

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Mailed: March 5, 2007

Cancellation No. 92043900

Omnova Solutions, Inc.

v.

The Die Gem Co., Inc.

Linda Skoro, Interlocutory Attorney

This case now comes up on petitioner's motion, filed May 15, 2006, to compel further responses to its discovery requests and to extend the discovery period. Respondent has objected.

As grounds for the motion petitioner states that it served its first round of discovery requests on March 16, 2006 and sent a letter to respondent on May 4, 2006 when no response was received. On May 12, 2006, petitioner received respondent's responses including objections to relevancy and claiming protection of trade secrets; that the parties had signed a protective agreement and that because respondent's answers and objections were late, it has waived all objections. Petitioner thereby requests respondent's

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objections to be overruled and that respondent be ordered to immediately provide responsive discovery and documents.

Respondent's response to the motion to compel states that "petitioners OMNOVA Solutions Inc. has had the answer to their discovery queries for one year, May 30, 2005, in the answer to petition to cancel 92043900" (response at 1); that "representative from petitioner OMNAVOA Solutions Inc. has been allowed to review Trade Secret information. The information disclosed from these two sources more than answers the Petitioner OMNOVA Solutions Inc. false accusations and discovery request" (response at 1).

Discovery in proceedings before the Board is not governed by any concept of priority of discovery or disposition as may exist under the rules of practice of some state or local courts. Rather, a party is under an obligation to respond to an adversary's requests for discovery during the time allowed therefore under the applicable rules, irrespective of the sequence of discovery, or of an adversary's failure to provide discovery. See, *Miss American Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067 (TTAB 1990).

Petitioner made a good faith effort to obtain the responses it requested. In respondent's response to the motion to compel it provides numerous allegations, none of which include a reason why it has failed to provide the

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requested discovery. Respondent alleges that it is a small company and that much of the information petitioner seeks is publicly available and petitioner could have obtained it from other sources. Respondent is advised that discovery in Board proceedings is governed by Fed. R. Civ. P. 26(b)(1) which provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim...". Further, that each party has a duty to make a good faith effort to satisfy the discovery needs of its adversary. While the right to discovery is not unlimited, only specific objections are permitted, such as it is unreasonably cumulative or duplicative, or is unduly burdensome.

A review of respondent's answers to the interrogatories and petitioner's requests for production of documents are primarily unresponsive, contain improper objections as to relevancy and do not appear to have been provided in a good faith effort to cooperate.

Accordingly, respondent is ordered to provide its full responses to all of the discovery requests to petitioner, without objection; and to produce all documents requested, without objection; within **thirty days** of the date of this order, without objection.

In light of the above, trial dates are reset, including the period for discovery, as requested by petitioner, as indicated below.

DISCOVERY PERIOD TO CLOSE:	<b>3/15/2007</b>
30-day testimony period for party in position of plaintiff to close:	<b>6/13/2007</b>
30-day testimony period for party in position of defendant to close:	<b>8/12/2007</b>
15-day rebuttal testimony period to close:	<b>9/26/2007</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.

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