

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

CBG

Mailed: August 27, 2007

Cancellation No. 92047342

Imagination Holdings Pty. Ltd.

v.

Joyce Lopeteguy

Cindy B. Greenbaum, Attorney:

This case now comes up on opposer's motion to dismiss for applicant's failure to respond to opposer's discovery requests. As an initial point, the Board notes that Board rules do not contemplate such relief for a party's failure to respond to discovery requests absent either that party's affirmative statement that it will not respond to the outstanding requests, or a Board order compelling discovery. See Trademark Rules 2.120(g)(1) and (2). Accordingly, the motion to dismiss is denied as premature.

To the extent opposer intended the motion as one to compel, rather than to dismiss, the motion is denied for opposer's failure to make a sufficient good faith effort to resolve the underlying dispute before seeking the Board's assistance, as Trademark Rule 2.120(e)(1) requires. More specifically,

applicant's single letter to petitioner, mailed and emailed approximately three weeks before serving petitioner with the motion to compel, and with no follow up, by letter or telephone to confirm that opposer received said letter, does not rise to the level of even a *minimal* showing of a good faith effort to resolve the discovery disputes.

The parties are reminded that the purpose of discovery is to advance the case so that it may proceed in an orderly manner within reasonable time constraints. To this end, the parties must adhere to the strictures set forth in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986), and repeated below:

[E]ach party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved in the case. Moreover, where the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

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The parties are directed to work together to resolve their discovery problems, in the spirit of good faith and cooperation that is required of all litigants in Board proceedings. In particular, no motion to compel should be filed unless the parties are truly unable, after making their best efforts, to work out mutually acceptable solutions to their discovery problems without the Board's help.

In the event applicant has not already served its discovery responses, applicant has until TWENTY DAYS from the mailing date of this order to do so.

Dates remain as set.