

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Mailed: August 29, 2003

Cancellation No. 92040559

A.J. BOGGS & COMPANY

v.

INTRADO, INC.

**Frances S. Wolfson, Interlocutory Attorney:**

### **Respondent's Motion To Compel**

On January 24, 2003, respondent filed a motion to compel petitioner to respond to respondent's first set of interrogatories and requests for production of documents. Petitioner filed a brief in response to respondent's motion. On March 7, 2003, respondent advised the Board that it had not received a copy of petitioner's response to respondent's motion to compel, and requested that the Board order petitioner to serve petitioner's response on respondent, and to reset respondent's time for filing a brief in reply.

Respondent's motion is granted in part. Petitioner is ordered to serve a copy of its response to respondent's motion to compel on respondent. Petitioner is allowed until THIRTY DAYS from the mailing date of this order to serve respondent with a copy of its response to respondent's motion to compel.

Respondent's request for additional time to file a reply brief is denied inasmuch as the Board has determined that respondent's first set of interrogatories exceed the number allowed under the trademark rules, i.e., they number more than seventy-five, including subparts.

Trademark Rule 2.120(d)(1) provides that if a party objects to interrogatories served on the ground that the number thereof exceeds the limits of the rule, the party shall not answer any of the interrogatories but instead shall file a motion for a protective order.<sup>1</sup> Petitioner improperly answered some of the interrogatories, while refusing to answer those it contends are over the limit.

The Board will not accept any of petitioner's answers as proper answers to respondent's interrogatories. Accordingly, petitioner is relieved from answering respondent's interrogatories served November 25, 2002 and respondent is allowed until SIXTY DAYS from the mailing date of this order to serve a revised set of interrogatories in their stead, not to exceed seventy-five in number, counting subparts. *See, Brawn of California Inc. v. Bonnie Sportswear Ltd.*, 15 USPQ2d 1572, 1574 (TTAB 1990). Inasmuch as petitioner improperly provided answers to respondent's interrogatories, respondent may not introduce these answers

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<sup>1</sup> In this case, the question arises out of respondent's motion to compel rather than by way of a motion for protective order. In either case, our analysis of the facts is the same.

as evidence by way of notice of reliance during respondent's testimony period. Respondent may rely, however, upon petitioner's answers to interrogatories served in compliance with this order.

### **Respondent's Motions To Quash Testimonial Depositions**

On February 19, 2003, respondent filed a motion to quash three testimonial depositions. On February 24, 2003, respondent filed a motion to quash one testimonial deposition served by petitioner on respondent.

Office records indicate no response to either of respondent's motions. When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded. See Trademark Rule 2.127(a), and TBMP §502.04 (2d ed. June 2003).

Respondent's motions to quash are also well-taken. This case has been essentially suspended from the date applicant filed its motion to compel, despite the fact that the Board did not issue a formal suspension order. See Trademark Rule 2.120(e)(2) and TBMP §523.01 (2d ed. June 2003).

Accordingly, respondent's motions to quash four testimonial depositions (apparently taken during the pendency of respondent's motion to compel) is granted as conceded and as well-taken.

## **Respondent's Motion To Change Its Name**

The Office incorrectly recorded a security agreement as an assignment and changed respondent's name in the caption of this proceeding. The caption has now been corrected. Correction to the assignment database (at Reel/Frame No. 2518/0200) will be made in due course.

## **Respondent's Motion For A Single Service Address For Petitioner**

In its response to respondent's motion to compel, petitioner listed itself with a new address. This address is hereby made of record and shall be the operative address for correspondence purposes for petitioner:

Jeffrey A. Sadowski, Esq.  
Howard and Howard Attorneys, PC  
29400 Woodward Avenue, Suite 101  
Bloomfield Hills, MI 48304-5151

## **Trial Schedule**

Discovery has closed in this case. Trial dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:

**CLOSED**

30-day testimony period for party in the position of plaintiff to close:

**January 20, 2004**

30-day testimony period for party in the position of the defendant to close:

**March 20, 2004**

15-day rebuttal period for party in the position of the plaintiff to close:

**May 4, 2004**

**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.