

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 17, 2005

Opposition No. **91159927**

Elon University

v.

Kabushiki Kaisha Phenix

Cheryl Goodman, Interlocutory Attorney:

This case now comes up on opposer's motion to compel, filed October 12, 2004. The motion is fully briefed.

In support of its motion, opposer states that discovery requests were served on applicant on May 26, 2004; that applicant has not responded; and that opposer attempted to contact counsel concerning the motion to compel and has had no response.

In response, applicant states that opposer has not made a good faith effort; that "the only effort made" was to leave a "single voice mail message" for counsel on October 12, 2004; that applicant's counsel left a voice mail message for opposer's counsel on October 12, 2004, but opposer never returned this call.

In reply, opposer argues that applicant has not addressed why it has failed to respond to opposer's discovery requests; that opposer disagrees with applicant's

assertion that opposer has failed to comply with its meet and confer requirements; that opposer's counsel discussed the discovery requests on November 17, 2004 and again on November 22, 2004 but that applicant's counsel was unable to provide assurances when applicant would respond to opposer's discovery.

The purpose of the requirement that the parties make a good faith effort is to relieve the Board of the burden of ruling on motions to compel in those cases where the parties can resolve their discovery disputes by agreement if they make a good faith effort to so. In this case, opposer indicated in its motion that it called applicant prior to filing the motion to compel, and subsequently advised that despite the parties' attempts on November 17, 2004 and November 22, 2004 to resolve the discovery dispute, it appears that no responses from applicant are forthcoming. Moreover, in its response, applicant has provided no reason for failing to timely respond to opposer's discovery requests. Accordingly in view of the parties subsequent attempts to resolve the discovery dispute, the Board finds the requisite good faith effort required under Trademark Rule 2.120(e). See e.g., *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448 (TTAB 1979) (when no responses served, one telephone call deemed sufficient good faith effort).

In view of applicant's failure to respond to opposer's discovery requests, opposer's motion to compel is granted. Moreover, applicant by failing to timely respond to the discovery requests, has forfeited its right to object to the requests on their merits. See e.g., *Crane Co. v. Shimano Industrial Co., Ltd.*, 184 USPQ 691 (TTAB 1975). Applicant is allowed THIRTY days from the mailing date of this order to respond to opposer's outstanding discovery requests as put that is without objection.

Discovery and trial dates, are reset as follows:

DISCOVERY PERIOD TO CLOSE:	March 17, 2005
30-day testimony period for party in position of plaintiff to close:	June 15, 2005
30-day testimony period for party in position of defendant to close:	August 14, 2005
15-day rebuttal testimony period for party in position of plaintiff to close:	September 28, 2005

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.