USPQ2d 1708 (TTAB 1984).

Here, the Board did not err in denying Applicant's motion to dismiss for lack of jurisdiction. Applicant's arguments to the contrary are unavailing. First, the Board notes that Applicant improperly reargues in its motion for reconsideration the same points raised in its motion to dismiss. *Compare* Applicant's motion to dismiss, 4 TTABVUE at p. 5 line 4 through p. 7 line 22 with Applicant's motion for reconsideration, 11 TTAVUE at p. 5, line 4 through p. 7, line 14. Second, Applicant's unfamiliarity with relevant law and Board procedure under which the Board issued its denial of Applicant's motion to dismiss is not a basis for filing a motion for

reconsideration of the Board's September 30, 2015, order so that it may now address the Board's legal conclusions as set forth in its order. A party, whether represented by counsel or not, is expected to familiarize himself with Board rules and procedure. Third, the fact that Opposer allegedly did not set forth the legal basis on which the Board decided its September 30, 2015, order is similarly not a basis for filing a motion for reconsideration of the Board's order. A motion for reconsideration only concerns a decision reached by the Board based on its own application of relevant law and Board rules, not a response to a motion entertained by the Board. Third, Applicant's contention that nowhere in the TBMP does it state that any extension of time up to ninety days can be met solely by asserting that a party needs to meet with counsel is inaccurate. TBMP § 207.02 (2015) clearly provides as follows:

A showing of good cause for an extension of time to oppose over thirty days must set forth the reasons why additional time is needed for filing an opposition. Circumstances that may constitute good cause include the potential opposer's need to investigate the claim, **the potential opposer's need to confer with or obtain counsel**, applicant's consent to the extension, settlement negotiations between the parties, the filing of a letter of protest by the potential opposer, an amendment of the subject application, the filing of a petition to the Director from the grant or denial of a previous extension, and civil litigation between the parties. The merits of the potential opposition are not relevant to the issue of whether good cause exists for the requested extension.

(emphasis added).

Further, Applicant's reliance on other federal agencies' procedures regarding extensions of time as support for its contention that the procedure by which Board entertains extensions of time to oppose is improper is misplaced. The Board has its own rules and procedure regarding extensions of time to oppose and the rules of procedure of other federal agencies do not dictate Board procedure. Similarly,

Applicant's reliance on Fed. R. Civ. P. 27(a)(2) in support of its motion for reconsideration is also misdirected. This particular federal rule of civil procedure concerns depositions to perpetuate testimony and has no bearing on whether good cause exists for filing an extension of time to oppose a trademark application. Finally, Applicant's contention that the Board's adoption of procedure regarding extensions of time to oppose that exceed thirty days is in violation of the Administrative Procedures Act because it creates a de facto rule is also unavailing. The Board has complied with rulemaking requirements in the implementation of its ESTTA filing system, particularly as they concern extensions of time to oppose. *See* 78 Fed. Reg. 6841902 (2013) ("If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in inter partes and ex parte cases electronically, they must use the forms provided through ESTTA. Oppositions to extensions of protection under the Madrid Protocol, as well as requests for **extensions to oppose**, must be filed electronically through ESTTA.") (emphasis added).¹

Because Applicant has failed to demonstrate that the Board erred in reaching its December 30, 2015, decision, Applicant's motion for reconsideration is **DENIED**.

The Board's September 30, 2015, order stands as issued.

¹ To the extent Applicant advances an argument that the Board's procedure regarding extensions of time to oppose should be amended, the Board finds that it would be inappropriate to announce in an order involving an individual case any broad-based changes to the Board's rules or to its long-standing practices with respect to extensions of time to oppose.

Trial Schedule

Proceedings are resumed. Applicant is allowed until **March 22, 2016** in which to file an answer to the notice of opposition.² Remaining trial dates are reset as follows:

Deadline for Discovery Conference	4/21/2016
Discovery Opens	4/21/2016
Initial Disclosures Due	5/21/2016
Expert Disclosures Due	9/18/2016
Discovery Closes	10/18/2016
Plaintiff's Pretrial Disclosures Due	12/2/2016
Plaintiff's 30-day Trial Period Ends	1/16/2017
Defendant's Pretrial Disclosures Due	1/31/2017
Defendant's 30-day Trial Period Ends	3/17/2017
Plaintiff's Rebuttal Disclosures Due	4/1/2017
Plaintiff's 15-day Rebuttal Period Ends	5/1/2017

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 Trademarks Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

² In light of this order and since Applicant, pursuant to Board rules and procedure, was allowed until October 30, 2015 in which to file a motion for reconsideration of the Board's September 30, 2015, order, the Board's October 30, 2015, default notice is hereby set aside. Additionally, the Board has previously found that Opposer has adequately pleaded its standing, as well as its ground for opposition. *See* 9 TTABVue 5. Accordingly, Applicant is precluded from filing a motion to dismiss for failure to state a claim in response to Opposer's pleading.