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

Proceeding	92062391
Party	Plaintiff Truveris, Inc.
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Date	07/13/2016
Attachments	Truveris - Motion to Extend Discovery.pdf(92981 bytes)

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

TRUVERIS, INC.,

Petitioner,

v.

TRUVERSARX, LLC,

Respondent.

Cancellation No. 92062391

MOTION TO EXTEND DISCOVERY AND TRIAL DATES

Pursuant to Fed. R. Civ. P. 6(b), 37 C.F.R. § 2.120, and § 509.01(a) of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner Truveris, Inc., hereby respectfully moves the Board for an Order extending the discovery period in this proceeding for ninety (90) days, to October 11, 2016. Petitioner also requests that the testimony period be re-set to follow the close of discovery.

Petitioner has good cause for the requested extension. First, Registrant has failed to respond to Petitioner's Interrogatories and Document Requests, and has ignored all of Petitioner's communications asking when such responses can be expected. Second, Petitioner has made repeated good faith efforts to resolve this proceeding and this motion with Registrant but, to date, such efforts have also been ignored—including settlement terms proposed to Registrant under Fed. R. Evid. 408. In sum, Petitioner seeks a 90-day extension of all deadlines in this proceeding so that Petitioner can continue to work towards settlement and conduct meaningful discovery, should settlement not move forward.

Relevant Background

This proceeding was initiated on October 1, 2015. Shortly thereafter, Petitioner consented to a 30-day extension of Registrant's Answer deadline. That consented motion was filed and approved by the Board. The parties thereafter exchange Initial Disclosures and engaged in settlement discussions.

In May, Petitioner retained the undersigned as new counsel. That same month, Petitioner served Respondent with Requests For Production and Interrogatories. Counsel for the parties participated in a phone call to discuss this proceeding, and the parties' dispute, including the possibility of an early settlement. Following that call, Petitioner emailed Respondent's counsel on June 14, 2016, proposing a 90-day extension of discovery, and offering to extend Respondent's discovery response deadline of June 18, 2016 so that the parties could work on settlement. Respondent did not respond.

Petitioner again emailed Respondent on June 15, 2016 seeking confirmation to file a consented motion to extend, to which Respondent's counsel merely replied "*I have not yet had the opportunity to speak to my client re extension and will advise as soon as I can.*"

On June 28, 2016, Petitioner emailed Respondent's counsel once again seeking confirmation to file a consented motion to extend and inquiring about Respondent's discovery responses, which had not been served. Respondent did not respond.

And again on July 7, 2016, Petitioner emailed Respondent's counsel, requesting confirmation once again to file a consented motion to extend, and proposing settlement terms under Fed. R. Evid. 408 to resolve this matter. In light of Petitioner's proposal, Petitioner

suggested that the parties refrain from responding to discovery requests so that they can focus their efforts on reaching a business resolution.¹ Respondent did not respond.

And finally on July 12, 2016, Petitioner emailed Respondent's counsel again, requesting a reply to all of its prior emails. Respondent did not respond.

Good Cause Supports This Motion to Extend

Petitioner has good cause for the requested extension. Petitioner has diligently taken steps to discuss the substance of this matter with Respondent, attempt to ensure adherence with the Board's deadlines in this proceeding, and continue settlement discussions. Petitioner timely served discovery, but Respondent failed to respond to Petitioner's discovery requests and produce documents. Respondent also failed to respond to Petitioner's settlement proposal. In fact, and as noted, Respondent has ignored almost all of Petitioner's attempts to communicate. Respondent's repeated refusals to communicate appear to be a bad faith attempt to "run out the clock" and gain an unfair and prejudicial advantage over Petitioner.

The requested extension will provide the parties sufficient time and opportunity to conduct discovery and is not made for reasons of delay. Petitioner also respectfully submits that the ninety-day extension will provide Petitioner with the time lost while Petitioner attempted to, with limited success, move settlement discussions forward. Replacing this lost time is necessary to afford Petitioner the opportunity to engage in meaningful discovery prior to the testimonial period should the parties be unable to reach settlement (and move to compel, should that become necessary). Further, in accordance with Trademark Rule 2.120(e), Petitioner has made a good faith effort to resolve with Respondent the issues presented in this motion.

¹ For this reason, Petitioner has not served its written discovery responses, which were due on July 8, 2016.

Conclusion

For the reasons explained above, Petitioner respectfully requests that the Board grant this motion and extend all deadlines in this proceeding for ninety (90) days. Petitioner requests that this extension be calculated from all dates currently scheduled, as follows:

EXPERT DISCLOSURE DUE: 9/11/16

DISCOVERY TO CLOSE: 10/11/16

PLAINTIFF'S PRETRIAL DISCLOSURES: 11/25/16

PLAINTIFF'S 30-DAY TRIAL PERIOD TO CLOSE: 01/09/17

DEFENDANT'S PRETRIAL DISCLOSURES: 01/24/17

DEFENDANT'S 30-DAY TRIAL PERIOD TO CLOSE: 03/10/17

PLAINTIFF'S REBUTTAL DISCLOSURES: 03/25/17

PLAINTIFF'S 15-DAY REBUTTAL PERIOD ENDS: 04/24/17

Dated: New York, NY
July 13, 2016

Respectfully submitted,

FISH & RICHARDSON P.C.

/Mannu Harnal/_____
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Attorneys for Petitioner
TRUVERIS, Inc.

CERTIFICATE OF SERVICE

This is to certify that, on this 13th day of July, 2016, a true copy of the foregoing **Motion to Extend Discovery and Trial Dates** has been sent by electronic mail (as agreed by the parties) to Applicant's attorney of record:

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By: /Mannu Harnal/_____