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

GCP

Mailed: September 23, 2015

Opposition No. 91216061

RGB Systems, Incorporated

v.

Axtron Global LLC

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of Opposer's motion for discovery sanctions in the form of judgment filed on July 15, 2015. The motion is fully briefed.

By way of background, on February 24, 2015, Opposer filed a motion to compel Applicant to serve its initial disclosures on Opposer. By order dated April 27, 2015, the Board granted Opposer's motion to compel as conceded and ordered Applicant to serve its initial disclosures on Opposer by May 18, 2015.

Opposer's Motion For Discovery Sanctions In The Form Of Judgment

The Board now turns to Opposer's motion for sanctions in form of judgment. In support of its motion, Opposer argues that Applicant failed to comply with the Board's April 27, 2015, discovery order. Specifically, Opposer maintains that Applicant failed to serve its initial disclosures by the ordered May 18, 2015, deadline. Additionally, Opposer contends that despite its correspondences dated May 19, 2015, June 1, 2015, and June 26, 2015 to Applicant advising that

Applicant's initial disclosure remain overdue, Applicant has not yet to serve its initial disclosures on Opposer.

In response, Applicant maintains that its failure to serve its initial disclosures was a result of inadvertence and excusable neglect but that Applicant has agreed to comply by a certain date. Additionally, Applicant requests that since some of the information requested in the initial disclosures is work product or privileged, Applicant would like the Board to determine the scope of discovery permitted in this proceeding.

In reply, Opposer maintains that it never had an agreement with Applicant concerning Applicant's service of its initial disclosures. Moreover, Opposer contends that Applicant has not informed Opposer that it has served its initial disclosures or would serve the disclosures by a specific date and still not served its initial disclosures on Opposer. Opposer also maintains that an agreement between the parties concerning disclosures is inconsistent with Applicant's request to the Board to determine the scope of allowable discovery before proceeding with serving its initial disclosures.

Decision

The law is clear that if a party fails to comply with an order of the Board relating to discovery, the Board may order appropriate sanctions as defined in Trademark Rule 2.120(g)(1) and Fed. R. Civ. P. 37(b)(2), including entry of judgment.

Applicant is expected to comply with all applicable rules and Board practices, which includes Applicant's disclosure requirements, as well as cooperating during

discovery. Based upon the record, the Board finds that Applicant has not complied with the Board's April 27, 2015, discovery order and has provided no explanation as to why its failure to timely comply was the result of inadvertence or excusable neglect. Further, Applicant's request that the Board determine the scope of discovery in this matter as a precondition to Applicant serving its initial disclosures is unjustified. First, the scope of the parties' respective discovery needs should have been discussed during the parties' Fed. R. Civ. 26(f) discovery conference. Second, the Board neither has the time nor the resources to educate every litigant regarding the scope of discovery in Board proceedings. Notwithstanding, Applicant and its counsel may review TBMP § 414 (2015) which provides guidelines relating to the discoverability of various matters in Board cases.

In view of the foregoing, Opposer's motion for discovery sanctions is **GRANTED** solely to the extent outlined below.[1]

1. Applicant is ordered to serve its initial disclosures on Opposer's counsel by **October 5, 2015**, if it has not already done so; and
2. Applicant is barred from (1) seeking an unconsented extension or reopening of any deadline in this case,[2] and (2) filing any motions for summary judgment in this proceeding.

[1] To the extent Opposer's motion for sanctions seeks a sanction in the form of judgment, the Board has not given any consideration to such relief at this juncture in this proceeding.
[2] If Applicant files or serves a late paper in violation of this order, Opposer is ordered to file no response, and the Board will give the paper no consideration. If extraordinary circumstances arise, Applicant may seek a phone conference with the Board and Opposer in which to explain those circumstances and to seek permission to file or serve a late paper.

Applicant is also advised that, should it not comply with the present order of the Board, as well as the Board's April 27, 2015, discovery order, and if Opposer brings another motion for discovery sanctions in the form of judgment, the Board will likely enter the sanction of judgment against Applicant.

Trial Schedule

Proceedings are resumed. Remaining trial dates are reset as follows:

Expert Disclosures Due	**10/30/2015**
Discovery Closes	**11/29/2015**
Plaintiff's Pretrial Disclosures Due	**1/13/2016**
Plaintiff's 30-day Trial Period Ends	**2/27/2016**
Defendant's Pretrial Disclosures Due	**3/13/2016**
Defendant's 30-day Trial Period Ends	**4/27/2016**
Plaintiff's Rebuttal Disclosures Due	**5/12/2016**
Plaintiff's 15-day Rebuttal Period Ends	**6/11/2016**

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