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

Proceeding	92060353
Party	Defendant Aucera SA
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Submission	Motion to Extend
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Date	08/20/2015
Attachments	Bentley Motors v. Aucera - 92060353 - Motion to Re-Set Dates - Final.pdf(41316 bytes)

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

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)	
BENTLEY MOTORS LIMITED)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92060353
)	
)	
AUCERA SA)	
)	
Registrant/Respondent.)	
)	
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MOTION TO RESET SCHEDULE AND EXTEND TIME TO RESPOND TO DISCOVERY

Registrant/Respondent Aucera SA (“Respondent”) respectfully moves to request a resetting of the trial dates in the subject case, due to the improper serving of initial disclosures by Petitioner Bentley Motors Limited (“Petitioner”) after the period to do so had closed. It is undersigned counsel’s understanding, through a brief telephone conversation with Interlocutory Attorney Baxley on August 18, 2015, that it is the practice of the TTAB to honor late filings of initial disclosures. Undersigned counsel is grateful for the Interlocutory Attorney’s time on the phone. However, to the extent that TTAB rules allow for parties to file initial disclosures without first resetting trial dates, Respondent requests reconsideration of this policy.

In this particular case, initial disclosures were originally due on February 20, 2015. On February 19, 2015, the parties filed a 30-day “Motion for an Extension of Answer or Discovery or Trial Periods With Consent.” Thus, the new deadline to file initial disclosures should have been March 22, 2015. Instead the period to file initial disclosures was designated as “CLOSED.” The parties then filed a 60-day “Motion for an Extension of Answer or Discovery or Trial Periods With Consent” on March 27, 2015. Applying this extension retroactively to the deadline to file initial disclosures, the new deadline to file initial disclosures should have been May 21, 2015. However, again, the period was designated as “CLOSED.” Petitioner then filed its initial disclosures and discovery requests on August 12, 2015, nearly three months after initial disclosures were due, and in spite the fact that the trial schedule indicated that the period to file initial disclosures had closed. Whereas parties usually have about 180 days (5 months) between the time that initial disclosures are served and the time that discovery closes, in the present case, the gap between service of initial disclosures and the close of discovery was 66 days.

Although there may be a number of reasons why both parties would ignore a TTAB-mandated deadline, one conventional reason would likely be that settlement negotiations are occurring. Thus, the sudden serving of initial disclosures by one party with both parties willingly ignoring a deadline on the trial schedule could potentially feel like an ambush to the non-serving party. It seems contrary to the intent of the TTAB, which appears to wish to manage a well-thought-out process by setting dates with precision to maximize fairness, to allow one party to unilaterally serve initial disclosures after the period to do so has “closed” without first resetting the trial schedule. Both parties in this case were complicit in the ignoring of the deadline to serve initial disclosures, due to settlement negotiations, and it makes sense that both parties should work together to reset the trial schedule before embarking on contentious discovery. Requiring the parties to reset the schedule would minimize prejudice to the non-serving party, as it would at least be on notice that the dynamic of the proceeding was changing. Respondent is merely requesting that it be allowed to take part in the process by working with Petitioner to reset the schedule in advance of having initial disclosures served upon it in an unexpected strategic move by Petitioner.

In light of the above, Respondent proposes the following resetting of the trial schedule for this case, calculating initial disclosures from Wednesday, August 26, 2015, one week from this filing, and moving forward all other dates by 30 days:

Time to Answer:	CLOSED
Deadline for Discovery Conference:	CLOSED
Discovery Opens:	CLOSED
Initial Disclosures Due:	8/26/2015
Expert Disclosure Due:	10/18/2015
Discovery Closes:	11/17/2015
Plaintiff's Pretrial Disclosures:	01/01/2015
Plaintiff's 30-day Trial Period Ends:	02/15/2016
Defendant's Pretrial Disclosures:	03/2/2016
Defendant's 30-day Trial Period Ends:	04/15/2016
Plaintiff's Rebuttal Disclosures:	04/30/2016
Plaintiff's 15-day Rebuttal Period Ends:	05/30/2016

In addition, as an acknowledgement that trial dates should be reset before filing initial disclosures after the deadline and after the period has been designated as “closed,” Respondent requests that the TTAB order that Respondent’s discovery responses be due not on September 16, 2015 (35 days after service), but on October 1, 2015 (50 days after service), amounting to a 15-day expansion of the time to respond.

Respectfully submitted,

AUCERA SA

Date: August 20, 2015

/M. Scott Alprin/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion To Reset Schedule And Extend Time To Respond To Discovery has been placed in queue to be mailed and will be served on Petitioner by sending a copy to counsel for Petitioner, Rod S. Berman, Esq., via Pre-Paid First Class Mail, on August 20, 2015, to:

Jessica Bromall, Esq.
Jeffer Mangels Butler & Mitchell LLP
1900 Avenue Of The Stars, Seventh Floor
Los Angeles, CA 90067

/M. Scott Alprin/

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