

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

<p>HAGIE MANUFACTURING CO.</p> <p align="center">Opposer,</p> <p>v.</p> <p>BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT,</p> <p align="center">Applicant.</p>	<p>Opposition No. 91158034 Application No. 76/454,861 Mark: XDRIVE</p>
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MOTION TO REOPEN TESTIMONY

Opposer, by its attorney, hereby requests a reopening of the testimony period until November 30, 2004. Throughout the opposition, Opposer and Applicant have been in settlement discussions and it was Opposer's belief that the parties were close to an agreement on terms regarding resolution of the instant opposition. Opposer was under the impression that based upon issuance of Opposer's trademark application as U.S. Registration No. 2,866,082, on July 27, 2004, Applicant would be motivated to continue discussions toward resolution of the instant opposition.

Applicant's Motion for Dismissal insinuates that Opposer has failed to actively pursue this opposition and has been solely responsible for delays associated with the discovery process. Opposer, however, has actively conducted discovery in the instant application. Additionally, Applicant has been similarly dilatory in providing discovery responses and has been substantially less than forthcoming in providing complete responses to Opposer's outstanding discovery request. Although Opposer will continue to work toward resolution of the instant opposition, Opposer will file the collected discovery within the reopened testimony period in the event the parties are not able to come to a resolution regarding the instant application. As reopening the testimony period will not result in any prejudice to Applicant, and as refusal to reopen the testimony would cause severe prejudice to Opposer, Applicant hereby respectfully requests the Board reopen discovery up to and including November 30, 2004.

Respectfully submitted,

HAGIE MANUFACTURING CO.

By 

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10-28-2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing OPPOSER'S FIRST AMENDED REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 34 was served upon the party BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT. by mailing the same by first-class mail to its attorneys, *James F. McKeown, Crowell & Moring, LLP, P. O. Box 14300, Washington, DC 20044-4300*, this 21 day of October, 2004.


