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

Reed Elsevier Properties, Inc.)
)
 Opposer,)
)
 v.)
)
 Interface Systems, Inc.,)
)
 Applicant, and)
)
 Dynamic Fax, Inc.,)
)
)
 Party Defendant.)

Opposition No. 115,119

Application Serial No. 75/497,661

Published: June 1, 1999



05-21-2003

U.S. Patent & TMOtc/TM Mail Rpt Dt. #22

DYNAMIC FAX, INC.'S RESPONSE TO
OPPOSER REED ELSEVIER PROPERTIES, INC.'S
MOTION TO EXTEND THE TESTIMONY PERIOD

On May 2, 2003, Opposer filed its fifth motion to extend the time of these proceedings. This latest motion seeks a sixty (60) day extension of the testimony periods¹ on account of the facts that Opposer's counsel, Carla Calcagno, changed law firms in early April, and is planning a European vacation in May. Because these circumstances do not constitute "good cause" within the meaning of Fed.R.Civ.P. 6(b), and further because the continuing delay in resolving these proceedings is prejudicial to Defendant, Opposer's motion should be denied.

¹ According to this proposed schedule, Opposer's testimony period would close on August 1, 2003, Defendant's testimony period would close on September 30, 2003, and Opposer's rebuttal testimony period would close on November 14, 2003.

Under Fed.R.Civ.P. 6(b) and TBMP 509, the privilege of an extension of time is granted only where the movant shows "good cause." Here, the asserted cause is anything but good.

Opposer's claim that its counsel's change of firms has any impact on the taking of testimony according to the present schedule is disingenuous. By its own admission, Opposer's counsel transferred firms on *April 9*, nearly one month prior to the commencement of Opposer's testimony period. There is absolutely no reason why it should have taken all of April for Opposer's counsel to run a conflict check, and, indeed, none is offered. Neither is it likely that any reasonable explanation will be forthcoming, for Opposer's counsel most certainly would have insured that her clients' work (and most especially that of a major company like Opposer, for whom there are nearly seventy matters pending before the TTAB²), would transfer to her new firm well before agreeing to leave her old firm. As such, Opposer's should, and probably did, have access to Ms. Calcagno's counsel during much of April. And, in any event, Opposer offers no explanation why it was not already sufficiently prepared for its testimony period, the commencement date of which has been known to Opposer since the Board's Order of February 4, 2003.

As for Ms. Calcagno's vacation plans, Opposer offers no explanation as to why a nearly forty person Washington, D.C. law firm specializing in intellectual property cannot make another attorney available to take testimony in Ms. Calcagno's absence, or why those days in May when Ms. Calcagno will not be on vacation cannot suffice for the taking of testimony. Surely the excuse cannot be Ms. Calcagno's familiarity with this

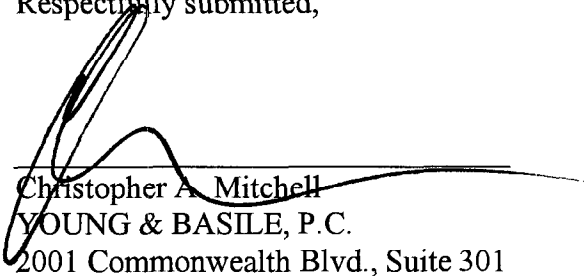
² See TTAB Adversary Proceeding Index.

case, inasmuch as Opposer has never taken any deposition testimony in these proceedings, while its discovery has been limited to just a few written requests.

As the party who initiated these proceedings, Opposer carries the burden of going forward in a *timely* manner, and has the duty to diligently plan how it would prove its case during the *prescribed* testimony period (i.e., that period known to it since February 4). It should not, therefore, now be heard to complain of vacation plans or its counsel's change of law firms well prior to the testimony period as reasons for further delaying the resolution of a proceeding begun nearly *four* years ago, all to the prejudice of Defendant, which continues to operate under a cloud of uncertainty concerning the registration of its trademark.

In view of the foregoing, DFI respectfully submits that Opposer's motion to extend the testimony periods should be denied.

Respectfully submitted,



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DATED: 16 May 2003

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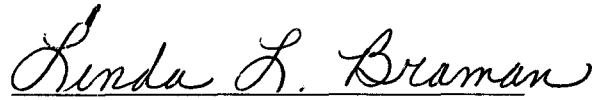


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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of Dynamic Fax, Inc.'s Response to Opposer Reed Elsevier Properties, Inc.'s Motion to Extend the Testimony Period was served upon Carla C. Calcagno, Rothwell, Figg, Ernst & Manbeck, P.C., 1425 K Street, NW, Suite 800, Washington, D.C. 20005, via First Class Mail, on May 16, 2003.

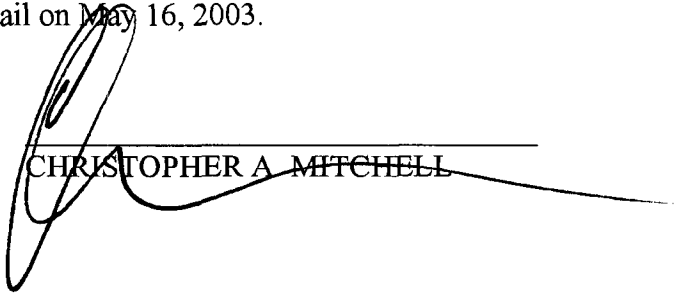

Linda L. Braman

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Party Defendant)	

CERTIFICATE OF MAILING

The undersigned hereby certifies that an original of Dynamic Fax, Inc.'s Response to Opposer Reed Elsevier Properties, Inc.'s Motion to Extend the Testimony Period was filed with the United States Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, Virginia 22202-3513, via First Class Mail on May 16, 2003.


CHRISTOPHER A. MITCHELL