

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

Baxley

Mailed: May 22, 2012

Cancellation No. 92054095

Southern Mills, Inc. DBA  
TenCate Protective Fabrics USA

v.

Drifire, LLC

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

On May 2, 2012, petitioner filed a motion to: (1) compel respondent to (a) designate its one or more officers, directors, or managing agents, or designate other persons who will testify on its behalf in a discovery deposition under Fed. R. Civ. P. 30(b)(6); and (b) provide dates on which those persons are available to appear for such deposition; and (2) extend the discovery period by sixty days. Respondent has filed a brief in response thereto. Although petitioner's time in which to file a reply brief has not lapsed, the Board elects to decide such motion at this time. See Trademark Rule 2.127(a).

The Board finds initially that, in view of the February 17, 2012 letter from petitioner's attorney to respondent's attorney and respondent's failure to provide alternative dates for petitioner to take a discovery deposition of

respondent's Rule 30(b)(6) witness(es), as promised in its attorney's March 2, 2012 letter to petitioner's attorney, petitioner made a good faith effort to resolve the parties' discovery dispute prior to seeking Board intervention. See Trademark Rule 2.120(e)(1); TBMP Section 523.02 (3d ed. 2011).

Rule 30(b)(6) states in relevant part as follows:

*Notice or Subpoena Directed to an Organization.*  
In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency, or other entity and must describe with reasonable particularity the matters for examination. **The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify.** A subpoena must advise a nonparty organization of its duty to make this designation. The persons designated must testify about information known or reasonably available to the organization.

(emphasis in bold font added)

Respondent's assertion that it need not designate its Rule 30(b)(6) witness(es) in advance of a Rule 30(b)(6) discovery deposition is not well-taken. Because Rule 30(b)(6) allows for an organization that has been served a Rule 30(b)(6) notice of deposition to identify the matters to which each designated witness "will testify," such rule contemplates that persons who will appear on its behalf for the discovery deposition shall be designated in advance of

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that deposition.<sup>1</sup> See Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d Section 2103 (1994). See also *AMP Inc. v. Molex Inc.*, 227 USPQ 172 (N.D. Ill. 1985) (party compelled to designate Rule 30(b)(6) witness).

Moreover, because the place where a Rule 30(b)(6) deposition is taken is determined by the location of the Rule 30(b)(6) witness(es), such witness(es) should be designated in advance. See Trademark Rule 2.120(c)(2). Inasmuch as petitioner's notice of deposition is otherwise adequate, petitioner's motion to compel is granted.

Respondent is allowed until fifteen days from the mailing date set forth in this order to designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf in a Rule 30(b)(6) discovery deposition and until thirty days from the mailing date set forth in this order to produce such person(s) for said deposition.<sup>2</sup> The deposition shall be taken in the Federal judicial district where the witness resides or is regularly employed, or, if the witness neither resides nor is regularly employed in a Federal judicial

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<sup>1</sup> Respondent, however, correctly notes that Rule 30(b)(6) does not set forth a deadline by which such persons must be designated. However, the Board expects parties to cooperate in the discovery process. See TBMP Section 408.01.

<sup>2</sup> If respondent fails to comply with this order, petitioner's remedy is to file a motion for sanctions under Trademark Rule 2.120(g).

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district, where the witness is at the time of the deposition. See Trademark Rule 2.120(c)(2).

Regarding petitioner's motion to extend the discovery period by sixty days, the Board finds that respondent's failure to provide alternative dates for the taking of the Rule 30(b)(6) deposition as its attorney promised in a March 2, 2012 letter constitutes good cause for an extension, albeit one shorter duration than petitioner requests.<sup>3</sup> See Fed. R. Civ. P. 6(b)(1)(A); TBMP Section 509.01(a).

Accordingly, proceedings herein are resumed. Dates are reset as follows.

Expert Disclosures Due	6/6/12
Discovery Closes	7/6/12
Plaintiff's Pretrial Disclosures Due	8/20/12
Plaintiff's 30-day Trial Period Ends	10/4/12
Defendant's Pretrial Disclosures Due	10/19/12
Defendant's 30-day Trial Period Ends	12/3/12
Plaintiff's Rebuttal Disclosures Due	12/18/12
Plaintiff's 15-day Rebuttal Period Ends	1/17/13

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>3</sup> Although respondent contends that the parties should agree to suspend this proceeding for settlement negotiations, the Board notes that suspensions for settlement negotiations are subject to either party's right to request resumption at any time. See TBMP Section 510.03(b).

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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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.