

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

Baxley

Mailed: February 6, 2013

Cancellation No. 92054956

Jacques Henri Francois
Guillemet and Lena Irene
Hirzel

v.

Frederic Rambaud and Alan
Ceppos

Andrew P. Baxley, Interlocutory Attorney:

On December 6, 2012, the closing date of the discovery period as last reset in the Board's September 10, 2012 order, petitioners' attorneys filed a combined request to withdraw as attorneys herein and motion to extend the discovery period by sixty days. Respondent filed a brief in opposition to the motion to extend.

In a January 22, 2013 order, the Board deferred consideration of the motion to extend, denied without prejudice petitioners' attorneys request to withdraw as counsel, and allowed petitioners' attorneys time in which to file a renewed request to withdraw. On January 30, 2013, petitioner's new attorneys filed a combined entry of appearance and consented motion to suspend this proceeding

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for sixty days for settlement negotiations. The entry of appearance is noted.

The consented motion to suspend for settlement negotiations is granted. Proceedings herein are suspended until April 8, 2013, subject to either party's right to request resumption at any time. See Trademark Rule 2.117(c).

Turning to the motion to extend the discovery period, petitioners, in view of respondents' alleged refusal to respond to some of petitioners' discovery requests and incomplete responses to others, seek a sixty-day extension of the discovery period.

In response, respondents contend that they served discovery responses on October 8, 2012; that petitioners' attorney contacted respondents on December 5, 2012 to request consent to a sixty-day extension of the discovery period; that they have a duty to supplement their discovery responses; that they have not served any discovery requests and do not intend to so serve; and that extending the discovery period would only allow petitioners to propound additional discovery requests. Accordingly, respondents asks that the Board deny the motion to extend.

The 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)(1)(A); TBMP Section

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509.01(a) (3d ed. rev. 2012). A motion to extend should include a recitation of specific facts constituting good cause for the extension sought. See *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). If a party that served a request for discovery receives a response thereto which it believes to be inadequate, but fails to file a motion to challenge the sufficiency of the response, it may not thereafter be heard to complain about the sufficiency thereof. *H.D. Lee Co. v. Maidenform Inc.*, 87 USPQ2d 1715, 1719 (TTAB 2008); TBMP Section 523.04.

Although petitioners contend that respondents' discovery responses are inadequate, respondents claim, and petitioners did not dispute in a reply brief, that respondents served discovery responses with nearly two months remaining in the discovery period. Petitioners have failed to provide any specific information concerning efforts that they undertook to resolve the parties' discovery dispute between receiving respondents' discovery responses and the filing of petitioners' former attorneys' request to withdraw.¹ See generally TBMP Section 414

¹ Respondents are reminded of their duty to supplement their discovery responses. See Fed. R. Civ. P. 26(e). Respondents are further reminded that, if they fail to provide properly

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regarding discoverability of various types of information in Board *inter partes* proceedings. Petitioners' remedy under the circumstances was to file a motion to compel discovery, after having made a good faith effort to resolve the parties' discovery dispute. See Trademark Rule 2.120(e)(1); TBMP Section 523.04.

Because petitioners have provided no other basis for seeking an extension of the discovery period, the Board finds that petitioners have failed to show good cause for the extension sought. In view thereof, the motion to extend is denied.

As noted *supra*, proceedings herein are suspended through April 8, 2013, subject to either party's right to request resumption at any time. If there is no word from the parties on the status of their settlement negotiations by the end of the suspension period, proceedings herein will resume on April 9, 2013 under the following schedule.²

Discovery Closes	4/9/2013
Plaintiff's Pretrial Disclosures Due	5/24/2013
Plaintiff's 30-day Trial Period Ends	7/8/2013
Defendant's Pretrial Disclosures Due	7/23/2013
Defendant's 30-day Trial Period Ends	9/6/2013

discoverable information and documents in discovery, they may, upon timely objection from petitioners, be precluded from relying upon such information and documents as trial evidence. See Fed. R. Civ. P. 37(c)(1).

² Because petitioners filed the combined request to withdraw and motion to extend the discovery period on the last day of the discovery period, proceedings will resume with a one-day discovery period.

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Plaintiff's Rebuttal Disclosures Due	9/21/2013
Plaintiff's 15-day Rebuttal Period Ends	10/21/2013

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.

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