

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

Baxley

Mailed: July 23, 2008

Cancellation No. 92048775

Emoda.Com Corporation

v.

EMOD

**Andrew P. Baxley, Interlocutory Attorney:**

On July 21, 2008, petitioner filed a motion to compel initial disclosures from respondent. Although respondent's time in which to respond to that motion has not lapsed, the Board, in its discretion, elects to decide such motion at this time.

After reviewing petitioner's motion, the Board finds that, prior to seeking Board intervention, petitioner did not make a good faith effort to resolve the parties' discovery dispute, as required by Trademark Rule 2.120(e)(1). The Board notes that petitioner's sole effort to resolve the parties' dispute consists of a single letter, which was sent on July 15, 2008, i.e., on the second business day after the due date for such disclosures, from petitioner's attorney to respondent,<sup>1</sup> and that petitioner

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<sup>1</sup> The Board notes that petitioner did not include a copy of that letter as an exhibit to its motion.

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filed its motion to compel less than a week later and apparently without making even a follow-up telephone call to respondent. As such, the Board finds that petitioner did not allow respondent a reasonable opportunity to cure its alleged failure to serve initial disclosures and therefore failed to make a good faith effort to resolve the parties' dispute prior to seeking Board intervention.<sup>2</sup> Based on the foregoing, the motion to compel is denied without prejudice.

Under the circumstances, the Board, in exercising its inherent authority to control the scheduling of cases on its docket, deems it appropriate to reset dates herein.

Accordingly, dates herein are reset as follows.

Initial Disclosures Due	8/1/08
Expert Disclosures Due	11/29/08
Discovery Closes	12/29/08
Plaintiff's Pretrial Disclosures	2/12/09
Plaintiff's 30-day Trial Period Ends	3/29/09
Defendant's Pretrial Disclosures	4/13/09
Defendant's 30-day Trial Period Ends	5/28/09
Plaintiff's Rebuttal Disclosures	6/12/09
Plaintiff's 15-day Rebuttal Period Ends	7/12/09

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.

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<sup>2</sup> Moreover, respondent may have been under the impression that the documents that it filed and served concurrently with its answer were its initial disclosures. If respondent was under such impression, it should inform petitioner promptly.

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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.