

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

Mailed: October 5, 2010

Opposition No. 91191601

The Laryngeal Mask Company
Limited

v.

Anibal de Oliveira Fortuna

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

On September 24, 2010, the day before its pretrial disclosures were due to be served, opposer filed a motion to deem admitted its second and third requests for admissions. More particularly, opposer asks that its second request for admissions be deemed admitted because applicant never served responses;¹ and that its third request for admissions be deemed admitted because applicant served responses three days late.² Opposer notes that the parties had agreed to service by email earlier in the course of the proceeding. Trademark Rule 2.119(b)(6). Thus, the additional five days to respond available with traditional service methods under Trademark Rule 2.119(c) is not applicable herein.

¹ Opposer states that responses were due May 28, 2010.

² Opposer states that responses were due September 10, 2010.

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The relief requested by opposer is not available through a motion. In accordance with Fed. R. Civ. P. 36(a)(3), "[a] matter is deemed admitted unless, within 30 days from being served, the party to whom the request is directed serves on the requesting party a written answer or objection ...". The provisions of the Rule are operative with no further action by the Board or opposer, absent the granting of a motion (not present in this case) under Fed. R. Civ. P. 36(b) from applicant to withdraw and amend effective admissions.³ See also TBMP §525 (2d ed. rev. 2004).

Accordingly, no further consideration is given to opposer's motion.

Applicant's motion, filed September 30, 2010, to reopen discovery is noted. The motion is not accompanied by proof of service on opposer. See Trademark Rule 2.119; and TBMP §113 (2d ed. rev. 2004). To expedite matters, opposer is referred to <http://ttabvue.uspto.gov/ttabvue/v?pno=91191601&pty=OPP&eno=16> Opposer's response, if any, is due October 17, 2010.

Operative dates are reset as follows:

³ The Board notes in passing that, to the extent opposer intended its motion to be one to test the sufficiency of applicant's responses to opposer's third request for admissions, opposer did not indicate that it had made a good faith effort to resolve any dispute. Trademark Rule 2.120(h); TBMP §524.02 (2d ed. rev. 2004). However, the Board understands opposer motion to be directed only to the untimeliness only of applicant's responses.

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Plaintiff's pretrial disclosures:	10/31/10 ⁴
Plaintiff's 30-day Trial Period Ends	12/15/2010
Defendant's Pretrial Disclosures	12/30/2010
Defendant's 30-day Trial Period Ends	2/13/2011
Plaintiff's Rebuttal Disclosures	2/28/2011
Plaintiff's 15-day Rebuttal Period Ends	3/30/2011

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



⁴ Opposer is reminded that it pretrial disclosures are of witnesses it expects will testify and those that may testify, if needed. Thus, opposer may include witnesses in the latter category in the event the status of applicant's responses to the admissions requests at issue in this order is changed.