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

Proceeding	92056168
Party	Plaintiff Legend Pictures LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

LEGEND PICTURES, LLC,	)	
	)	
Petitioner	)	
	)	
v.	)	Cancellation No. 92056168
	)	
QUENTIN DAVIS,	)	
	)	
Defendant	)	

**LEGEND’S MOTION FOR SUSPENSION AND EXTENSION OF  
DISCOVERY ON LEGEND’S BEHALF**

Petitioner, Legend Pictures, LLC, hereby moves the Trademark Trial and Appeal Board to suspend further proceedings in this case pending the Director of Trademark’s decision on Quentin Davis’ Petition. Davis has filed a Petition to Vacate the Board’s September 4, 2013 interlocutory order. A copy of the Petition appears in the file of Registration No. 4106459.<sup>1</sup>

Petitioner, Legend Pictures, LLC, further moves the Trademark Trial and Appeal Board to extend discovery 60 days solely for Legend’s benefit, once the Director denies Mr. Davis’ Petition.

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<sup>1</sup> Pursuant to 37 C.F.R. 2.122(b), the Registration file, including the Petition, are part of the record of this case and may be referred to for any reason. As this rule states : the file of each ... registration against which a petition ... for cancellation is filed forms part of the record of the proceeding without any action by the parties and reference may be made to the file for any relevant and competent purpose.

This motion is timely as it is made before the discovery period's close.

## **BACKGROUND FACTS**

On September 4, 2013 the Board issued an order granting Legend's Motion to Compel and its Motion to Amend. By this Order, the Board compelled Davis to serve the following documents by October 4, 2013:

- 1) Davis' written responses to Legend's Interrogatories Nos. 1-21;
- 2) Davis' written responses and documents, all without objection, to Legend's Requests for Production Nos. 2, 3, 4, 5, 6(a), 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39;
- 3) Davis' written responses and documents to Legend's Requests for Production Nos. 1, 6(b), 8-11 and 30 ; and
- 3) Davis' Answer to the Amended Petition to Cancel.

The Board also re-opened discovery for sixty days, or until October 31, 2013, to allow, inter alia, Legend time for follow up discovery, after Davis served its long overdue discovery responses. The Board's Order expressly held that Legend had timely served early and appropriate discovery. By failing to answer Legend's discovery requests, Davis had denied Legend not only of its right to initial discovery responses, but also follow up discovery. Board's Order, page 6

Davis rejected and refused to comply with the Board's Order. To date, Davis has not answered any of Legend's discovery requests, nor produced any documents, nor has it answered the Amended Petition to Cancel, as required.

Instead, Davis chose to file a Petition with the Director of Trademarks. Davis seeks to have the Board's September 4, 2013 Order vacated. In its Petition, Davis contests the validity and the integrity of the Board's September 4, 2013 decision,

On October 21, 2013, by certificate of mailing, Legend timely filed its response to the Petition to the Director.<sup>2</sup>

## **ARGUMENT**

By this motion, Legend seeks to suspend proceedings pending the decision by the Director of Trademarks. Assuming the Director denies Davis' Petition, Legend also moves to extend discovery solely on Legend's behalf. Legend requests that this extension run sixty days from the date that the Board issues an Order resuming proceedings following the Director's decision.

By failing to comply with the Board's Order, Davis once again delayed the case, evaded answering Legend's initial discovery requests, and deprived Legend of its right to conduct follow-up discovery.

This motion is interposed in the interests of justice and not for mere delay. There is no lack of due diligence on the part of Legend. Legend cannot move forward with this case, nor proceed to trial until Davis is forced to answer Legend's discovery requests and Legend is

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<sup>2</sup> It appears that Legend's Response to the Davis Petition was forwarded by the USPTO mailroom to the Board, as a copy of the same appears at Docket No. 29 of the Board's docket in this case. It is incorrectly captioned on the docket as a copy of Petitioner's May 2013 Motion to Compel

permitted to further test those responses through follow-up discovery. Thus, Legend seeks to extend discovery for 60 days, solely for its benefit, following the date of the Board's decision resuming the case.

## **CONCLUSION AND REMEDIES SOUGHT**

As Davis chose to contest the Board's decision, Legend requires a period of suspension to allow the Director of Trademarks to address Respondent's Petition.

Further, as Davis rejected and refused to comply with the Board's September 4, 2013 order, Legend still has not received a single interrogatory answer, a single production request answer, a single production document, nor an Answer to the Amended Petition to Cancel. Therefore, Legend requires a sixty day extension of the discovery period solely for its benefit following the date of the Board's order resuming this case.

Legend makes this motion without prejudice to its right to file a Motion for Sanctions at the appropriate time should the Director deny the Davis Petition to overrule the Board's September 4, 2013 Order.

Respectfully submitted,

/Carla C. Calcagno/  
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### **Certificate of Service**

The undersigned hereby certifies that on October 31, 2013 a true and accurate copy of the foregoing LEGEND'S MOTION FOR SUSPENSION AND EXTENSION OF DISCOVERY ON LEGEND'S BEHALF was served by agreement of the parties on Defendant by emailing a copy of same to [nevisbaby@hotmail.com](mailto:nevisbaby@hotmail.com) and [tharilest@yahoo.com](mailto:tharilest@yahoo.com).

*/Carla Calcagno/*