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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233165
Party	Plaintiff Park Hotel Management Pte Ltd.
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shortly. On June 20, 2018, Opposer's counsel in Singapore followed up with Applicant regarding its response to the proposed settlement. A second reminder was sent the week of June 25, 2018. On June 29, 2018, Applicant communicated its counterproposal to Opposer's counsel in Singapore. On July 9, 2018, Opposer's counsel contacted Applicant's counsel regarding an extension of the testimony period given that the parties were continuing to discuss settlement terms. On July 13, 2018, counsel for the parties in the US discussed the extension request. At that time, Applicant's counsel indicated that they would only consent to a further extension if Opposer accepted the counter proposed settlement terms. Applicant's US counsel communicated this information to Opposer through Opposer's Singapore counsel on July 13, 2018. Opposer was unable to agree to Applicant's terms without consulting with counsel in the US and counsel in Singapore regarding the proposed settlement terms from Applicant.

Opposer's motion for an extension of the trial dates followed on August 2, 2018, after Opposer's US counsel received instructions to file the motion on July 31, 2018 from counsel in Singapore. Opposer's counsel in Singapore further indicated on July 31, 2018, that they had not heard back from Opposer regarding Applicant's settlement terms.

ARGUMENT

Opposer filed its motion to extend the trial dates in the proceeding before the end of Opposer's testimony period. That motion remains pending. Opposer has established good cause for extending the testimony periods in the proceedings. Accordingly, Applicant's motion for judgment should be denied.

Moreover, Applicant's citations simply do not apply here. Each of those cases involved a party's failure to take action before the close of a period; those cases involved a request to **reopen**

the relevant period. Opposer is not seeking to reopen any periods in the proceeding. Opposer is seeking an extension of a period.

Applicant conveniently fails to provide a timeline of settlement negotiations in its Motion and inexplicably claims that Opposer's failure to respond within 14 days to Applicant's counter proposal meant that negotiations were "stagnating." This is of course after Opposer patiently waited over four months to receive any comment from Applicant regarding Opposer's proposed terms. At no time has Applicant indicated that it was of the opinion that negotiations were stagnating. In this proceeding, there are ongoing bilateral settlement negotiations. There are open terms for settlement on the table and these are a counterproposal to Opposer's earlier communicated terms. This is not a situation where one party is under the mistaken impression that there are settlement discussions. There are open settlement discussions.

Further, *Atlanta-Fulton County Zoo Inc. v. DePalmai*, 45 USPQ2d 1858 (TTAB 1998), does not apply here. In that case, the opposer's testimony period was to close on February 8, 1997. On March 14, 1997, the opposer discovered that its testimony had closed. Opposer filed a motion to reopen the discovery and trial dates on March 17, 1997, and stated that its failure to monitor the dates was inadvertent. In evaluating the parties settlement discussions, the Board found:

As regards opposer's contention that the parties were continuing to explore settlement possibilities during opposer's testimony period, it is well established that the mere existence of settlement negotiations alone does not justify a party's inaction or delay. *See Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848 (8th Cir. 1996); *Jones Truck Lines v. Foster's Truck & Equipment Sales, Inc.*, 63 F.3d 684 (8th Cir. 1995); *Federal Savings & Loan Insurance Corp. v. H. Kroenke, v. Anderson Die Castings, Inc.*, 925 F.2d 226 (7th Cir. 1991). Parties engaged in proceedings before the Board frequently discuss settlement, but the existence of such negotiations or offers, without more, does not excuse them

from complying with the deadlines set by the Board or imposed by the rules.

Contrary to opposer's contentions, the record does not establish that this is a case where the parties were engaged in on-going, bilateral settlement negotiations during the critical time period up to and including February 8, 1997. Rather, the record shows that on February 4, i.e., four days prior to the close of opposer's testimony period, applicants forwarded to opposer, by first-class mail, a settlement proposal. Opposer's sole documented response thereto was, on February 27, 1997, to reject the settlement offer out of hand. As regards the settlement proposal, we cannot be certain that it even reached opposer before the close of its testimony period. Nor can we determine if opposer was planning to offer evidence during the last four days of its testimony period, but did not go forward because of the proposal. On this record, we can only conclude that opposer was without a reasonable basis for failing to take the steps necessary to preserve its claim.

If there is a case that does not apply, the *DePalmai* case is that case. Opposer been monitoring the deadlines in this case and timely filed its motion to extend the most recent deadline. There is an open settlement offer on the table -- from Applicant. Opposer has not rejected Applicant's offer. Opposer is considering the offer and has not responded to date.¹

Moreover, Opposer forwarded its pretrial disclosures to Applicant on February 20, 2018. Opposer has not missed a deadline to act. Opposer has not requested a reopening of any period in the proceeding. Opposer has not failed to prosecute this opposition.

CONCLUSION

Applicant's motion must be denied. Opposer did not fail to act at any time. Opposer timely filed a motion to extend the trial dates in this proceeding and that motion remains

¹ Applicant claims that if its Motion is denied, it will be forced to expend resources during its testimony period. Opposer is baffled by this statement as it has neither rejected nor accepted Applicant's settlement offer of June 29, 2018.

pending. Opposer has not requested that any period be reopened. Opposer has not failed to prosecute its case.

Respectfully submitted,

PARK HOTEL MANAGEMENT PTE LTD.



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Date: August 27, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR JUDGMENT UNDER TRADEMARK RULE 2.132(A) FOR OPPOSER'S FAILURE TO PROSECUTE ITS CASE** has been served via email on this 27th day of August 2018 to:

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