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

EJW

Mailed: April 22, 2016

Opposition No. 91222795

Consorzio Tutela Vini Emilia

v.

Molinos IP S.A.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up for consideration of Opposer's contested motion (filed March 17, 2016) to extend the discovery period and subsequent disclosure and trial dates.

By way of background, as set forth in the Board's institution order mailed on July 14, 2015, the discovery period was set to close on March 20, 2016. Opposer requests an extension of the discovery period for sixty days. As grounds therefor, Opposer explains that the parties themselves or their lead counsel residing in each party's country of origin have been conducting settlement negotiations related to the parties' multiple-country trademark dispute; and that Italian counsel for Opposer recently advised Opposer's U.S. counsel that Applicant had recently indicated willingness to continue settlement discussions. Opposer also states that it had recently served discovery on Applicant, and that it had hoped to receive responses during the discovery period. In response, Applicant essentially states that Opposer

has not provided any reason for the extension of time and requests the motion be denied.

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." *See* Fed. R. Civ. P. 6(b) and TBMP § 509 (2015) and cases cited therein. The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the motion sets forth with particularity facts that constitute good cause for the requested extension, *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQd 1479, 1480 (TTAB 2000), and the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1375 (TTAB 2001) (cursory and unsupported statements are insufficient to show good cause); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000); and *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (TTAB 1992). The moving party, however, retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *See National Football League v. DNH Management LLC,* 85 USPQ2d 1852, 1854 (TTAB 2008) (citing *Sunkist Growers, Inc. v. Benjamin Ansehl Company,* 229 USPQ 147 (TTAB 1985)).

The Board finds that an extension of the discovery period is not warranted in this instance. Although it appears that the parties themselves may be involved to some extent in negotiating settlement, said interest in settlement and cooperation apparently does not carry over to this proceeding. "A party is under no requirement

to settle a case and is under no requirement to negotiate settlement with its adversary." *Kellogg Co. v. New Generation Foods Inc.*, 6 USPQ2d 2045, 2049 (TTAB 1988). Thus, the Board cannot suspend the proceeding for purposes of settlement or extend the discovery period for that purpose when the adverse party is unwilling to participate or otherwise disagrees.

Second, to the extent Opposer desires to receive Applicant's responses to its discovery during the discovery period and, therefore, seeks to have time added to the discovery period for that purpose, the Board notes that Opposer waited until three weeks prior to the close of the discovery period to serve its discovery requests. The Board reminds Opposer that a party may not wait until the waning days of the discovery period to serve its discovery requests or notices of deposition and then be heard to complain that it needs an extension of the discovery period in order to take additional discovery. Mere delay in initiating discovery does not constitute good cause for an extension of the discovery period. If a party believes that issues in a case are complex and may involve lengthy discovery, it is its responsibility to begin taking discovery early in the discovery period. To allow an extension for all purposes herein would be to reward Opposer for its delay in initiating discovery, a result which is to be discouraged. *Luehrmann v. Kwik Kopy Corp.*, 2 USPQ2d 1303, 1305 (TTAB 1987).

In view of the foregoing, Opposer's motion to extend the discovery period is **denied**. Trial dates remain as set in the Board's institution order mailed on July 14, 2015.

☼☼☼