

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

Mailed: January 20, 2012

Opposition No. 91202147

Novatel Wireless, Inc.

v.

Delphi Technologies, Inc.

**George C. Pologeorgis,
Interlocutory Attorney:**

Per the Board's October 18, 2011 institution order, answer in this case was due by November 27, 2011 and the deadline for the parties' required discovery conference was set for December 27, 2011. Applicant timely filed its answer on November 23, 2011. On December 27, 2011, opposer filed an unconsented motion to suspend proceedings herein for six months so that the parties may pursue settlement negotiations. Thereafter, on December 28, 2011, opposer filed a consented motion to suspend via ESTTA employing the Board's "consented motion" form. On December 28, 2011, the Board's ESTTA filing system automatically generated an order granting opposer's consented motion to suspend filed on December 28, 2011.

Inasmuch as it was unclear whether the parties had conducted their required discovery conference prior to the

filing of either motion to suspend for settlement, the Board contacted opposer's counsel to ascertain whether in fact the parties had conducted their discovery conference. On Friday, January 6, 2012, opposer's counsel contacted the Board and advised that the parties have yet to conduct their required discovery conference.

In its announcement of the final rule requiring discovery conferences, the Board stated:

The Board anticipates it will be liberal in granting extensions or suspensions of time to answer, when requested to accommodate settlement talks or submission of the dispute to an arbitrator or mediator. However, if a motion to extend or suspend for settlement talks, arbitration or mediation is not filed prior to answer, then the parties will have to proceed, after the answer is filed, to their discovery conference, one point of which is to discuss settlement. It is unlikely the Board will find good cause for a motion to extend or suspend for settlement if the motion is filed after answer but prior to the discovery conference, precisely because the discovery conference itself provides an opportunity to discuss settlement.

"Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242, 42245 (Aug. 1, 2007) (emphasis added).

Accordingly, inasmuch as opposer's consented motion to suspend for settlement negotiations was filed after the filing of applicant's answer but prior to the parties

actually conducting their required discovery conference and because the purpose of the discovery conference is to afford the parties an opportunity to discuss settlement, opposer's consented motion to suspend for settlement filed on December 28, 2011 is denied for a lack of showing of good cause.

In view of the foregoing, the Board's December 28, 2011 order granting opposer's consented motion to suspend for settlement is hereby vacated and replaced with the instant order.¹

The Board notes, however, that the deadline for the parties' discovery conference has already expired and, therefore, in order to afford the parties time in which to prepare for said conference, the deadline for the discovery conference and all subsequent trial dates are reset as follows:

Deadline for Discovery Conference	2/3/2012
Discovery Opens	2/3/2012
Initial Disclosures Due	3/4/2012
Expert Disclosures Due	7/2/2012
Discovery Closes	8/1/2012
Plaintiff's Pretrial Disclosures	9/15/2012
Plaintiff's 30-day Trial Period Ends	10/30/2012
Defendant's Pretrial Disclosures	11/14/2012
Defendant's 30-day Trial Period Ends	12/29/2012
Plaintiff's Rebuttal Disclosures	1/13/2013

¹Opposer's unconsented motion to suspend for settlement filed on December 27, 2011 is also denied for the same reasons discussed above.

Plaintiff's 15-day Rebuttal
Period Ends

2/12/2013

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 Trademark Rule 2.129.

As a final matter, the parties are advised to refrain from using the "consented motion" forms when consented motions to extend or suspend via ESTTA until after initial disclosures have been served. Instead, the parties should employ the "general filings" form and attach an appropriate motion and proposed trial schedule.