

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

Mailed: September 11, 2014

Cancellation No. 92054171

Valeritas, Inc.

v.

VGO Communications, Inc.

**Robert H. Coggins,  
Interlocutory Attorney:**

Petitioner's motion (filed September 10, 2014) to compel is denied without prejudice for lack of a sufficient good faith effort prior to filing the motion. Trademark Rule 2.120(e)(1). Although Petitioner is not required to wait indefinitely for receipt of the amended responses and additional documents sent by Respondent on September 10, 2014, it was incumbent upon Petitioner to wait at least an appropriate time to receive and review the amended responses and additional documents and to determine if those responses and documents would resolve or narrow the discovery controversy raised in the motion to compel. *See Hot Tamale Mama...and More, LLC v. SF Invs., Inc.*, 110 USPQ2d 1080, 1082 (TTAB 2014).

On page 3 of the motion, Petitioner states (with presumed typographical errors) that “Respondent received further correspondence on September 10, 2014, which Respondent anticipates receiving but has not yet received. See Exhibit 4.” The meaning of this sentence is unclear, but a review of Exhibit 4 (at 52 TTABVue pp170-188 of 342) reveals that Respondent sent to Petitioner a September 10, 2014 correspondence indicating that Respondent was producing amended responses to two sets of interrogatories and was providing approximately 229 pages of documents. In addition, Exhibit 4 reveals that by way of an August 27, 2014 email, counsel for Respondent stated that it has requested of its client information responsive to interrogatory numbers 2, 15, 16, and 17, and document request numbers 3, 17, 20, 22, 29, 32, and 37, and it seeks from Petitioner clarification of request number 46; all of which are at issue (i.e., raised by Petitioner) in the motion to compel.

It is difficult to understand how Petitioner could have completed the requisite good faith effort and arrived at an unresolvable situation when it does not appear that Petitioner had yet reviewed the amended responses and documents referenced in the September 10th letter, let alone appropriately responded to any perceived deficiencies that remained after receiving those responses and documents. Petitioner makes no mention of doing so in the motion; instead, it appears that Petitioner simply rushed to file the motion to compel, hoping to beat the clock prior to the close of discovery.

The record does not reflect an unresolvable situation, such as would have been the case if Respondent was a defiant adversary who simply refused to engage in discovery or to provide Petitioner with any answer to Petitioner's latest (i.e., August 14th) inquiry about perceived deficiencies. *See Hot Tamale Mama...and More, LLC, supra*, 110 USPQ2d at 1082. In view thereof, Petitioner had not made a sufficient good faith effort to resolve the issues with Respondent prior to filing the motion.

Proceedings are not suspended, and dates remain as set.