

testimony transcripts is because Respondent has not signed a protective order.¹ Therefore, Respondent has intentionally prevented Petitioner from sending Respondent the very transcripts which Respondent complains he has not received. Respondent cannot be rewarded for such actions which are designed to delay this case. Granting the motion would reward Respondent for intentional delay, further increase the costs to Petitioner for this proceeding, and punish Petitioner for following the rules.

II. Background Facts.

On November 27, 2006, Petitioner took the properly noticed testimony depositions of Nora Orozco and Tony Sugden. (Koenig Dec. ¶ 2).

On December 27, 2006 Petitioner timely served Respondent with the transcripts of the testimony taken on November 27, 2006. (Koenig Dec. ¶ 3). Petitioner informed Respondent that it was unable to serve the confidential portions of Petitioner's trial testimony because Respondent had not signed a protective order. (Koenig Dec. ¶ 3, 4, 5). Petitioner informed Respondent in three different documents why the confidential transcripts had been withheld. (Koenig Dec. ¶ 3, 4, 5).

Respondent's brief opines that Respondent sent a letter on January 29, 2007 inquiring why they had not yet received copies of the confidential transcripts. This letter was sent on the penultimate day of Respondent's testimony period and was an obvious last minute attempt at "window dressing" to cover up for Respondent's neglect of his case. This should not be

¹ Respondent has noted in a single lone sentence in his brief that he consents to the use of the standard TTAB protective order. (Respondent's Brief at 2). However, Respondent still has yet to execute or forward the same to allow counsel for Petitioner to send the confidential portions and file the entire transcripts with the Board. Since confidential materials filed in the absence of a protective order are not regarded as confidential and will not be kept confidential by the Board, Respondent's actions have prevented Petitioner from filing its testimony transcripts with the Board. TBMP §§ 106.03 and 120.02; *See also, Harjo v. Pro-Football, Inc.*, 50 USPQ2d 1705, 1714 (TTAB 1999).

tolerated as good cause to extend Respondent's testimony period. Instead, the letter, can be viewed as confirmation of Respondent's intentional neglect.

III. Respondent's Motion to Reopen is Untimely and Should be Denied.

The only issue to be decided is whether Respondent should be allowed to reopen its testimony, extend the due dates, and further delay this case after failing to take any action to prosecute his case during his own testimony period.

IV. Petitioner's Motion fails to Show Good Cause for the Requested Extension.

Pursuant to Fed. R. Civ. P. 6(b), made applicable to Board proceedings by 37 C.F.R. § 2.116(a), a party may file a motion for an enlargement of the time in which an act is required or allowed to be done. The rule is that 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, e.g., Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999). Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. TBMP § 509.01(a).

Here, the only support for Respondent's delay is that he did not receive the confidential portions of Petitioner's trial testimony. However, the receipt of the documents were in the complete control of Respondent. Respondent knew that Petitioner was unable to send the confidential portions of the trial testimony until and unless Respondent signed the protective order. Respondent has provided no other support for Respondent's failure to prepare and submit his evidence during his testimony period or why Respondent waited until the last day of his testimony period to request the extension. There is no doubt Respondent's counsel knew of the deadline, yet waited until very last day to file an unconsented motion to extend time. As a result,

Respondent has failed to show that its failure to act during the time allotted was the result of excusable neglect. *See* Fed. R. Civ. P. 6(b).

The alleged need for the requested extension resulted solely from Respondent's intentional delay and lack of diligence during its testimony period. The failure to take any action to prosecute his case is solely the fault of Respondent. Respondent's failure to attend Petitioner's properly noticed trial testimony depositions and failure to sign a protective order should not be rewarded. Since Respondent alone was the sole cause of the delay, Respondent cannot now be rewarded and Petitioner punished for such actions.

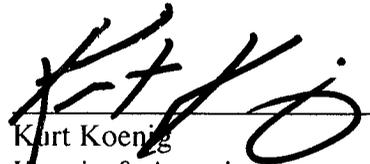
VI. Conclusion.

There is no legal or factual support for Respondent's Motion to reopen Respondent's trial testimony period. Respondent was quite aware of the upcoming due dates and simply failed to timely act. Accordingly, Petitioner requests that Respondent's Motion be denied in its entirety.

Respectfully submitted,

Dated: February 20, 2007

By:



Kurt Koenig
Koenig & Associates
226 East Canon Perdido Street, Suite M
Santa Barbara, CA 93101
Tel: 805-965-4400
Fax: 805-564-8262
Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing "PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO RESET REGISTRANT'S TESTIMONY PERIOD AND ALL SUBSEQUENT DATES PURSUANT TO TBMP §§ 703.01(k), (m) and 37 C.F.R. §2.125(a)" was served on February 20, 2007 by first-class mail, postage prepaid, to Applicant's counsel addressed as follows:

Mr. John Johnson
Ms. Irene Hudson
Fish & Richardson P.C.
Citigroup Center
153 E. 53rd St., 52nd Floor
New York, NY 10022-4611

Dated: February 20, 2007


Kurt Koenig

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: **Trademark Trial and Appeal Board, U.S. Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451**, on February 20, 2007.


Kurt Koenig

Dated: February 20, 2007

4. On December 27, 2006, concurrently with the mailing of Petitioner's Testimony Deposition Transcripts, I enclosed a cover letter which informed Respondent's counsel that I was unable to serve the confidential portions of the transcript until the protective order was executed. A copy of this letter is attached as Exhibit B.

5. On January 2, 2007, I sent a letter to counsel for Respondent. Among other things, this letter noted that Respondent's testimony period had opened and noted certain dates on which I would be unavailable for any depositions during Respondent's testimony period. In that letter, I offered to adjust my dates and schedules to accommodate Respondent's counsels' schedule. That letter contains certain information that required redaction because those portions related to certain prior settlement discussions. A redacted copy of the January 2, 2007 letter is attached as Exhibit C.

6. The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that the facts set forth in this application are true; all statements made herein of her own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: February 20, 2007


Kent Koenig

Exhibit A

CERTIFICATE OF SERVICE

I, Kurt Koenig, hereby certify that I caused a copy of the foregoing "Service on Respondent of Transcript of Oral Testimony Deposition" to be served on December 27, 2006, by Federal Express, in a package addressed to:

Mr. John Johnson
Ms. Irene Hudson
Fish & Richardson P.C.
Citigroup Center
153 E, 53rd St., 52nd Floor
New York, NY 10022-4611

Dated: December 27, 2006

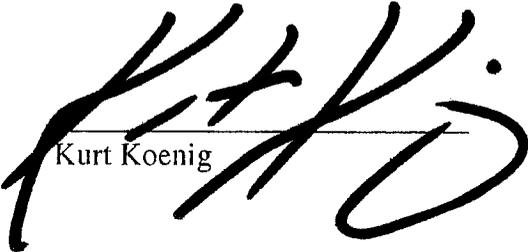

Kurt Koenig

Exhibit B

KOENIG & ASSOCIATES

ATTORNEYS AT LAW

WRITER'S EMAIL: KURT@INCIP.COM

226 EAST CANON PERDIDO, SUITE M
SANTA BARBARA, CALIFORNIA 93101

FACSIMILE: 805-564-8262

TELEPHONE: 805-965-4400

December 27, 2006

VIA FEDERAL EXPRESS

Mr. John T. Johnson
Ms. Irene Hudson
Fish & Richardson P.C.
Citigroup Center
153 E. 53rd St., 52nd Floor
New York, NY 10022-4611

Re: Roger Orozco and Nora Orozco v. Michael Hwang
Cancellation No. 92043811

Dear John and Irene:

Attached please find copies of the testimony transcripts for the testimony taken on November 27, 2006 for the above-noted matter.

Since we do not have a signed Protective Order in place the confidential portions of the Testimony have been withheld until such Agreement is executed.

Please note, we just received the transcript on Thursday so it has not yet been reviewed for any errors or corrections. If any changes or corrections are required we will provide you with a corrected copy as certified upon filing with the TTAB.

Please call me at your convenience with any questions.

Very truly yours,


Kurt Koenig

KK:mo
Enclosures

Exhibit C

KOENIG & ASSOCIATES

ATTORNEYS AT LAW

WRITER'S EMAIL: KURT@INCIP.COM

226 EAST CANON PERDIDO, SUITE M
SANTA BARBARA, CALIFORNIA 93101
TELEPHONE: 805-965-4400

FACSIMILE: 805-564-8262

January 2, 2007

Via Facsimile and copy by Mail: 212-258-2291

Mr. John T. Johnson
Ms. Irene Hudson
Fish & Richardson P.C.
Citigroup Center
153 E. 53rd St., 52nd Floor
New York, NY 10022-4611

Re: Roger Orozco and Nora Orozco v. Michael Hwang
Cancellation No. 92043811

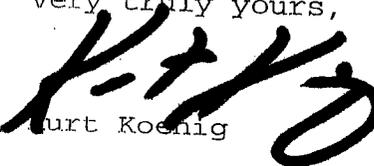
Dear John and Irene:



We note your testimony period has now opened. I wanted you to be aware of some dates where we would be unavailable for any testimony proceedings. I will be unavailable January 3-5, 8-10, and 22-23. As dates get closer some of my schedule may change, but feel free to check with me if you have any questions. Although you had refused to accommodate our request to extend the dates of our testimony period, we would be happy to adjust the dates of your testimony period to fit everyone's schedule if that is required.

It would be easiest to coordinate dates in advance and then we can set them formally. Please call me with any questions.

Very truly yours,


Kurt Koenig

KK:mo
Enclosures