

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

MBA

Mailed: December 9, 2011

Cancellation No. 92052967

Cancellation No. 92053960

Ira Pazandeh d/b/a Episode  
Audio

v.

Wirepath Home Systems, LLC

**Michael B. Adlin, Interlocutory Attorney:**

Pursuant to the Board's order of May 4, 2011, discovery was scheduled to close on December 14, 2011. This case now comes up for consideration of respondent's contested motion for a 30 day extension of the discovery and trial periods, filed December 1, 2011. On December 8, 2011, at petitioner's request, the Board held a teleconference with the parties to hear further argument on and resolve respondent's motion. Pro se petitioner Ira Pazandeh appeared on his own behalf, Robert H. Cameron appeared on respondent's behalf and the interlocutory attorney responsible for this proceeding conducted the teleconference.

Respondent alleges that an extension of time is appropriate because it "noticed the deposition of Petitioner for December 6, 2011, but despite efforts to confirm his

appearance and also discuss settlement of the dispute so as to avoid the need for said deposition, Petitioner has neither confirmed or denied that he will attend."

Respondent also relies on its need "to travel across the country to Los Angeles" for the deposition, and the upcoming holiday season, as grounds for the requested extension.

During the teleconference, petitioner conceded that respondent noticed the deposition several weeks prior to the scheduled close of discovery. However, petitioner claimed that he was not asked to confirm his appearance on December 6, 2011, and argued that respondent has already had sufficient time to conduct discovery.

Because respondent moved for an extension prior to the expiration of the discovery period, it need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509 (3d ed. 2011). Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." American Vitamin Products Inc. v. DowBrands Inc., 22 USPQ2d 1313, 1315 (TTAB 1992).

In this case, as held during the teleconference, respondent has established the requisite "good cause." In fact, respondent initially sought the deposition several weeks before the close of discovery, but the deposition did

not take place. The parties could not agree on why the deposition did not take place, and neither party presented the Board with any evidence that the other party acted improperly, impeded the taking of the deposition or caused the associated delay. Nevertheless, it is clear that the parties miscommunicated, apparently because of disagreements or actions which have nothing to do with completing discovery or preparing for trial in this proceeding.<sup>1</sup> While the parties will be expected to document their disagreements and their versions of the facts in any future motion, with evidence, respondent's attempt to take the deposition, which was unsuccessful due to miscommunications or misunderstandings, constitutes "good cause," at least at this stage of the proceeding. The need to travel and the upcoming holiday season also constitute good cause for the requested extension. Finally, petitioner failed to establish that it would be prejudiced by the requested brief extension, and this is respondent's first unconsented request for an extension of time in this case, and it has therefore not abused the privilege of extensions (thus far). For all of these reasons, respondent's motion for a 30 day

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<sup>1</sup> One party's desire to settle, when the other party is unwilling to do so, is not, without more, relevant to the schedule for this case. Similarly, discovery disputes unrelated to respondent's notice of deposition of petitioner, and threats of infringement litigation, have nothing to do with respondent's pending extension request, or the bases therefor.

extension of the discovery period is hereby **GRANTED** and discovery and trial dates are reset as indicated below.

However, respondent's motion is sparse at best, and unaccompanied by, for example, the parties' correspondence or other evidence of their (mis)communications. See generally, Luemme Inc. v. D.B. Plus Inc., 53 USPQ2d 1758, 1760 (TTAB 1999). Similarly, while petitioner complained about respondent's conduct, he failed to submit any documentary or other evidence supporting his claims.<sup>2</sup> Perhaps more importantly, during the teleconference it appeared that the parties' difficulties arise out of gamesmanship, rather than a desire to move this case forward. The parties are hereby warned that one of them, or quite possibly both parties, may be extremely dissatisfied by the ruling on any future motions resulting from miscommunication, gamesmanship or other improper or inappropriate conduct. In any event, under the circumstances, and because respondent expressed the need to conduct "follow-up" discovery after the deposition, the parties are hereby ordered to mutually agree on a date and place for the deposition, and to conduct the deposition

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<sup>2</sup> As discussed during the teleconference, in the event petitioner is dissatisfied with respondent's discovery responses, its remedy may be found in Trademark Rule 2.120(e), the requirements of which are **strictly enforced**.

**prior to January 9, 2012.**<sup>3</sup> It is extremely unlikely that the Board will grant any further unconsented motions to extend the discovery period, unless petitioner thwarts respondent's efforts to conduct the deposition prior to January 9, 2012. Discovery and testimony periods are hereby reset as follows:

Discovery Closes	<b>January 16, 2012</b>
Plaintiff's Pretrial Disclosures	<b>March 1, 2012</b>
Plaintiff's 30-day Trial Period Ends	<b>April 15, 2012</b>
Defendant's Pretrial Disclosures	<b>April 30, 2012</b>
Defendant's 30-day Trial Period Ends	<b>June 14, 2012</b>
Plaintiff's Rebuttal Disclosures	<b>June 29, 2012</b>
Plaintiff's 15-day Rebuttal Period Ends	<b>July 29, 2012</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 Rules 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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<sup>3</sup> Because the parties will document their efforts to comply with this order, in the event the deposition does not take place as required, it will be clear which party is at fault.