

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

BUO

Mailed: August 8, 2016

Opposition No. 91227733

*eBay Inc.*

*v.*

*Ahmed Hegazy*

**Benjamin U. Okeke, Interlocutory Attorney:**

Now Before the Board is Applicant's motion, filed July 14, 2016, to extend its time to file an answer to the notice of opposition without Opposer's consent. As set by the Board's order instituting this proceeding, Applicant's answer was due on June 14, 2016. Unable to effect service of the notice of opposition on Applicant, the Board effected service by publication in the Official Gazette on June 21, 2016. By that publication, Applicant was allowed thirty days to enter an appearance or otherwise move with respect to the notice of opposition. Applicant's submission in response to the publication simply states that Applicant "requests that the Trademark Trial and appeal [sic] Board extend the period for filing an Answer for the Opposition No. 91227733 for 2 months," citing the fact that Applicant is "not [a] resident in the U.S." and had "issues with receiving the documents sent by the opposer." 7 TTABVUE 2.

Opposer contests this motion, arguing, “[h]aving now been served by email, Overnight Mail, and publication, Applicant requests an additional two month extension to file an Answer based on the false statement that Applicant ‘had some issues with receiving the documents sent by the opposer.’” 9 TTABVUE 3. Opposer concludes, “Applicant’s Motion must be denied because its vague assertions regarding ‘issues with receiving the documents’ fail to set forth with any particularity facts demonstrating good cause for an extension.” *Id.* at 4.

***Motion to Extend***

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. *See* Fed. R. Civ. P. 6(b)(1); TBMP § 509.01(a) (2014). 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., Am. Vitamin Prods., Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. *See Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999) (sparse motion contained insufficient facts on which to find good cause). The Board will “scrutinize carefully” any motion to extend time, to determine whether the requisite good cause has been shown. *Id.*

After reviewing the parties’ arguments and keeping in mind the Board’s liberal application of the Rule 6(b) standard, the Board finds that the circumstances herein

are appropriate for granting Applicant's motion to extend time. Despite the extremely scant nature of Applicant's motion, and the dubious "reasons" presented for extension, there is no evidence that Applicant has acted negligently, and inasmuch as this is Applicant's first request for an extension, there has not been an abuse of the privilege of extension. Thus, the Board finds good cause to extend Applicant's time to file an answer.

Accordingly, Applicant's motion is **GRANTED** in part, inasmuch as while the Board agrees that an extension of time is warranted, the Board does not see the efficacy or need for a two-month extension. To avoid hardship and surprise, however, the Board will allow Applicant **THIRTY DAYS** from the mailing date of this order to file an appropriate answer to the notice of opposition, failing which a notice of default will be issued, and default judgment may thereafter be entered.<sup>1</sup>

***Answer***

An answer should bear at its top the heading "IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD," followed by the name of the proceeding (*e.g.*, "*eBay Inc. v. Ahmed Hegazy*"), the proceeding number (*e.g.*, "Opposition No. 91227733"), and a title

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<sup>1</sup> Applicant is strongly encouraged to retain experienced trademark counsel in the United States to represent him in this matter. In any event, Applicant should review the "*Pro Se* Information" section provided at the end of this order. Applicant should note that the Board will not tolerate any further delays caused by Applicant's inattention to this matter. Regardless of the retention of counsel, strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, as well as adherence to the dates set forth in the Board's orders, is expected of all parties before the Board. The parties are expected to fully comply with the directives and the deadlines set by this order. Failure to do so may result in the entry of judgment against the violating party.

describing the nature of the paper (e.g., “ANSWER,” “ANSWER AND COUNTERCLAIM,” etc.). *See* TBMP § 311.01(a).

The answer must contain admissions or denials of the allegations in the complaint and may include any defenses to those allegations. Applicant should not argue the merits of the allegations found in the complaint but rather should simply state, as to each of those allegations, that the allegation is either admitted or denied. *See* Trademark Rule 2.106(b)(1); Fed. R. Civ. P. 8(b); *Turner Entm’t Co. v. Ken Nelson*, 38 USPQ2d 1942 (TTAB 1996) (applicant’s answers were argumentative and nonresponsive and Board was ultimately forced to interpret the answer). If Applicant does not have sufficient information to admit or deny an allegation, Applicant may so state, and this statement will have the effect of a denial as to that allegation.

The complaint in this proceeding consists of 38 numbered paragraphs setting forth the basis of Opposer’s claim of damage; Applicant’s admissions or denials should also be made in 38 numbered paragraphs corresponding to the numbered paragraphs in the complaint. *See* TBMP § 311.02(a).

Applicant may also assert any affirmative defenses he believes are appropriate. Affirmative defenses may include unclean hands, laches, estoppel, acquiescence, fraud, mistake, prior registration (*Morehouse*) defense, prior judgment, or any other matter constituting an avoidance, amplification or affirmative defense. *See* Trademark Rule 2.106(b)(1); *Order of Sons of Italy in Am. v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1222 (TTAB 1995).

For reference, an appropriate answer would appear as follows:

Paragraph 1. Denied.

Paragraph 2. Admitted.

Paragraph 3. Admitted as to <insert part of allegation  
admitted>, but denied as to the remainder.

...

Further, if Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, he should so state and this will have the effect of a denial, e.g.:

Paragraph 4. Applicant is without sufficient knowledge to form a belief as to the truth or falsity of the allegations of paragraph 4, and therefore denies the same.

For additional information regarding the substance of an answer Applicant is referred to the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 311.01 *et seq.*

Finally, the answer, as all other papers filed during this proceeding, must be signed by Applicant and served on Opposer. *See* Trademark Rule 2.119(a)-(b). The answer must include proof that service has been made, *i.e.* a certificate of service, consisting of a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. Applicant should review the “*Pro Se* Information” section below, which includes a sample certificate of service. The certificate of service should be attached to the filing to which it pertains, rather than being separately filed. Failure to include this proof of service with any papers filed may result in the Board not considering those papers. *See* Trademark Rule 2.119(a).

The proceeding is **RESUMED**. Conferencing, disclosure, discovery, and trial dates are reset as follows:

Deadline for Discovery Conference	<b>9/27/2016</b>
Discovery Opens	<b>9/27/2016</b>
Initial Disclosures Due	<b>10/27/2016</b>
Expert Disclosures Due	<b>2/24/2017</b>
Discovery Closes	<b>3/26/2017</b>
Plaintiff's Pretrial Disclosures	<b>5/10/2017</b>
Plaintiff's 30-day Trial Period Ends	<b>6/24/2017</b>
Defendant's Pretrial Disclosures	<b>7/9/2017</b>
Defendant's 30-day Trial Period Ends	<b>8/23/2017</b>
Plaintiff's Rebuttal Disclosures	<b>9/7/2017</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>10/7/2017</b>

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

***Pro Se Information***

A. Representation

The Board notes that Applicant currently represent himself *pro se*, *i.e.* without assistance from a licensed attorney. It should be noted that, while Patent and Trademark Rule 11.14 permits any party to represent itself, it is advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial decision maker, the

Board may not provide legal advice, though it may provide general procedural information.

B. Nature of Board Proceedings

An opposition proceeding before the Board is similar in many ways to a civil action in a Federal district court. There are pleadings (notice of opposition, answers, and, sometimes, a counterclaim), a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. Unlike the case in a civil proceeding, the Board does not preside at the taking of testimony. Rather, all testimony is taken by deposition during the assigned testimony, or trial, periods, and the written transcripts, together with any exhibits, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

C. Electronic Resources

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), the Trademark Act, and the Trademark Rules of Practice, all available on the USPTO website, [www.uspto.gov](http://www.uspto.gov). The TTAB homepage provides electronic access to the Board's standard protective order, and answers to frequently asked questions. Other useful resources include the ESTTA filing system<sup>2</sup> for Board filings and TTABVUE for status and prosecution history.

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<sup>2</sup> Use of electronic filing with ESTTA — as the parties have done so far — is strongly encouraged. This electronic file system operates in real time and provides filers with confirmation that the filing has

Compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

D. Service of Papers

Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or the other party itself, if unrepresented, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers that Applicant may file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

The following is an example of an acceptable Certificate of Service:

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been received. When papers are filed through ESTTA, the papers must still be served on the other party to the proceeding.

If the parties have questions about or need assistance with ESTTA, they may call the Board at (571) 272-8500 or (800) 786-9199 (toll free) from 8:30 a.m. until 5:00 p.m. (EST).

While electronic filing is preferred, papers may also be filed by mail. The parties should refer to TBMP §§ 107-111 for information on filing by mail. If ESTTA filing is not possible for any reason, the filer should submit its papers by mail, with a certificate of mailing. *See* TBMP § 110 *et. seq.*

**Certificate of Service**

The undersigned certifies that a copy of the attached  
<describe filing> was served, by first class mail, upon  
opposer at the following address:

<insert address>,

on <insert date>.

/<your name here>/