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

DUNN

Mailed: April 2, 2007

Opposition No. 91172575

GMA Accessories, Inc.

v.

Wright Medical Technology, Inc.

Elizabeth A. Dunn, Attorney:

This case comes before the Board on opposer's motion, filed January 30, 2007, to compel applicant's responses to opposer's first set of interrogatories and first request for production of documents. The motion is contested.

In support of its motion to compel, opposer alleges it served discovery on December 5, 2006, and that applicant neither served discovery responses nor requested additional time to respond, notwithstanding opposer's January 16, 2007 and January 23, 2007 letters requesting that applicant do so. In opposition to the motion applicant submitted the declaration of attorney Anthony Fitzpatrick averring that counsel for applicant never received the discovery requests, possibly due to the resignation of counsel's assistant; that

applicant believed the parties to be negotiating a coexistence agreement and refrained from serving discovery requests; that opposer's January 16, 2007 letter requesting responses was sent by regular mail to a different attorney in the firm and had not been received at the time counsel for opposer called on January 23, 2007 and faxed a second letter; that on the same day counsel for applicant informed counsel for opposer by voice mail that no discovery requests had been received; that counsel for applicant called counsel for opposer on January 24, 2007, January 25, 2007, January 29, 2007 and January 30, 2007 indicating that more time to respond to discovery would be necessary and that a protective order must be entered, and discussing the draft co-existence agreement; that counsel for opposer never refused an extension of time to respond to discovery; that counsel for applicant was surprised to find that a motion to compel had been filed later that day; and that the motion to compel should be denied inasmuch as opposer failed to make a good faith effort to resolve the discovery issues.

The Board finds that opposer's motion to compel is procedurally deficient inasmuch as opposer has not satisfied its obligation under Trademark Rule 2.120(e) to make a good faith effort to resolve discovery disputes prior to seeking the Board's intervention. A party seeking discovery has a duty to make a good faith effort to determine why no

response has been made before coming to the Board with a motion to compel. *See, e.g., MacMillan Bloedel Ltd. v. Arrow-M Corp.*, 203 USPQ 952, 953 (TTAB 1979). See also TBMP §523.02 (2nd ed., June 2003). Here it is apparent that opposer made no effort to ensure to resolve this dispute. In view of the foregoing, opposer's motion to compel is denied.

Opposer is allowed until thirty days from the mailing date of this order to respond to any outstanding discovery requests.

Proceedings herein are resumed, and discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	**June 2, 2007**
Thirty-day testimony period for party in position of plaintiff to close:	**August 31, 2007**
Thirty-day testimony period for party in position of defendant to close:	**October 30, 2007**
Fifteen-day rebuttal testimony period to close:	**December 14, 2007**

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.l25.

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.l29.

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