

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514**

Mailed: October 15, 2004

Cancellation No. 92041776

CATERPILLAR INC.

v.

Pave Tech, Inc.

Linda Skoro, Interlocutory Attorney

This case now comes up on the following matters:
Petitioner's motion for an extension of discovery and
testimony dates, filed May 3, 2004; respondent's motion to
quash and for a protective order, filed May 12, 2004; and
petitioner's motion for a protective order, filed May 3,
2004.

Motion to Extend

As good cause for the extension of the discovery
period, petitioner states that more time is needed to
complete discovery due to an inability to schedule
depositions within the discovery period and an inability to
agree to an extension of the discovery period.

Discovery was scheduled to close on May 5, 2004. On
April 21 respondent noticed three depositions to be taken on
the last three days of discovery. Petitioner's counsel

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contacted respondent's counsel through email, stating they were unable to attend the depositions on these dates, requested a rescheduling and an opportunity to take depositions on their end. Petitioner states that in a subsequent telephone conversation with opposing counsel, petitioner requested a 60-day extension and respondent's counsel indicated a 30-day extension would be acceptable but she needed to contact respondent for consent for a 60-day extension. Respondent's counsel then informed petitioner that they would only agree to allow respondent's depositions to be taken after the close of discovery. Respondent has opposed the motion, contending there was no verbal agreement to a 30-day extension; that it had been awaiting a settlement offer from petitioner and when none was forthcoming, it noticed its depositions at the end of the discovery period.

We believe that an extension of the periods is warranted. The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. Fed. R. Civ. P. 6(b)(1). Further, the Board ordinarily is liberal in granting extensions before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused. Counsel for both sides were unable to arrive at a mutually agreeable date within the discovery period and further

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discovery depositions were needed. Petitioner has shown good cause sufficient to justify an extension of the discovery and testimony periods for both parties. Accordingly, the discovery period will be extended by sixty days to enable both parties to notice and take the depositions they each seek.

Motions for Protective Orders

In that respondent had served its notices of deposition that opposing counsel was unable to attend, petitioner filed a motion for a protective order together with its motion for an extension of the discovery period. Additionally, in that petitioner may have misunderstood that respondent had agreed to a thirty day extension, it served notices of depositions on respondent, scheduled for early May, outside of the discovery period. Accordingly, respondent also filed a protective order and a motion to quash petitioner's depositions as untimely.

In that the Board has found good cause and granted the extension of the discovery period, and since the time has passed for all previously noticed depositions, the motions for protective orders and to quash are denied as moot. Both parties have the sixty days in additional discovery within which to find mutually agreeable dates for any further discovery depositions each feels necessary.

The motion to extend discovery is granted and dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	12/15/2004
Thirty-day testimony period for party in position of plaintiff to close:	3/15/2005
Thirty-day testimony period for party in position of defendant to close:	5/14/2005
Fifteen-day rebuttal testimony period to close:	6/28/2005

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. Rule 2.125.

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