UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Baxley

Mailed: May 5, 2016

Opposition No. 91223088

Lytx, Inc.

v.

Liberty Mutual Insurance Company

Andrew P. Baxley, Interlocutory Attorney:

This case comes up for consideration of Opposer's motion (filed April 8, 2016) to extend discovery by 180 days. Applicant has filed a brief in response thereto. Although Opposer's time in which to file a reply brief has not lapsed, the Board, in its discretion, elects to decide the motion to extend at this time.

Opposer acted prior to the close of discovery and therefore need only show "good cause" for the extension sought.[1] *See* Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a) (2015). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992). However, a party, in its motion to extend, must set forth with particularity the facts said to constitute good cause for the requested extension and must establish that the requested extension is not made necessary by the party's own lack of diligence or

[1] Opposer's showing of excusable neglect is inappropriate under the circumstances. *See* Fed. R. Civ. P. 6(b)(1)(B); TBMP § 509.01(b).

unreasonable delay in taking the required action during the time previously allotted therefor. *See* TBMP § 509.01(a).

Bearing in mind that the Board liberally grants extensions and that Opposer's motion marks the first request for an extension that either party has made in this proceeding, the Board notes that Opposer's attorney sent an email on February 25, 2016 in which he proposed several options for settlement; that Applicant's attorney responded on March 3, 2016, stating that Applicant was considering those options; and that Applicant did not respond further to Opposer's February 25, 2016 e-mail. The settlement options could conceivably have eliminated the need for discovery in this case. Accordingly, the Board finds that Applicant's failure to respond substantively to the February 25, 2016 email constitutes good cause for a short extension of the discovery period. However, the 180-day extension that Opposer seeks is unreasonable.

Based on the foregoing, Opposer's motion to extend is granted to the extent modified by this order.[2] Dates herein are reset as follows.

Discovery Closes	**6/5/2016**
Plaintiff's Pretrial Disclosures Due	**7/20/2016**
Plaintiff's 30-day Trial Period Ends	**9/3/2016**
Defendant's Pretrial Disclosures Due	**9/18/2016**
Defendant's 30-day Trial Period Ends	**11/2/2016**
Plaintiff's Rebuttal Disclosures Due	**11/17/2016**
Plaintiff's 15-day Rebuttal Period Ends	**12/17/2016**

[2] In view of Applicant's opposition to the motion to extend, the parties are advised that Opposer will not be allowed any further extensions of the discovery period without either Applicant's consent or a showing of extraordinary circumstances. Opposer brought this case and, in so doing, took responsibility for moving it forward in accordance with the trial schedule. *See PolyJohn Enterprises Corp. v. 1-800-Toilets Inc.*, 61 USPQ2d 1860, 1862 (TTAB 2002).

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. If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.