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

MBA/CME

Mailed: January 9, 2013

Opposition No. 91202418

Innovation Law Group, Ltd.

v.

Ryan E. Alley

Michael B. Adlin, Administrative Trademark Judge:

This case now comes up for consideration of opposer's contested motion, filed January 4, 2013, to again extend opposer's time to respond to applicant's October 23, 2012 motion for summary judgment and November 5, 2012 addendum, this time until January 23, 2013. Pursuant to the Board's order of November 29, 2012, which granted opposer's earlier, consented motion to extend, opposer's response is currently due on January 9, 2013. On January 7, 2013, at opposer's request, the Board held a teleconference with the parties to hear further argument and rule on the motion, at which Neil D. Greenstein appeared on opposer's behalf and applicant, an attorney, appeared pro se. The interlocutory attorney assigned to this proceeding conducted the teleconference.[1]

[1] Applicant filed a written response to opposer's motion on January 4, 2013.

Opposer argues that it requires a two week extension of time to respond to applicant's motion for summary judgment in order to obtain the necessary declarations in support of its response. Specifically, opposer claims that it has been unable to obtain all necessary declarations because of the unavailability of some of its witnesses due to the recent Thanksgiving, Christmas and New Year's holidays. Opposer's counsel also asserts that he is traveling out of the country until January 9, 2013 and that opposer's principal will be out of town during the week of January 14, 2013. Opposer claims that it has been diligent in preparing its response and that applicant would not be prejudiced by the requested extension.

Applicant opposes a two week extension, claiming that it would delay the deadline for his reply brief, thus "complicating" his patent docket because he is traveling out of the country during the first week of February and intends to file several patent applications prior to March 16, 2013, a date of alleged statutory significance. Applicant questions why opposer has not been able to secure the allegedly necessary declarations given that applicant previously agreed to a thirty-day extension of opposer's response deadline and points out that opposer's motion is unsupported by declaration testimony or any other evidence whatsoever. Applicant would nevertheless

consent to allowing opposer until January 15, 2013 to respond to applicant's motion for summary judgment.

Because opposer filed its motion for extension prior to the expiration of its response period, it need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509 (3d ed. rev. 2012). 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." *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1315 (TTAB 1992).

In this case, opposer has established good cause. Opposer has shown that it has acted with at least some diligence in attempting to obtain witness declarations and that its efforts have been slowed down by the intervening holidays. Further, opposer has not acted in bad faith in seeking the extension nor has it abused the privilege for extensions thus far, as this is the first unconsented extension it seeks in this matter. Applicant's claims of prejudice are in part if not entirely speculative; applicant may perform the anticipated patent work while awaiting opposer's response and reply briefs are often not necessary (and not desired by the Board) where they would merely rehash arguments already made. For these reasons, opposer's motion for a two-week extension of its response

period until January 23, 2013 is hereby **GRANTED**. Further, to minimize the impact of the extension on applicant, **opposer must follow through on its offer and serve a copy of the response brief on applicant via e-mail.**

However, opposer, which chose not to file any declarations or other evidence supporting the assertions made in its motion, will now have three months to respond to applicant's motion for summary judgment. That will surely be enough. If it is not, opposer may have to devise a different strategy for its response or for this case. Indeed, **no further extensions of opposer's response deadline will be granted absent extraordinary and extreme circumstances beyond opposer's reasonable control which are supported by declaration testimony or other credible evidence.** See *e.g.*, *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999) ("sparse motion contains very little information upon which the Board could find good cause"). Proceedings herein remain suspended pending disposition of applicant's motion for summary judgment.

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