

ESTTA Tracking number: **ESTTA752910**

Filing date: **06/16/2016**

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

Proceeding	92060164
Party	Plaintiff Servall Company
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Submission	Motion to Extend
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Date	06/16/2016
Attachments	R1411770.PDF(114829 bytes)

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

SERVALL COMPANY,)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92060164
)	Registration No. 3,707,736
)	Mark: SERVALL SERVICES,INC.COM
LORENZO SIMMONS,)	
)	
Registrant.)	
_____)	

UNCONSENTED MOTION AND BRIEF IN SUPPORT OF MOTION
TO EXTEND DISCOVERY AND TESTIMONY PERIODS

Petitioner, Servall Company, by and through their below listed attorneys, pursuant to 37 TBMP §§ 509.01, 509.01(a), and 509.02, C.F.R. § 2.120(a) and Fed. R. Civ. P. 6(b)(1), respectfully request that the Trademark Trial and Appeal Board (“Board”) extend the discovery and testimony periods in the above-identified opposition proceeding for a period of sixty (60) days. This period will permit the parties to finalize the partially executed settlement agreement.

BRIEF IN SUPPORT OF MOTION TO EXTEND
DISCOVERY AND TESTIMONY PERIODS

I. Statement of Facts

Pursuant to the latest Order granted by the Board on May 17, 2016, the discovery period in this proceeding is scheduled to close on June 16, 2016.

Petitioner submits that, during this entire proceeding, the parties have been negotiating in good faith. In fact, the parties agreed to terms of settlement and Petitioner executed a settlement agreement incorporating such terms and sent it to Registrant’s counsel, Matthew H. Swyers of the Trademark Company, for countersignature on March 7, 2016. On April 8, 2016, counsel for

Registrant, advised that the delay in countersignature was due to his client having to comply with one of the terms of the settlement agreement before executing the document. Since then, the parties have jointly consented to extend the close of discovery two times with the current deadline expiring on June 16, 2016. In view of the parties' negotiations and the anticipated settlement, discovery has not commenced.

Counsel for Petitioner attempted to contact Registrant's counsel by telephone and electronic mail several times seeking Registrant's consent to extend the current discovery and testimony periods with emails being sent on June 1, 2016, June 13, 2016, June 15, 2016 and June 16, 2016. Specifically, on June 16, 2016, Petitioner's counsel contacted Registrant's counsel via telephone and facsimile, again seeking Registrant's consent to extend the discovery and testimony periods. Registrant's counsel has not responded to Petitioner's requests, however, and therefore consent to extension of the discovery and testimony periods has not been provided.

II. Argument

The standard for allowing an extension of a prescribed period prior to expiration of that period is good cause pursuant to 37 TBMP § 509.01 and Fed. R. Civ. P. 6(b)(1), made applicable to Board proceedings by 37 C.F.R. § 2.116(a). The discovery period may be extended upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board pursuant to C.F.R. §2.120(a).

Despite Petitioner's efforts, Registrant has failed to respond to Petitioner's request for consent to extend the discovery and testimony periods. Petitioners are hopeful that this matter will be resolved and that the settlement agreement will be executed by Registrant. However, in the absence of such an agreement, it would be highly prejudicial for Petitioner to be precluded from taking discovery and testimony. Therefore, Petitioner submits that it has demonstrated good cause for the extension.

Further, the Board has been 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. Petitioner has worked diligently to keep this case moving forward as evidenced by the parties' settlement negotiations culminating in a partially signed settlement agreement. Unfortunately, due to delays on the part of Registrant, the matter has not been concluded. As the discovery period closes today, June 16, 2016, Petitioner submits this Motion is timely.

III. Conclusion

In accordance with the foregoing showing of good cause, Petitioner requests a sixty (60) day extension of the Discovery and Testimony Periods and that the new periods be reset accordingly.

Respectfully submitted,



Date: June 16, 2016

By: _____

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing *Unconsented Motion and Brief in Support of Motion to Extend Discovery and Testimony Periods* on Registrant by causing a true and correct copy thereof to be sent on June 16, 2016, by first class mail, postage prepaid to:

Matthew H. Swyers, Esq.
The Trademark Company
344 Maple Avenue West, Ste. 151
Vienna, VA 22180



Date: June 16, 2016

Linda Monge Callaghan