

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

am

Mailed: November 16, 2015

Cancellation No. 92060353

Bentley Motors Limited

v.

Aucera SA

Andrew P. Baxley, Interlocutory Attorney:

On November 6, 2015, Petitioner filed a motion to compel discovery responses without objection. Although Respondent's time to respond to that motion has not lapsed, the Board elects to decide that motion at this time. *See* Trademark Rule 2.127(a).

After reviewing Petitioner's brief in support of such motion, the Board finds that Petitioner has not shown that it made a good faith effort to resolve the issue presented in the motion and that the parties were unable to resolve their differences. *See* Trademark Rule 2.120(e)(1); *Hot Tamale Mama...and More, LLC v. SF Invs., Inc.*, 110 USPQ2d 1080, 1081 (TTAB 2014). The record does not reflect an unresolvable situation — such as would have been the case if Respondent were a defiant adversary who simply refused to engage in discovery or to provide Petitioner with any answer regarding the failure to serve discovery responses. *See Hot Tamale Mama...and More, LLC*, 110 USPQ2d at 1082. Indeed, Respondent's attorney

indicated on November 4, 2015 that Respondent was in the process of preparing discovery responses.¹

Further, Petitioner's assertion that Respondent has forfeited the right to object on the merits to Petitioner's discovery requests is not well-taken. It is for the Board -- upon the filing of a motion to compel and in exercising its "great discretion" -- and not for a propounding party to determine that a responding party has forfeited the right to object on the merits to discovery requests. *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000).

Based on the foregoing, Petitioner's motion to compel is hereby denied without prejudice. The Board deems the filing of the motion to compel to have tolled the running of dates. Proceedings herein are resumed. Remaining dates are reset as follows:

Discovery Closes	11/30/2015
Plaintiff's Pretrial Disclosures Due	1/14/2016
Plaintiff's 30-day Trial Period Ends	2/28/2016
Defendant's Pretrial Disclosures Due	3/14/2016
Defendant's 30-day Trial Period Ends	4/28/2016
Plaintiff's Rebuttal Disclosures Due	5/13/2016
Plaintiff's 15-day Rebuttal Period Ends	6/12/2016

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. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only

¹ If necessary, Petitioner may file a motion to extend the discovery period to allow Petitioner time in which to take follow-up discovery. *Cf. Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666, 667 (TTAB 1986) (where a party is concerned over the running of dates, a motion to extend time to allow parties to seek to settle a discovery dispute is proper); TBMP § 403.04 (a party may not deprive its adversary of time to take follow-up discovery by delaying responding to discovery requests).

Cancellation No. 92060353

upon request filed as provided by Trademark Rule 2.129. If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.