

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

CME

Mailed: February 19, 2015

Opposition No. 91201529

MCE Ltd.

v.

Zubair Sardar

Christen M. English, Interlocutory Attorney:

This case now comes up on Applicant's motion, filed December 15, 2014, to extend the deadlines in this proceeding by sixty (60) days starting with Applicant's pretrial disclosure deadline. The motion is fully briefed.

In support of his motion, Applicant asserts that his counsel has been "newly introduced to this case" and needs "additional time ... to familiarize and prepare facts and documents." Motion, p. 1. Applicant also asserts that Opposer failed to serve its testimonial deposition transcript within 30 days as required by Trademark Rule 2.125, and therefore, "[a]dditional time is ... required to review and analyze the Opposer's belated exchanged documents." *Id.* at p. 2.

In opposition to the motion, Opposer argues that "there has been ample delay in this proceeding" as Applicant, who proceeded *pro se* for much of this proceeding, "has consistently missed deadlines and been given further

chances from the Board.” Response, p. 1; that one of Applicant’s attorneys, Dennis Drehkoff, is not new to this proceeding as he has been involved in settlement negotiations since April 2014, and since that time has received service of papers in this proceeding on behalf of Applicant, *see id.* at p. 2 and 3, n.1; that Applicant has been on notice since May 2014 that Opposer intended to prosecute this opposition, and Applicant’s delay in filing a notice of appearance of counsel and retaining two additional attorneys to represent him in this proceeding was due to his own lack of diligence; *see id.* at pp. 2-3; that there is no need for additional time for Applicant’s counsel to review documents because there are few documents to review, *see id.* at pp. 3-4; and that Trademark Rule 2.125 concerns oral depositions and does not apply to Opposer’s deposition on written questions, which Opposer “promptly” served on Applicant as required by Trademark Rule 2.124. *Id.*

In reply, Applicant argues that his counsel Mr. Drehkoff was retained in April 2014 “solely for the purpose of negotiating settlement” and was not retained to represent Applicant in “the actual Opposition proceedings until November 2014.” Reply, pp. 2-3. Applicant further contends that between June 2014, when Opposer purportedly rejected his settlement offer, and November 2014, he “thought about the next steps and conversed with the undersigned [counsel] for the next few months weighing the merits of the Opposition and trying to form a decision.”¹ *Id.* at 3.

¹ Applicant argues for the first time in his reply brief, that the “ongoing litigation and travel commitments” of his counsel is “another reason” for the extension

As an initial matter, the Board addresses two procedural matters. First, Applicant's motion fails to indicate proof of service on Opposer's counsel as required by Trademark Rule 2.119.² It is clear, however, that Opposer obtained a copy of the motion as it filed a timely response. For this reason, the Board will consider Applicant's motion; **however, strict compliance with Trademark Rule 2.119 is required in all future filings.** Second, Applicant's motion and reply brief are not paginated as required by Trademark Rule 2.126. Any future filings that do not comply with Trademark Rule 2.126 may be given no consideration.

Turning to the merits of Applicant's motion, Applicant need only establish "good cause" for the requested extension as the pretrial disclosure deadline had not yet passed at the time Applicant filed his motion. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509 (2014). Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *Am. Vitamin Prods. Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313, 1315 (TTAB 1992).

request. Reply, p. 4. The Board has not considered this argument because Opposer did not have an opportunity to respond. See *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989) ("The presentation of one's arguments and authority should be presented thoroughly in the motion or the opposition brief thereto.").

² Applicant's "certificate of service" indicating that he electronically filed his motion with the Board "which will send notification of such filing to any and all parties' of record" is incorrect and not sufficient to meet the service requirement of Trademark Rule 2.119.

Opposer correctly points out that Trademark Rule 2.125, requiring a party to serve an *oral* testimony deposition transcript within thirty days, does not apply here where Opposer took a testimony deposition on *written* questions. As such, Applicant's argument that his counsel needs "[a]dditional time ... to review and analyze the Opposer's belated exchanged documents" is without merit. Still, Applicant's attorneys – from two different law firms, Kelly & Krause, LP and Howard B. Rockman PC – did not enter an appearance in this case until November 12, 2014, and there is no indication that Applicant's attorneys from Howard B. Rockman PC had any prior familiarity with the case. Accordingly, that Applicant's attorneys need additional time to familiarize themselves with the facts of this case and prepare Applicant's defense is sufficient good cause for an extension of the deadlines in this proceeding, albeit for a shorter amount of time than requested.

Accordingly, Applicant's motion is **granted, in part**, to the extent that Opposer is allowed **until March 16, 2015, to serve his pretrial disclosures**. Deadlines are reset as follows:

Defendant's Pretrial Disclosures Due	3/16/2015
Defendant's 30-day Trial Period Ends	4/30/2015
Plaintiff's Rebuttal Disclosures Due	5/15/2015
Plaintiff's 15-day Rebuttal Period Ends	6/13/2015

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.

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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.
