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

Mailed: April 10, 2008

Cancellation No. 92048118

Jack Richeson & Co., Inc.

v.

Select Export Corp. dba Trident

George C. Pologeorgis, Interlocutory Attorney:

On April, 4, 2008, petitioner filed a motion to extend the close of the discovery period by forty-five days. Thereafter, on April 9, 2007, respondent filed an opposition to petitioner's motion to extend.

The Board, in its discretion, suggested that the issues raised in the aforementioned motion should be resolved by telephonic conference as permitted by TBMP § 502.06 (2nd ed. rev. 2004). The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a conference at 2:00 p.m. EST on Thursday, April 10, 2008. The conference was held as scheduled among Paul W. Kruse, as counsel for Jackson Richeson & Co., Inc., Cheryl Meide, as counsel for Select Export Corp. d/b/a Trident, and the above signed, as a Board

attorney responsible for resolving interlocutory disputes in this case.

The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matter. During the telephone conference, the Board made the following findings and determinations:

Petitioner's Motion to Extend Discovery

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." *See* Fed. R. Civ. P. 6(b) and TBMP Section 509 (2nd ed. rev. 2004) and the authorities cited therein.

Although the Board generally is liberal in granting extensions of time so long as the moving party has not been guilty of negligence or bad faith and the privilege extensions is not abused, where the motion is contested, the movant must demonstrate that the motion had not been necessitated by that party's own lack of diligence or delay in taking appropriate action. *Luemme, Inc. v. D.B. Plus, Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999); *Baron Phillippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1840, 1851 (TTAB 2000). The Board will carefully scrutinize motions to extend, to determine whether the requisite

showing of good cause has been made. *Leumme*, 53 USPQ2d at 1760.

After considering the parties' arguments during the phone conference and the submitted motion and opposition thereto, the Board finds, in this instance, that petitioner has failed to demonstrate the requisite good cause to warrant an extension of the discovery period. In view thereof, petitioner's motion to extend discovery is **denied**.[1]

Discovery is now closed and trial dates remain as set in the Board's September 17, 2007 institution order.

The Board thanks counsel for Jack Richeson & Co., Inc. and Select Export Corp. d/b/a Trident for agreeing to participate in the phone conference.

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[1] The Board notes that petitioner served a notice of discovery deposition of Herbert Moebius upon respondent on April 4, 2008 setting the date of the deposition to take place on May 8, 2008. The Board notes that discovery depositions must be both noticed and taken prior to the expiration of the discovery period. *See Smith International, Inc. v. Olin Corp.*, 201 USPQ 250, 251 (TTAB 1978); *Rhone-Poulenc Industries v. Gulf Oil Corp.*, 198 USPQ 372, 373 (TTAB 1978) (it is clear from the language of Fed. R. Civ. P. 30 and 33 that while interrogatories need only be "served" during the discovery period, depositions must be "taken" during the discovery period); and TBMP § 403.02 (2d ed. rev. 2004). Since the Board, by the instant order, has denied petitioner's motion to extend discovery and discovery in this case is now deemed closed, the Board, *sua sponte*, hereby quashes petitioner's notice of deposition of Herbert Moebius inasmuch as the noticed date of the deposition is set to occur following the expiration of the discovery period in this case.