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PRECEDENT OF THE
TTAB

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

CME

Mailed: September 25, 2015

Cancellation No. 92058543

Edge Games Inc.

v.

Razer (Asia-Pacific) Pte Ltd.

Before Quinn, Taylor, and Shaw,
Administrative Trademark Judges.

By the Board:

This case now comes up on: (1) Respondent's motion for summary judgment, filed March 31, 2015; (2) *pro se* Petitioner's partial response and cross-motion, filed April 18, 2015, to reopen its time to respond to Respondent's requests for admission under Fed. R. Civ. P. 6(b)(2) or, in the alternative, to withdraw such admissions under Fed. R. Civ. P. 36(b) and submit amended responses; and (3) Petitioner's cross-motion, also filed April 18, 2015, for discovery pursuant to Fed. R. Civ. P. 56(d).¹ Petitioner opposes Respondent's motion for summary judgment. Petitioner's cross-motions are fully briefed.²

¹ Petitioner's cross-motion for Fed. R. Civ. P. 56(d) discovery is not paginated as required by Trademark Rule 2.126(a)(5). Petitioner is reminded that it is required to comply with all applicable rules and procedures, including those related to the form of submissions filed with the Board. Future compliance with the rules governing Board proceedings is expected.

² Petitioner filed a 20-page reply brief that addresses both Petitioner's cross-motion to withdraw its admissions or, in the alternative to reopen, and Petitioner's cross-motion for Fed. R. Civ. P. 56(d) discovery. Because Petitioner could have filed two separate reply

The Pleadings

A decision on summary judgment necessarily requires a review of the operative pleadings. Accordingly, before turning to the merits of the parties' cross-motions, the Board examines the claims in the petition for cancellation and the defenses asserted in Respondent's answer thereto.³

Petitioner seeks to cancel Respondent's Registration No. 4394393 for the mark EDGE, in standard characters, for "computer tablet; computer keyboards and keypads adapted for use with computer tablet; batteries and power supplies for the aforementioned goods" in International Class 9, and "computer and video game controllers adapted for use with computer tablet" in International Class 28.⁴ In its petition for cancellation, Petitioner identifies four "claims for relief," namely: (1) priority of rights; (2) likelihood of confusion; (3) dilution; and (4) bad faith.⁵ As

briefs, each 10-pages in length, we find that Petitioner's combined reply brief falls within the page limit. *See Cooper Techs. Co. v. Denier Elec. Corp.*, 89 USPQ2d 1478, 1479 n.2 (TTAB 2008).

The parties' filings of June 1, 2015 and June 3, 2015 are in the nature of surreplies, and therefore, will be given no consideration. *See Trademark Rule 2.127(a)* (prohibiting surreplies); *see also No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000).

³ Moreover, Respondent has specifically "request[ed] the Board to clarify that ... the only viable claims in the Petition to Cancel are based on (a) a likelihood of confusion and (b) dilution." Respondent's Response to Petitioner's Combined Response and Cross-Motion, pp. 2 and 13-14.

⁴ Filed April 17, 2012 and issued September 3, 2013, pursuant to Section 66(a) of the Trademark Act, 15 U.S.C. § 1141f(a), based on International Registration No. 1129284, registered on April 17, 2012 with a priority date of October 18, 2011 based on Singapore application Serial No. T1114581F.

⁵ Petitioner further alleges that it filed a letter of protest against Respondent's underlying application that "still has not [been] processed." Petition, ¶ 2. The Board has confirmed with the Office of the Deputy Commissioner for Trademark Examination and Policy that Petitioner's letter of protest has been denied.

Respondent points out in its motion for summary judgment, priority is not a separate claim, but rather it is an element of a likelihood of confusion claim pursuant to Section 2(d) of the Trademark Act. *See* 15 U.S.C. § 1052(d); *see also United Global Media Group, Inc. v. Bonnie Tseng*, 112 USPQ2d 1039, 1047 (TTAB 2014). Similarly, bad faith is not a ground for cancellation, but is a factor that may be considered in a likelihood of confusion analysis.⁶ *See, e.g. J & J Snack Foods*

⁶ Petitioner attempts to spin its allegations of bad faith as a claim of fraud and asks that “if the Board does not feel that Petitioner was clear in its ground of fraud” that it be allowed to file a motion for leave to amend to add a claim of fraud. Petitioner’s Reply, p. 18; *see also* Board’s Order of January 30, 2015 (requiring Petitioner to obtain Board approval prior to filing any unconsented motions). The petition for cancellation, however, does not once reference “fraud” with respect to Respondent, and as such, there is no basis for construing Petitioner’s allegations of bad faith as an attempt to allege a claim of fraud, which must be pleaded with a heightened degree of particularity. Fed. R. Civ. P. 9(b); *see also Asian and Western Classics B.V. v. Selkow*, 92 USPQ2d 1478, 1478-79 (TTAB 2009). Moreover, Petitioner indicates that its proposed claim of fraud would be based on [Respondent] allegedly “applying to register the mark EDGE in their name when they knew well when they applied for the registration that the mark EDGE is in fact legally owned by Petitioner.” Petitioner’s Reply, p. 18. Petitioner has not explained why it did not plead a claim of fraud on this basis at the time it filed its petition for cancellation. Nor has Petitioner pointed to any newly discovered evidence to support such a claim. *See Trek Bicycle Corp. v. StyleTrek Ltd.*, 64 USPQ2d 1540, 1541 (TTAB 2001) (denying motion for leave to amend to add a dilution claim where the motion was filed eight months after notice of opposition filed and opposer failed to offer any “explanation as to why it did not raise the dilution claim earlier.”)

With respect to a proposed claim of abandonment, the involved registration issued on September 3, 2013 pursuant to Section 66(a) of the Lanham Act. “[I]n order to sufficiently plead a claim for cancellation of a Section 66(a) registration on grounds of abandonment for nonuse, the plaintiff must allege, as of the date the claim is filed, either: (a) three or more consecutive years of nonuse commencing no earlier than the date on which the registration was issued; or (b) if the period of nonuse commencing no earlier than the date of registration and extending to the filing date of the claim is less than three years, facts supporting nonuse after the date of registration, coupled with an intent not to resume use.” *Dragon Bleu (SARL) v. Venm, LLC*, 112 USPQ2d 1925, 1931 (TTAB 2014). Here, there can be no claim of abandonment based on nonuse for three years because the involved registration issued less than three years ago. Moreover, with respect to a possible claim of abandonment based on nonuse for less than three years coupled with an intent not to resume use, Petitioner merely has opined that “[p]roof of ... [Respondent’s abandonment] will be obtained through ... further discovery.” Petitioner’s Reply, p. 19. As such,

Corp. v. McDonald's Corp., 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991) (“Whether there is evidence of intent to trade on the goodwill of another is a factor to be considered” in assessing likelihood of confusion); *Edom Labs. Inc. v. Lichter*, 102 USPQ2d 1546, 1553 (TTAB 2012) (“Under the thirteenth *du Pont* factor, evidence of applicant’s bad faith adoption of his mark is relevant to our likelihood of confusion analysis.”).

With the foregoing clarifications, we consider the sufficiency of Petitioner’s allegations of standing and claims for likelihood of confusion and dilution. Petitioner has alleged priority based on ownership of prior-filed application Serial No. 85147499 for the mark EDGE GAMES, in standard characters, for “computer game programs; computer game software; computer game software downloadable from a global computer network; computer game software for use on mobile and cellular phones,”⁷ and prior common law rights in the marks EDGE and THE EDGE for “computer and video game hardware,” the mark GAMER’S EDGE for “game software” and “game hardware,” and the marks EDGE NET, CUTTING EDGE, EDGE GAMES and EDGE GAMERS for “computer and video games [sic] software and hardware.”⁸ Petition, ¶¶ 3-4 and 6-7. Petitioner further alleges that

Petitioner’s request for permission for leave to amend its complaint to add a claim of abandonment is premature, at best.

In view of the foregoing, Petitioner’s request for permission to file a motion for leave to amend its pleading to add claims of fraud and abandonment is **DENIED**.

⁷ Filed October 7, 2010 based on a claim of first use of December 31, 2003.

⁸ Petitioner also pleads ownership of five cancelled registrations alleging that such registrations are “proof of the long standing prior rights of Petitioner that substantially predate any that might be claimed by Registrant.” Petition, ¶ 26. We note, however, that evidence of an expired or cancelled registration “is not evidence of anything except that the

use of Respondent's mark is likely to cause confusion with its pleaded marks. Such allegations are sufficient to plead both Petitioner's standing and a plausible claim for priority and likelihood of confusion. *See Barbara's Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1285 (TTAB 2007).

To adequately plead a claim of dilution pursuant to Section 43(c) of the Trademark Act, a petitioner must allege that: (1) it owns a famous mark that is distinctive; (2) that its pleaded mark became famous prior to the respondent's date of priority; and (3) the respondent's use of its mark is likely to cause dilution by blurring or tarnishment. *See Coach Srvs. Inc. v. Triumph Learning LLC*, 101 USPQ2d 1713, 1723-24 (Fed. Cir. 2012); *Chanel, Inc. v. Makarczyk*, 110 USPQ2d 2013, 2018 and n.6 (TTAB 2014). Petitioner has failed to sufficiently plead a dilution claim because it has not alleged that its mark became famous prior to the date of priority on which Respondent may rely. Accordingly, Paragraph 31 and all other references to Section 43(c) of the Trademark Act are **STRICKEN** from the petition for cancellation.⁹

registration issued; it is not evidence of any presently existing rights in the mark shown in the registration, or that the mark was ever used." TBMP § 704.03(b)(1)(A) (2015) and cases cited in footnote 24 therein.

⁹ In its petition for cancellation, Petitioner also: (1) alleges that it has "been vigilant over the past two decades or more in preventing dilution of the brand EDGE both in U.S. commerce and on the USPTO Register, [u]ntil [Respondent] was wrongly granted the instant registration for the mark EDGE," Petition, ¶ 18; *see also id.* at ¶ 19; and (2) sets forth allegations regarding its efforts to police its pleaded marks. *Id.* at ¶¶ 19, 28-30 and 37-38. Such allegations concern the number and nature of similar marks in use on similar goods, which is a factor that may be considered in a likelihood of confusion analysis. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973). For this reason, we allow such allegations of "dilution" to stand and strike only references to Section 43(c) of the Trademark Act, including Paragraph 31 of the petition for cancellation, which specifically attempts to plead relief pursuant to Section 43(c).

Turning to Respondent's answer, Respondent denies the salient allegations in the petition for cancellation and asserts five affirmative defenses. The Board may strike from a pleading any insufficient defense, or any redundant, immaterial, impertinent or scandalous matter. *See* Fed. R. Civ. P. 12(f); *Am. Vitamin Prods. Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992); TBMP § 506.01. A defense will not be stricken as insufficient if the insufficiency is not clearly apparent, or if it raises factual issues that should be determined on the merits. *See* TBMP § 506.01. With this background, we consider the sufficiency of each of Respondent's affirmative defenses in turn below.

Affirmative Defenses 1: "Petitioner has abandoned any rights it may have had in EDGE-related marks."

The foregoing allegation is not a true affirmative defense, but it amplifies Respondent's denials, and therefore, it is allowed to stand.

Affirmative Defense 2: "Petitioner is estopped from proceeding with the cancellation action."

Affirmative Defense 3: "Petitioner's unclean hands prevent it from proceeding with the cancellation action."

Affirmative defenses, like claims in a notice of opposition or petition for cancellation, must be supported by enough factual background and detail to fairly place the claimant on notice of the basis for the defenses. *See IdeasOne Inc. v. Nationwide Better Health Inc.*, 89 USPQ2d 1952, 1953 (TTAB 2009); *Ohio State Univ. v. Ohio Univ.*, 51 USPQ2d 1289, 1292 (TTAB 1999) (noting that the primary purpose of pleadings "is to give fair notice of the claims or defenses asserted"); *see also* TBMP § 311.02(b). Respondent's Affirmative Defenses 2 and 3 are bald,

conclusory allegations that are not supported by any facts. We find it appropriate, however, to allow Respondent an opportunity to replead. Accordingly, Respondent is allowed until **TWENTY DAYS** from the mailing date of this order to file an amended answer that adequately pleads the factual bases for its affirmative defenses of estoppel and unclean hands, failing which Affirmative Defenses 2 and 3 will be stricken and given no further consideration. *See* Fed. R. Civ. P. 12(f); *see also* TBMP § 506.01.

Affirmative Defense 4: “Petitioner’s First Claim for Relief fails to state a claim upon which relief can be granted.”

Affirmative Defense 5: “Petitioner’s Fourth Claim for Relief fails to state a claim upon which relief can be granted.”

An assertion that a pleading fails to state a claim upon which relief can be granted is not a true affirmative defense because it relates to an assertion of the insufficiency of the pleading rather than a statement of a defense to a properly pleaded claim. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.*, 60 USPQ2d 1733, 1738 n.7 (TTAB 2001). Nonetheless, we have reviewed the sufficiency of Petitioner’s pleading and explained above that Petitioner’s first and fourth claims are not separate causes of action, but are subsumed within Petitioner’s likelihood of confusion claim. In view hereof, Affirmative Defenses 4 and 5 are **STRICKEN**.

Petitioner’s Cross-Motion to Withdraw Admissions or, in the Alternative, to Reopen

In its motion for summary judgment, Respondent relies entirely on Petitioner’s effective admissions to argue that there are no genuine disputes of material fact

regarding Petitioner's claims and that Respondent is entitled to judgment. Accordingly, before addressing Respondent's motion for summary judgment, we consider Petitioner's cross-motion to withdraw its admissions pursuant to Fed. R. Civ. P. 36(b) and submit amended responses or, in the alternative, to reopen its time to respond.

Petitioner's responses to Respondent's requests for admission were due on March 12, 2015. *See* Motion for Summary Judgment, Declaration of Keith Barritt, ¶ 2 and Exhibit 1-A thereto; *see also* Trademark Rules 2.119(c) and 2.120(a)(3). Petitioner, however, did not serve responses to Respondent's requests for admission until March 31, 2015. Petitioner's Combined Response and Cross-Motion, Declaration of Dr. Tim Langdell, ¶ 3 and Exhibit B thereto. Accordingly, Petitioner is deemed to have admitted Respondent's requests for admission. *See* Fed. R. Civ. P. 36(a)(3) ("A matter is deemed admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.")

Fed R. Civ. P. 36(b) provides that the Board may permit withdrawal or amendment of admissions if: (1) the merits of the case will be subserved by relieving the party of the admissions; and (2) the party who obtained the admissions will not be prejudiced by withdrawal of the admissions. *See Giersch v. Scripps Network, Inc.*, 85 USPQ2d 1306, 1308 (TTAB 2007). With respect to the first prong of the test, we find that the merits of the action will be subserved by allowing withdrawal of the admissions. Petitioner has served late responses to Respondent's requests for

admission denying many of the previously admitted facts, and as such, many of the supposedly admitted matters are actually in dispute. If Petitioner is not permitted to withdrawal its effective admissions, it will be held to have admitted critical facts potentially dispositive of its claims notwithstanding that it has denied many such facts in its actual responses.

As for the second prong, the Board does not find that Respondent will be prejudiced by allowing withdrawal of the admissions, even though Respondent relied on the admissions in filing its motion for summary judgment. *See Giersch*, 85 USPQ2d at 1309. Moreover, discovery remains open, and therefore, Respondent will have an opportunity to conduct discovery regarding the subject matter of the requests for admission that Petitioner has denied. *See Hobie Designs v. Fred Hayman Beverly Hills Inc.*, 14 USPQ2d 2064, 2065 (TTAB 1990) (finding that any prejudice to opposer in granting applicant's motion to withdraw its effective admission could "easily be overcome by extending the discovery period.").

Notwithstanding the foregoing, Respondent argues that the Board "should exercise its discretion and not allow withdrawal of the default admissions" in view of "Petitioner's continued pattern of making false statements to the Board to paint [Respondent] in an unjustified light, combined with its long history of fabricating evidence, third-party testimony, and legal quotes in various judicial proceedings including before the Board as documented in detail in [Respondent's] request for sanctions filed on September 18, 2014 and [Respondent's] reply brief in support of its request for sanctions filed on October 20, 2014." Respondent's Response to

Petitioner's Combined Response and Cross-Motion, p. 6. The Board already sanctioned Petitioner for the conduct complained of in Respondent's motion for sanctions. *See* Board's Order of January 30, 2015. A further sanction in the form of denying Petitioner's motion to withdraw is not warranted at this time¹⁰ as Petitioner's failure to timely respond to Respondent's requests for admissions was not egregious and because such a ruling would produce the harsh result of Petitioner being held to have admitted facts potentially dispositive of its claims.

In view of the foregoing, Petitioner's motion to withdraw is **GRANTED**. We need not consider Petitioner's motion to reopen.¹¹

Respondent's Motion for Summary Judgment

Because Respondent has based its assertion that there are no genuine disputes of material fact on Petitioner's effective admissions, which we have allowed Petitioner to withdraw, Respondent's motion for summary judgment is **DENIED**. Accordingly, Petitioner's motion for discovery pursuant to Fed. R. Civ. P. 56(d) is moot and will be given no further consideration.

¹⁰ But see footnote 15 *infra*.

¹¹ Petitioner's responses to many of Respondent's request for admission are made subject to objections. Respondent argues that in the absence of excusable neglect, Petitioner has waived its right to object to Respondent's requests for admission; however, the cases Respondent cites in support of its argument concern the waiver of objections to interrogatories and document requests and not to requests for admission. *See* Respondent's Response to Petitioner's Combined Response and Cross-Motion, p. 12. Moreover, the recourse for a party dissatisfied with its adversary's responses and objections to requests for admission is to file a motion to test the sufficiency of the responses. *See* Fed. R. Civ. P. 36(a)(6); *see also* TBMP § 403.03. For these reasons, we decline to find that Petitioner has waived its right to object to Respondent's requests for admission.

Respondent's Alternate Requests for Relief¹²

Because we have denied Respondent's motion for summary judgment, we consider Respondent's alternate requests for relief, namely that the Board: (1) find that Petitioner has waived its right to object to Respondent's first set of interrogatories and document requests,¹³ see Motion for Summary, p. 7 and Respondent's Response to Petitioner's Combined Response and Cross-Motion, p. 12; (2) "issue any other sanctions that the Board deems appropriate ... due to the length of time that has passed since [Respondent's] discovery requests were first served on February 5, 2015," Motion for Summary Judgment, p. 7; and (3) extend the discovery period by 90 days for Respondent only to allow it time to conduct follow-up discovery. *See id.* at pp. 7-8.

1. Waiver of Objections

Respondent seeks a determination that Petitioner has waived its right to object to Respondent's first set of interrogatories and document requests on the ground that Petitioner's responses to these discovery requests were untimely. *See id.* at p. 7. Petitioner categorically denies that its responses were untimely and asserts that Respondent has not submitted any evidence to support its contention. *See* Petitioner's Reply, pp. 14-15.

¹² Petitioner embedded in its combined response and cross-motion an unconsented "request to extend discovery deadlines" for an unspecified amount of time. Petitioner's Combined Response and Cross-Motion, p. 17. We have given no consideration to this "motion" as Petitioner failed to obtain Board authorization to seek an unconsented extension of time as required by the Board's order of January 30, 2015.

¹³ We have addressed in footnote 11 *supra* Respondent's requests that Petitioner be deemed to have waived its right to assert objections to Respondent's first set of requests for admission.

The record is clear that Respondent served its first set of interrogatories and document requests on February 5, 2015 via certified mail,¹⁴ and therefore, responses were due on or before March 12, 2015. *See* Motion for Summary Judgment, Declaration of Keith Barritt, ¶¶ 3-7 and Exhibits 1B-1F thereto; *see also* Rules 2.119(c) and 2.120(a)(3). Petitioner's own evidence further establishes that Petitioner did not serve responses to Respondent's interrogatories and document requests until March 31, 2015. *See* Petitioner's Combined Response and Cross-Motion, Declaration of Dr. Tim Langdell, ¶¶ 4-5 and Exhibits C and D thereto. Accordingly, there is no doubt that Petitioner's responses to Respondent's first set of interrogatories and document requests were untimely.¹⁵

A party that fails to timely serve responses to interrogatories and document requests may be found to have waived its right to assert merit-based objections¹⁶ unless the party can show that its untimeliness was the result of excusable neglect.

¹⁴ The parties have stipulated to service via certified mail. *See* Board's Order of January 30, 2015, p. 1.

¹⁵ The Board will not tolerate bald-faced untruths. To be blunt, Petitioner's filings in this case are sorely trying the Board's patience. If the Board finds any further instance of Petitioner misrepresenting the facts in this case, the Board will consider entering sanctions against Petitioner in addition to those imposed by the Board in its order of January 30, 2015, including the possible entry of judgment against Petitioner. *See Carrini Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067 (TTAB 2000). Moreover, Petitioner is advised that any factual assertions that it makes in this proceeding must be supported by declarations, affidavits or other documentary evidence. Any unsupported assertions will be given no consideration.

¹⁶ "Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information." *No Fear*, 54 USPQ2d at 1554.

No Fear Inc. v. Rule, 54 USPQ2d 1551, 1554 (TTAB 2000). Petitioner has not argued much less established excusable neglect for its failure to timely serve responses to Respondent's interrogatories and document requests.¹⁷ Accordingly, we find that Petitioner has waived its right to assert merit-based objections. *See No Fear*, 54 USPQ2d at 1554.

Within **TWENTY DAYS** of the mailing date of this order, Petitioner is ordered to serve on Respondent amended responses to Respondent's first set of interrogatories and document requests *without objections on the merits*, failing which Petitioner may be subject to sanctions, including entry of judgment against it.

2. Sanctions

Respondent requests that the Board enter unspecified sanctions "due to the length of time that has passed since [Respondent's] discovery requests were first served on February 5, 2015." Motion for Summary Judgment, p. 7. A motion for discovery sanction is procedurally improper here because no discovery order has been violated or even issued. *See, e.g., Nobelle.com LLC v. Qwest Commc'ns Int'l Inc.*, 66 USPQ2d 1300, 1303 (TTAB 2003). Moreover, to the extent Respondent seeks sanctions pursuant to the Board's inherent authority to sanction, Petitioner's nineteen-day delay in responding to Respondent's discovery requests does not merit sanctions. For these reasons, Respondent's request for sanctions is **DENIED**.

¹⁷ Petitioner's argument that in "equity and fairness" Respondent also should be deemed to have waived its right to object because Respondent allegedly failed to timely respond to discovery is without merit. Petitioner's Combined Response and Cross-Motion, p. 15; *see also Miss Am. Pageant v. Petite Prods. Inc.*, 17 USPQ2d 1067, 1070 (TTAB 1990) ("[T]he Board has taken the position that a party is not relieved of its discovery obligations in spite of the fact that its adverse party has wrongfully failed to fulfill its own obligations"); TBMP § 403.03.

3. Extension of Time

Respondent seeks a unilateral 90-day extension of the discovery deadline to allow it an opportunity to conduct follow-up discovery. *See* Motion for Summary Judgment, pp. 7-8. The Board finds that Petitioner's failure to timely serve discovery responses constitutes good cause to grant Respondent an extension of the discovery period. *See Miss Am. Pageant v. Petite Prods., Inc.*, 17 USPQ2d 1067, 1070 (TTAB 1990) (Board will, upon motion, reopen or extend discovery solely for benefit of party who was unfairly deprived of follow-up discovery by opponent who wrongfully refused to answer or delayed responses to discovery). A 90-day extension, however, is not merited as Petitioner's delay in serving discovery responses was only nineteen days. Accordingly, Respondent's motion to extend is **GRANTED** to the extent that the discovery period is extended an additional 45 days *for Respondent only*. *See* TBMP § 403.04.

Procedural Issues

In its reply brief, Petitioner attaches copies of its second set of document requests and second set of interrogatories, which it served on May 26, 2015. *See* Petitioner's Reply, Exhibit C. Proceedings, however, have been suspended since April 1, 2015 pending determination of Respondent's motion for summary judgment. Therefore, it was procedurally improper for Petitioner to serve discovery requests on May 26, 2015 and Respondent need not serve responses.

Petitioner also requests that the Board "certify the subpoena" of third-party witness, Randall Copeland, "as it believes that [certification is] require[d] ... before

[the notice of deposition] can be filed with the District Court local to Mr. Copeland, and then issued by the court.” Petitioner’s Reply, p. 19. The Board will certify a copy of a notice of deposition where it is required, *e.g.* such as for purposes of a motion to quash the subpoena, or a motion to enforce the subpoena. *See* TBMP §§ 122, 703.01(e) and 703.01(f)(2). Because there is no indication that certification of Petitioner’s notice of deposition of Mr. Copeland is required, the Board declines to certify the notice of deposition at this time. If it becomes required for Petitioner to certify the notice of deposition, Petitioner may renew its request to certify at that time.

Dates Reset

Proceedings remain suspended until October 16, 2015 so that Petitioner may serve amended discovery responses as set forth in this order. Proceeding then shall resume on the following schedule:

Discovery Closes for Petitioner	11/15/2015
Discovery Closes for Respondent	12/30/2015
Plaintiff’s Pretrial Disclosures Due	2/13/2016
Plaintiff’s 30-day Trial Period Ends	3/29/2016
Defendant’s Pretrial Disclosures Due	4/13/2016
Defendant’s 30-day Trial Period Ends	5/28/2016
Plaintiff’s Rebuttal Disclosures Due	6/12/2016
Plaintiff’s 15-day Rebuttal Period Ends	7/12/2016

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.

Cancellation No. 92058543

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.
