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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044697
Party	Plaintiff ACM Enterprises, Inc.
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Attachments	SKIN DEEP Reply Brief re Motion to Reopen Testimony Period.pdf ( 4 pages ) (26800 bytes )



scheduled, to permit Mr. Daly time to come up to speed. By the time Mr. Daly was ready, Mr. Hankin was busy with other matters, but each time Mr. Hankin tried to discuss the case with Mr. Daly, Mr. Daly pushed the time back. On Friday, May 30, 2010, Mr. Hankin asked Mr. Daly to “speak on Tuesday” which was the very next business day, after Memorial Day. Mr. Hankin never heard back from Mr. Daly until after the Close of the Testimony Period.

Mr. Hankin tried to be respectful of Mr. Daly’s schedule, and in return Mr. Daly was cagey, evasive, and ultimately sought to take advantage of Mr. Hankin’s kindness by seeking to gain a procedural advantage. That kind of incivility should not be tolerated by the Board.

It is true that ACM did not complete ACM’s testimony before June 15, 2010, but there is no harm to re-setting the dates. Mr. Hankin was prepared to take the Testimony the week before Memorial Day, but Mr. Daly begged off. Mr. Hankin already has admitted that he should have pressed Mr. Daly harder to schedule the Testimony. That much is true. Nevertheless, Mr. Daly made no effort whatsoever to reschedule the Testimony dates, despite the fact that it was he who had asked for the continuance to get up to speed, and certainly, he could have contacted Hankin.

On June 16, 2010, Mr. Hankin finally reached Mr. Daly, and they had a short telephone conference and discussed settlement and reopening the Testimony Period. On June 17, 2010, Mr. Daly responded to ACM’s settlement offers and finally rejected all of the settlement offers extended. Mr. Daly also indicated that Defendant would be unwilling to stipulate to a reopening of ACM’s testimony period. There is, however, no harm to Respondent here by the short delay, and the Board should re-set the Testimony Period.

As support for Respondent’s Cross-Motion for Involuntary Dismissal, Mr. Daly cites an Order of the Board from September 17, 2008, in which the Board noted that “no further extensions for [settlement discussions] will be granted” and set the testimony period for party in

position of plaintiff to close on March 17, 2009. It is no secret that subsequently the Board re-set the testimony period for party in position of plaintiff to close on June 15, 2010 – FIFTEEN MONTHS LATER.

To argue now, almost two years after the September 17, 2008 Order that no further extension of time should be granted, and to do so would somehow delay this already five-year-old case is absolutely absurd, given: (a) the procedural history of this case; (b) the specific facts that led to the Testimony not being taken timely; (c) the fact that both Mr. Daly and Mr. Hankin were brand new to the case, and often when there is new Counsel on both sides, cases tend to settle; and (d) the fact that Mr. Hankin is NOT seeking a continuation of time to discuss Settlement, but rather, to take the Testimony that Mr. Hankin had planned to take the week before Memorial Day, but agreed to put off solely to accommodate Mr. Daly's schedule. ACM should NOT be prejudiced because first Mr. Daly and later Mr. Hankin both were busy, getting up to speed on this five-year-old case that was very new to them, and with other client matters.

The fact is that the Board regularly re-sets Testimony Periods, as it has previously in this case. Here there is absolutely good cause to do so to protect the rights of ACM. Certainly, here the delay was very short, and there can be no actual prejudice to Respondent because of the short delay. To be sure, because Mr. Daly forced Mr. Hankin to file and prosecute the instant Motion, the delay is taking MUCH longer than it would have, had Mr. Daly simply done the honorable thing and stipulated to continue the Testimony Period by a week or two, to permit ACM to take the Testimony before July 4. Now, it is not likely to be taken until closer to Labor Day.

For the above reasons, and in view of the additional delay caused by Respondent's Cross-Motion, ACM respectfully requests that the Board grant **Petitioner-Plaintiff's** Motion to Reopen the Testimony Period for Party in Position of Plaintiff and reset the Testimony Periods on the

revised dates now requested as follows:

DISCOVERY PERIOD:	CLOSED
Thirty-day testimony period for party in position of plaintiff to close:	September 30, 2010
Thirty-day testimony period for party in position of defendant to close:	November 30, 2010
Fifteen-day rebuttal testimony period to close:	December 31, 2010

Dated: August 6, 2010

Respectfully submitted,

/Marc E. Hankin/

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**CERTIFICATE OF SERVICE**

I hereby certify that I am not a party to this case and a true and correct copy of the following document: PETITIONER-PLAINTIFF'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO REOPEN THE TESTIMONY PERIOD FOR PARTY IN POSITION OF PLAINTIFF AND ANSWER IN OPPOSITION TO RESPONDENT'S CROSS-MOTION FOR INVOLUNTARY DISMISSAL UNDER TRADEMARK RULE 2.132(A) was sent by e-mail and First Class U.S. Mail on August 6, 2010, in an envelope addressed to:

Thomas Daly, Esq.  
Christie Parker & Hale LLP  
P.O. Box 7068  
Pasadena, CA 91109-7086  
Email: Thomas.Daly@cph.com and pto@cph.com.

/Marc E. Hankin /  
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August 6, 2010