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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055558
Party	Defendant Emmmanouil Kokologiannis and Sons, Societe Anonyme of Trade, Hotels And Tourism S.A. "with the business title "Scala" "Pangosmio"
Correspondence Address	CAMERON REUBER LEASON ELLIS LLP ONE BARKER AVENUE, FIFTH FLOOR WHITE PLAINS, NY 10601 UNITED STATES clarke@leasonellis.com, reuber@leasonellis.com, tmdocket@leasonellis.com
Submission	Motion to Extend
Filer's Name	Deirdre A. Clarke
Filer's e-mail	clarke@leasonellis.com, reuber@leasonellis.com, tmdocket@leasonellis.com
Signature	/deirdreclarke/
Date	02/18/2015
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ECONOMY RENT-A-CAR INC.,

Petitioner,

v.

EMMANOUIL KOKOLOGIANIS AND SONS,
SOCIETE ANONYME OF TRADE,
HOTELS AND TOURISM S.A.,

Respondent.

Cancellation No. 92055558

Registration No. 3256667

RESPONDENT’S MOTION TO EXTEND RELEVANT DEADLINES

Respondent, Emmanouil Kokologiannis and Sons, Societe Anonyme of Trade, Hotels and Tourism S.A., (“Respondent”) makes this Motion, pursuant to C.F.R. § 2.120(a), to request that all remaining deadlines in this Cancellation be extended by thirty (30) days. Respondent has made only one other motion for a 60-day extension regarding pre-trial disclosures; similarly, Petitioner Economy Rent-A-Car Inc. (“Petitioner”) has previously made a request to extend the discovery period by 90 days. The two prior motions by each party were made with the consent of the non-moving party. However, Counsel for Petitioner has indicated that he will oppose any motion for further extensions.

I. INTRODUCTION

As discussed more fully below, Respondent has the required good cause for the extension requested herein. Respondent has terminated prior counsel and secured new counsel (namely, Leason Ellis LLP) to advocate Respondent’s interests for the remainder of this case. Leason Ellis had no prior knowledge of this matter prior to being retained yesterday, February 17th. Discovery has closed, as has Petitioner’s trial period. All that remains is Respondent’s trial period and

Petitioner’s rebuttal period, for which no testimony dates have been scheduled or calendared by the parties. As such, the requested delay will simply allow Leason Ellis time to review and digest the record in this matter prior to proceeding with Respondent’s trial period. The delay is therefore neither extreme, nor unreasonably requested, and will not unduly delay completion of the instant proceedings. Accordingly, Respondent respectfully requests that the Board extend the remaining four deadlines in this Cancellation by thirty (30) days so as to allow Leason Ellis, as new counsel, to become reasonably familiar with the record so as to ably advocate Respondent’s case to the Board. It is further respectfully submitted that the additional time will be diligently used by Leason Ellis only to review the record and prepare Respondent’s case so as to enable a fair adjudication of this matter’s merits.

II. STATEMENT OF PERTINENT FACTS

The existing deadline schedule for this case is as follows:

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	CLOSED
Plaintiff's 30-day Trial Period Ends :	CLOSED
Defendant's Pretrial Disclosures :	02/18/2015
Defendant's 30-day Trial Period Ends :	04/04/2015
Plaintiff's Rebuttal Disclosures :	04/19/2015
Plaintiff's 15-day Rebuttal Period Ends :	05/19/2015

Insofar as post-pleading extensions, Petitioner has previously requested and received a 90-day extension to the discovery period. *Dkt.* 15. Respondent similarly received a 60-day extension regarding its pre-trial disclosures, which have been previously been served. *Dkt.* 45.

Leason Ellis had no prior knowledge of this matter prior to being retained on February 17th. Leason Ellis was retained concurrently with the termination and discharge of prior counsel, Da Vinci Partners, LLC, but has not yet received prior counsel's case files. Per the concurrently filed motion by prior counsel to withdraw as counsel, Da Vinci Partners, LLC is in the process of collecting and transferring all papers and property in its files concerning this proceeding. *See Dkt. 47*. As such, no unreasonable delay in the file transfer between prior counsel and Leason Ellis is known or expected.

Only Respondent's trial period and Petitioner's rebuttal period remain to be litigated. Leason Ellis contacted Petitioner's counsel by telephone on the day it was retained (February 17th) regarding, *inter alia*, the current testimony schedule, an extension of same, and his availability for the scheduling of testimony (as international travel is anticipated regarding same). Specifically, Leason Ellis requested consent to an extension of the remaining case deadlines during which time: (i) prior counsel could transfer its case file to Leason Ellis and Leason Ellis could digest same; and (ii) identify and explore whether options were available whereby international travel could be minimized. Currently, no testimony dates have been scheduled or calendared by the parties and Petitioner's counsel refuses to consent to an extension of any deadline by any amount of time.

III. ARGUMENT

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension. Fed. R. Civ. P. 6(b); TBMP § 509.01(a). Furthermore, the moving party must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay. *Id.*

a. An Extension in This Case Is Necessary

As mentioned above, Respondent has discharged prior counsel, whose casefile is in the process of being transferred to Leason Ellis, who will counsel and assume representation of Respondent for the duration of this matter (*i.e.*, Respondent's trial period and Petitioner's rebuttal). This is Respondent's first substitution of counsel in this matter and its timing does *not* negatively impact Petitioner or Petitioner's case since both discovery and Petitioner's trial period have already been completed. The delay merely provides counsel for both parties an opportunity to become similarly familiar with the record in this case prior to Respondent taking testimony. It is self-evident that Leason Ellis must be familiar with the facts of this case in order to be minimally competent to present the merits of Respondent's case to the Board. Requiring Leason Ellis to both become familiar with the record while *simultaneously* securing trial testimony within the current schedule is not likely to assist the trier of fact in this matter. Instead, it is necessary for Leason Ellis to have a reasonable opportunity to examine the record and meet with the client in advance of any taking of testimony as these basic steps will ensure that the evidence secured during the trial period is sufficient to allow the Board to rule on the merits of the Cancellation petition.

b. Failure to Grant an Extension Will Prejudice Petitioner

In a Cancellation before the Board, Petitioner has the burden of proving by a preponderance of the evidence that Registrant is not entitled to a registration. *Cold War Museum, Inc. v. Cold War Air Museum, Inc.*, 92 USPQ2d 1626 (Fed. Cir. 2009). In the instant proceeding, if no extension is granted, Respondent will be placed in a position where it must proceed into its trial period without a counsel of record that is at least minimally-informed as to the record. It is self-evident that forcing Respondent to secure evidence during the trial period without its trial counsel having first had the

benefit of reviewing and evaluating the existing record (including Respondent's own documents and witnesses) will prejudice Respondent's ability to fully and fairly try the case on its merits.

c. An Extension Will Not Prejudice Petitioner

Post-pleading, Petitioner has previously asked for and received a 90-day extension of case deadlines in this matter so it could complete discovery. During that same time period, Respondent has only recently asked for a 60-day extension to serve amended pre-trial disclosures after already serving Petitioner with pretrial disclosures concurrently with seeking the prior extension.¹ Accordingly, a further 30-day extension can hardly be said to prejudice to Petitioner since both discovery and Petitioner's trial period have already been completed and the additional time will only result in both parties having requested and received equal amounts of time to prepare and litigate their respective cases (*i.e.*, a total of 90 days each).

d. Petitioner Is Not Guilty of Lack of Diligence or Unreasonable Delay

Petitioner, within 24 hours of discharging its prior counsel, retained Leason Ellis as replacement counsel. Leason Ellis, within 24 hours of being retained, had contacted prior counsel, Respondent's counsel, and the Board to facilitate as timely and efficient a transition as possible. Petitioner's prior counsel, within 24 hours of being discharged and receiving the notice of appearance of Leason Ellis, has already filed a motion to withdraw, affirmatively representing that it is in the process of collecting and delivering to Respondent all papers and property in its files concerning this proceeding. Thus, it is respectfully submitted that, as far as counsel-of-record

¹ Though the pretrial disclosures have been served, Leason Ellis seeks to extend the deadline to serve amended disclosures by 30 days, *i.e.*, until after we have been given a reasonable opportunity to review the record and confirm that no other testimony is necessary to prove Respondent's case.

transitions go, there is no reasonable basis upon which to find a lack of diligence or unreasonable delay regarding the instant change of counsel.

e. **The Privilege of Extensions Is Not Being Abused Here**

Although this is the third post-pleading motion for an extension in this Cancellation, the privilege of extensions is not being abused. The two prior motions were both on consent (although Petitioner required Respondent to serve pretrial disclosures prior to granting its consent). As stated above, both parties will have sought and received equal 90-day extensions of time to prepare their respective cases if the instant extension is granted. Accordingly, a short, 30-day extension is appropriate and should allow the parties adequate time to enter Respondent's trial period on more equal footing in terms of familiarity with the record than if Leason Ellis is compelled to learn the case simultaneous with trying it. *See Am. Vitamin Prods. v. Dow Brands Inc.*, 22 USPQ2d 1313. 1314 n. 1 (stating "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"); *see also DBC, LLC v. Renaissance Herbs, Inc.*, Opposition No. 91161992, 2007 TTAB LEXIS 130, at *4 (TTAB Oct. 22, 2007) (same); *Sysco Corp. v. Princess Paper, Inc.*, Cancellation No. 92042937, 2006 TTAB LEXIS 94 (T.T.A.B. Mar. 22, 2006) (non-precedential) (same).

IV. CONCLUSION

Based on the foregoing, Respondent respectfully submits that it has shown good cause for its request that the remaining four deadlines in this Cancellation be extended by thirty (30) days, as identified below:

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	CLOSED
Plaintiff's 30-day Trial Period Ends :	CLOSED
Defendant's Pretrial Disclosures :	03/18/2015
Defendant's 30-day Trial Period Ends :	05/04/2015
Plaintiff's Rebuttal Disclosures :	05/19/2015
Plaintiff's 15-day Rebuttal Period Ends :	06/19/2015

Respondent further submits that its request is just and proper under existing Board precedent as such time is necessary for Leason Ellis to review and digest the factual record on behalf of Respondent so as to permit a fair adjudication by the Board of the parties' respective differences concerning same.

Respectfully submitted,



Date: February 18, 2015
White Plains, New York

Peter S. Sloane
Cameron Reuber

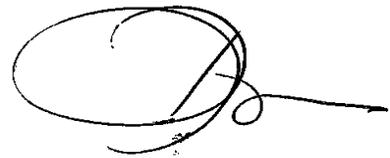
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 288-0022
Fax.: (914) 288-0023
E-mail: sloane@leasonellis.com
E-mail: reuber@leasonellis.com

Attorneys for Respondent

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing **RESPONDENT'S MOTION TO EXTEND RELEVANT DEADLINES** was served by First-Class mail, postage prepaid, upon the attorney for Petitioner, this 18th day of February, 2015, addressed as follows:

Nicole M. Meyer, Esquire
Melissa Alcantara, Esquire
Samuel Littlepage, Esquire
DICKINSON WRIGHT PLLC
1875 Eye St. N.W., Suite 1200
Washington, D.C. 20006-5420

A handwritten signature in black ink, appearing to read 'Deirdre A. Clarke', with a horizontal line extending to the right from the end of the signature.

Deirdre A. Clarke