

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

RK

Mailed: September 12, 2014

Cancellation No. **92057511**

Ann Mayo

v.

Origami Owl, LLC

Yong Oh (Richard) Kim, Interlocutory Attorney:

On September 9, 2014, the Board held a telephone conference to hear argument and rule on petitioner's motion (filed August 20, 2014) to extend the close of discovery. Respondent has contested the motion. Luke Brean, Esq., of BreanLaw LLC appeared as counsel for petitioner and Ray K. Harris, Esq., of Fennemore Craig appeared as counsel for respondent.

As last reset, discovery was due to close on August 20, 2014. As petitioner filed her motion while discovery remained open, petitioner need only show good cause for the requested extension. *See* Fed. R. Civ. P. 6(b); TBMP § 509.01. To show good cause, the moving party must set forth with particularity the facts said to constitute good cause and must demonstrate that the requested extension is not necessitated by the moving party's own lack of diligence or unreasonable delay. TBMP § 509.01(a).

Here, petitioner seeks an extension of the discovery period due to technical difficulties encountered in retrieving documents in support of her claim of first use. Specifically, petitioner asserts that much of the documentary evidence resides on an older version of the Outlook® email program which petitioner is unable to access through her new computer system. Petitioner represents that she has currently referred the matter to computer professionals to assist her in retrieving the older files and that additional time is needed to review and gather the materials in support of her claim of first use and which are responsive to respondent's discovery requests.

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 extension is not abused." *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). Respondent has not presented any evidence of negligence or bad faith on the part of petitioner and petitioner has sought no more extensions than that already allowed respondent to file its answer. Additionally, the Board sees no prejudice to respondent in allowing petitioner to locate the very documents respondent contends in its opposition to the motion that petitioner has failed to produce in response to respondent's discovery requests. Bearing in mind

the Board's policy to resolve cases on their merits to the extent possible, petitioner's motion to extend is hereby **GRANTED**.¹

Dates are **RESET** as follows:

Discovery Closes	10/6/2014
Plaintiff's Pretrial Disclosures Due	11/20/2014
Plaintiff's 30-day Trial Period Ends	1/4/2015
Defendant's Pretrial Disclosures Due	1/19/2015
Defendant's 30-day Trial Period Ends	3/5/2015
Plaintiff's Rebuttal Disclosures Due	3/20/2015
Plaintiff's 15-day Rebuttal Period Ends	4/19/2015

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.

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¹ As noted during the conference, should respondent seek additional time to review and follow-up on any discovery material produced by petitioner, respondent should do so by way of motion. The parties are reminded of their mutual duties of cooperation and good faith dealing during discovery.