

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

Baxley

Mailed: December 28, 2007

Opposition No. 91172459

Celerity, Inc

v.

Entegris, Inc.

Andrew P. Baxley, Interlocutory Attorney:

Opposer's motion (filed November 7, 2007) to compel discovery is granted as conceded. See Trademark Rule 2.127(a). Applicant is allowed until thirty days from the mailing date set forth in the caption of this order to serve upon opposer responses without objection to opposer's first set of interrogatories and first set of document requests,¹ and to notify opposer that the selection, designation and

¹ A party which fails to respond to a request for discovery during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. See *Bison Corp. v. Perfecta Chemie B.V.*, 4 USPQ2d 1718 (TTAB 1987); *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303 (TTAB 1987); *Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448 (TTAB 1979); *MacMillan Bloedel Ltd. v. Arrow-M Corp.*, 203 USPQ 952 (TTAB 1979); and *Crane Co. v. Shimano Industrial Co.*, 184 USPQ 691 (TTAB 1975).

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identification of such items and documents has been completed.²

Opposer is allowed until thirty days from receipt of notification from applicant that the items or documents have been selected, designated and identified, to inspect and copy the produced materials, as provided for in Fed. R. Civ. P. 34(b) and Trademark Rule 2.120(d)(2), unless the parties otherwise agree.³ If applicant fails to fully comply with this order, applicant's remedy lies in a motion for judgment pursuant to Trademark Rule 2.120(g)(1).

Proceedings herein are resumed. Had applicant timely served its discovery responses herein, opposer would have had ample time in which to take follow-up discovery. Accordingly, the Board deems it appropriate to extend the discovery period for opposer only, but to allow applicant a discovery period equal roughly to the amount of time remaining in the discovery period when opposer filed its motion to compel. See TBMP Section 403.04 (2d ed. rev. 2004).

Discovery and testimony periods are reset as follows:

² If the materials are voluminous, applicant may produce a representative sampling and so inform opposer that a representative sampling has been produced.

³ Opposer, however, need not provide privileged information and documents inasmuch as its right to claim privilege has not been waived. See, e.g., *American Standard, Inc. v. Pfizer*, 3 USPQ2d 1817 (Fed. Cir. 1987).

DEFENDANT'S DISCOVERY PERIOD TO CLOSE: **January 25, 2008**

PLAINTIFF'S DISCOVERY PERIOD TO CLOSE: **March 14, 2008**

Plaintiff's 30-day testimony period to close: **June 12, 2008**

Defendant's 30-day testimony period to close: **August 11, 2008**

Plaintiff's 15-day rebuttal testimony period to close: **September 25, 2008**

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.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any

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protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>