

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: November 4, 2002

Opposition No. 91124939

Elk Corporation of Dallas

v.

Royal Roofing, Inc.

Jyll S. Taylor, Attorney:

This case now comes up for consideration of opposer's motion (filed August 26, 2002) to extend the discovery period for three months. In support of its motion, opposer argues that the parties are currently discussing settlement of the opposition and that additional time is needed to determine if settlement can be reached. Opposer also argues that there is no prejudice to applicant and that the parties have both served discovery in this matter. Opposer therefore maintains that good cause exists for the requested extension.

In response to the motion, applicant argues that contrary to opposer's unsupported allegation, good cause does not exist for the requested extension. More specifically, applicant argues that opposer did not "choose to begin" discovery until August 7, 2002, six days prior to the close of the original

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discovery deadline of August 12, 2002,¹ and that opposer's failure to conduct discovery until the last minute does not constitute good cause for an extension of the discovery period. Applicant further disputes that the settlement negotiations are ongoing and contends that opposer rejected applicant's initial offer of settlement and has failed to respond to the latest "suggestions" to resolve the matter. Applicant also argues that it sees no reason why the parties cannot discuss settlement while discovery is ongoing.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b) and TBMP §509.

As an initial observation, although a motion to extend must state with particularity the grounds upon which it is based, opposer's sparse motion contains very little information upon which the Board could find good cause. See Fed. R. Civ. P. 6(b); *HKG Industries, Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156, 1158 (TTAB 1998) (motion to reopen denied because movant failed to provide detailed factual information in support of requested relief); and *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n. 3 (TTAB 1989) ("The presentation of one's arguments and authority should be presented thoroughly in the

¹ Applicant indicates that the parties subsequently agreed to a two-week extension of the discovery period, on the condition that no discovery depositions were taken.

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motion or the opposition brief thereto."). Regarding opposer's reference to the possibility of settlement of this matter, there is a dispute as to the existence of any on-going settlement negotiations. However, even if the parties had been discussing settlement, the mere existence of such negotiations or proposals, without more, would not justify opposer's delay in pursuing discovery. Indeed, by opposer's admission, the parties served discovery requests during the time that they were purportedly engaged in settlement negotiations. In short, no circumstances have been set forth to show any expectation that these proceedings would not move forward during any negotiations. See *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925 (TTAB 2000).

As such, the Board finds no good cause for opposer's failure to initiate discovery until the waning days of the discovery period. In that regard, the Board has previously held that mere delay in initiating discovery does not constitute good cause for an extension of the discovery period. See *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987), and Janet E. Rice, TIPS FROM THE TTAB: *The Timing of Discovery*, 68 Trademark Rep. 581 (1978). See also *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

In view thereof, opposer's motion to extend the discovery period is denied.

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Trial dates only are reset as indicated below.

THE PERIOD FOR DISCOVERY TO CLOSE: **CLOSED**

Testimony period for party in
position of plaintiff to close January 15, 2003
(opening thirty days prior thereto)

Testimony period for party in
position of defendant to close March 16, 2003
(opening thirty days prior thereto)

Rebuttal testimony period to close April 30, 2003
(opening fifteen days prior thereto)

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. Rule 2.125.

Briefs shall be filed in accordance with Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

If the parties stipulate to any extension of these dates, the papers should be filed in triplicate and should set forth the dates in the format shown in this order. See Trademark Rule 2.121(d).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.