

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

Baxley

Mailed: August 21, 2015

Cancellation No. 92060353

Bentley Motors Limited

v.

Aucera SA

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of Applicant's motion (filed August 20, 2015) to extend (1) remaining dates herein and (2) its time to serve responses to discovery requests by fifteen days. Opposer filed in brief in response in which it consents to Applicant's proposed schedule but opposes Applicant's motion to extend its time to serve discovery responses and requests in the alternative that, if the Board extends Applicant's time to serve discovery responses by fifteen days, it should receive the same extension of time to respond to discovery requests that Applicant served concurrently with its initial disclosures on August 19, 2015.

Applicant's motion to extend the schedule in this case is granted.¹ Remaining dates are reset in accordance with the schedule set forth in Applicant's motion.

¹ On February 19, 2015, prior to the due date for the parties' initial disclosures. Opposer filed a consented motion to extend using the Board's ESTTA electronic forms. In those motions, the first reset date was the deadline for the parties' expert disclosures. When a party is filing a consented motion to extend in which the first extended date is the deadline

Cancellation No. 92060353

Regarding Applicant's motion to extend its time to serve discovery responses, the Board finds that, to eliminate any potential surprise arising from both parties' late service of initial disclosures concurrently with their discovery requests, there is good cause to extend both parties' time to serve discovery responses by fifteen days.² See Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a). Applicant's discovery responses are due by October 1, 2015; Opposer's discovery responses are due by October 8, 2015.

for initial disclosures, the movant should not use the Board's ESTTA electronic form motions; the movant should prepare a consented motion.

² The Board infrequently receives motions to extend time to serve discovery responses because (1) parties usually agree among themselves to so extend, and (2) an extension of time to serve discovery responses does not, by itself, result in the automatic rescheduling of the case schedule. See Trademark Rule 2.120(a)(3). It is hoped that extensions of time to serve discovery responses will lead to more thoroughly prepared responses which reduce the need for motions relating to discovery.

In addition, regarding the interplay between initial disclosures and discovery requests, Trademark Rule 2.120(a)(3) states that a party cannot take discovery until it has served initial disclosures. However, written discovery requests may be served concurrently with initial disclosures. See TBMP § 403.02. Indeed, such service may be made as late as the closing date of the discovery period. See *Luster Products Inc. v. Van Zandt*, 104 USPQ2d 1877 (TTAB 2012). "[I]f [A]pplicant was concerned about [O]pposer's failure to serve initial disclosures [prior to such service on August 12, 2015], [A]pplicant should have filed a motion to compel initial disclosures after failing to receive timely initial disclosures from [O]pposer" and having made a good faith effort to resolve the parties' dispute with regard thereto. *Id.* at 1878-79. See Trademark Rule 2.120(e)(1); TBMP § 523.