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

Proceeding	91168617
Party	Defendant PIRELLI & C. S.P.A. PIRELLI & C. S.P.A. Via Gaetano Negri, 10 I-20123 MILANO (MI) ITX ,
Correspondence Address	VIRGINIA L. CARRON FINNEGAN, HENDERSON, FARABOW, GARRETT & 901 NEW YORK AVENUE, N.W. WASHINGTON D.C, 20001-4413  virginia.carron@finnegan.com
Submission	Motion to Extend
Filer's Name	Virginia L. Carron
Filer's e-mail	virginia.carron@finnegan.com
Signature	/Virginia L. Carron/
Date	05/25/2007
Attachments	Applicant's Motion to Extend Discovery Only as to Applicant - P ZEROTEMPO.pdf ( 5 pages )(31074 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Beniko, Inc.,	)	
	)	
Opposer,	)	Mark: P ZEROTEMPO
	)	
v.	)	Opposition No. 91168617
	)	
Pirelli & C. S.p.A.,	)	Serial No. 79/011,411
	)	
Applicant.	)	
	)	

APPLICANT'S MOTION TO EXTEND DISCOVERY  
ONLY AS TO APPLICANT

In accordance with Fed. R. Civ. P. 6(b), Applicant hereby moves the Board for a thirty (30) day extension of the discovery period, after a ruling by the Board on Applicant's Motion to Compel Discovery, for the limited purpose of allowing Applicant (and not Opposer) time to review Opposer's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary, and to take the long-ago noticed depositions of Opposer and its principal.

Opposer initiated this opposition on January 12, 2006, against Pirelli's P ZEROTEMPO mark as shown in Applicant's U.S. Application No. 79/011,411, alleging dilution and a likelihood of confusion based upon several of Opposer's marks. On April 7, 2006, Applicant Pirelli served its First Set of Interrogatories and its First Request for Production of Documents and Things on Opposer. Based upon settlement discussions between the parties, the opposition was suspended and then the periods extended such that the discovery period was set to close on April 14, 2007.

By early March, it became apparent that settlement was not likely, at least at this time, and thus, the parties turned to discovery. Pursuant to an agreement between the parties, Opposer's discovery responses and document production were to be served on Pirelli by March 30, 2007. Opposer provided objections and some limited responses to Pirelli's requests and produced documents comprising only thirty-eight pages of advertisements. Opposer wholly failed to answer a number of the interrogatories and did not produce documents responsive to the majority of Pirelli's requests. In addition, Pirelli served notices of deposition on Opposer pursuant to Federal Rule 30(b)(6) and Albert Khodari (who, based upon Opposer's sparse discovery responses, appears to be an officer, director or employee of Opposer) to be taken prior to the April 14 discovery close.

Over the next several weeks, Pirelli attempted, in good faith, to resolve the discovery issues with Opposer, but was unable to do so. Opposer refused to provide supplemental responses to Pirelli's discovery requests or produce documents and also refused to cooperate in scheduling depositions. On the eve of the close of discovery, Opposer informed Pirelli that it would not provide witnesses or dates certain for the depositions pursuant to Pirelli's deposition notices. Because Pirelli had received only a small fraction of Opposer's document production and had not received substantive interrogatory responses, nor a date certain for Opposer's remaining production or receipt of the substantive responses or for the depositions, Pirelli agreed to consent to a forty-five day extension of the discovery and other periods. Opposer's counsel thereafter filed a consented motion requesting that the discovery period be extended until May 29, 2007.

Because it was apparent that Opposer would not willingly provide proper discovery responses nor provide dates within the extended discovery period for the noticed deposition, on April 20, 2007, Pirelli filed its Motion to Compel Discovery herein. After Pirelli was forced to file its Motion to Compel, Opposer came forward with some additional documents responsive to Pirelli's discovery requests. However, Opposer still refuses to provide complete, substantive responses to many of Pirelli's interrogatories, has failed to produce many of the requested documents and refuses to make its witnesses available within the discovery period.<sup>1</sup> See Applicant's Reply to Opposer's Opposition to Applicant's Motion to Compel Discovery, pp 3-8.

As demonstrated in Applicant's Motion to Compel Discovery, and outlined briefly again above, Applicant has been diligent during the discovery period. Applicant propounded discovery as soon as it became apparent that settlement discussions were no longer moving forward. Applicant also made a good faith effort to resolve this matter before filing its motion to compel. Opposer, on the other hand, has had more than sufficient time in which to respond to discovery and to cooperate with Applicant to resolve the discovery issues, but Opposer has failed to respond to Applicant's discovery requests and communications in any meaningful manner.

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<sup>1</sup> Late on May 8, 2007, in anticipation of the May 10 deadline for responding to Pirelli's Motion to Compel, Opposer offered to make its witnesses available for deposition on June 21, 2007. Pirelli promptly responded on May 9, 2007, rejecting Opposer's offered date of June 21, 2007 because it is outside the discovery period. (See Exhibit A to Applicant's Reply to Opposer's Opposition to Applicant's Motion to Compel Discovery). Opposer claims that its witnesses have been unavailable for deposition due to "unanticipated travel plans" from the noticed date of April 12 until June 21, but fail to provide a declaration supporting its claim.

Applicant does not seek an extension of time for purposes of delay. It is requested that the limited thirty (30) day extension run from the date of service of Opposer's discovery responses as ordered by the Board, and that the discovery period be otherwise closed. Applicant also requests that the Board order Opposer to make its witnesses available for the noticed depositions fifteen (15) days after Opposer completes its document production and provides complete responses to Pirelli's interrogatories so that Pirelli can receive and review that discovery and prepare for the depositions.

#### CONCLUSION

For the reasons stated above, Applicant respectfully requests that the Board grant Applicant's motion for an extension of the discovery period for the limited purpose of allowing Applicant (and not Opposer) time to review Opposer's discovery responses as ordered by the Board, to take the noticed depositions of Opposer and its principal and to pursue follow-up discovery if necessary. Applicant requests that the extension run from the date of service of Opposer's discovery responses as ordered by the Board, and that the discovery period be otherwise closed.

Dated: May 25, 2007

Respectfully submitted,  
Virginia L. Carron  
Virginia L. Carron  
Laurence R. Hefter  
Finnegan, Henderson, Farabow, Garrett &  
Dunner L.L.P.  
901 New York Avenue, N.W.  
Washington, D.C. 20001-4413  
Facsimile: (202) 408-4400

Attorneys for Applicant,  
PIRELLI & C. S.P.A.

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	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of APPLICANT'S MOTION TO EXTEND DISCOVERY ONLY AS TO APPLICANT was served on May 25, 2007, by first class postage paid mail to Attorneys for Opposer at the address listed below:

Dax Alvarez  
Blakely Sokoloff Taylor & Zafman LLP  
12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, CA 90025-1030

/Virginia L. Carron/  
Virginia L. Carron  
Finnegan, Henderson, Farabow, Garrett &  
Dunner L.L.P.  
901 New York Avenue, N.W.  
Washington, D.C. 20001-4413  
Telephone: (202) 408-4000  
Facsimile: (202) 408-4400

Attorneys for Applicant,  
PIRELLI & C. S.P.A.