

ESTTA Tracking number: **ESTTA943338**

Filing date: **12/21/2018**

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

Proceeding	91239222
Party	Plaintiff Sterling Jewelers Inc.
Correspondence Address	AMANDA MARSTON HOLLAND & HART LLP PO BOX 8749 ATTN TRADEMARK DOCKETING DENVER, CO 80201 UNITED STATES docket@hollandhart.com, shavlick@hollandhart.com, anmarston@hollandhart.com, ejcooper@hollandhart.com, mamooore@hollandhart.com, ajtindell@hollandhart.com, ceradoci@hollandhart.com 303-473-2861
Submission	Motion to Extend
Filer's Name	Emily J. Cooper
Filer's email	docket@hollandhart.com, shavlick@hollandhart.com, anmarston@hollandhart.com, ejcooper@hollandhart.com, mamooore@hollandhart.com, ajtindell@hollandhart.com, ceradoci@hollandhart.com
Signature	/Emily J. Cooper/
Date	12/21/2018
Attachments	2018.12.21 Opposer's Motion to Extend.pdf(129767 bytes)

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

Sterling Jewelers Inc., Opposer, v. Tat Lee, Applicant.	Opposition No.: 91239222 Mark: TITANIUM KAY Serial No.: 87435559
---	--

OPPOSER’S MOTION TO EXTEND DEADLINES

Pursuant to 37 C.F.R. § 2.120(a)(2) and Fed. R. Civ. P. 6(b), Opposer Sterling Jewelers Inc., (“Opposer”) by and through its undersigned counsel, hereby moves to extend and reset the remaining deadlines in the above-captioned proceeding in accordance with the following schedule:

DEADLINE	CURRENT DATE	PROPOSED DATE
Expert Disclosures Due	12/22/2018	02/20/2019
Discovery Closes	01/21/2019	03/22/2019
Plaintiff's Pretrial Disclosures Due	03/07/2019	05/06/2019
Plaintiff's 30-day Trial Period Ends	04/21/2019	06/20/2019
Defendant's Pretrial Disclosures Due	05/06/2019	07/05/2019
Defendant's 30-day Trial Period Ends	06/20/2019	08/19/2019
Plaintiff's Rebuttal Disclosures Due	07/05/2019	09/03/2019
Plaintiff's 15-day Rebuttal Period Ends	08/04/2019	10/03/2019
Plaintiff's Opening Brief Due	10/03/2019	12/02/2019
Defendant's Brief Due	11/02/2019	01/02/2020
Plaintiff's Reply Brief Due	11/17/2019	01/16/2020
Request for Oral Hearing (optional) Due	11/27/2019	01/27/2020

In support of this Motion, Opposer states as follows:

Procedural History

1. Opposer filed its Notice of Opposition in this matter on January 31, 2018. After Applicant failed to timely Answer, the Board issued a Notice of Default on March 22, 2018. In response, Applicant filed its Answer and Motion to Set aside Default on April 13, 2018, but did not properly serve Opposer until instructed by the Board to do so on April 25th—44 days after the Answer deadline. Although Opposer filed a Response to Applicant’s Motion to Set Aside Default, the Board ultimately granted Applicant’s Motion and set the current case schedule as stated in the above table (“Current Schedule”).

2. According to the Current Schedule, discovery opened on July 25, 2018. Opposer served Applicant with written discovery (18 interrogatories and 16 document requests) on August 31, 2018. Applicant’s counsel requested an extension of time to respond until October 12th 2018. Opposer agreed in exchange for a reciprocal extension for its responses to Applicant’s discovery requests which were served on August 10, 2018.¹

3. On October 12, Applicant served its written discovery responses on Opposer, but did not produce any documents. Opposer’s counsel sent Applicant’s counsel an inquiry on October 16 to confirm when Applicant would make its document production. Applicant’s counsel responded that “documents should be there in a couple days.” Applicant then served First Amended responses to Opposers Interrogatories and Document Requests, and produced 9 pages of documents between October 21-26th, 2018.

4. On November 26, 2018, Opposer sent Applicant a deficiency letter seeking clarification on Applicant’s written responses and requesting a supplemental document production. Opposer

¹ Opposer timely responded to those requests as well as to Applicant’s supplemental requests served on October 30, 2018, including a production of over 300 pages of documents.

also requested a meet & confer with Applicant to discuss the issues in the letter prior to the requested response date of December 6. On November 29, counsel for Applicant responded to Opposer's counsel requesting an extension of time to respond to the letter until December 21, 2018. In a response dated December 3, Opposer's counsel suggested holding a meet & confer to discuss the letter and potentially narrow the issues in dispute, but Applicant's counsel declined (waiting until December 18 to respond), stating "I suggest we talk after you have had a chance to review the response to your letter."

5. On December 19—after still not receiving any substantive response or additional documents from Applicant—Opposer's counsel sought Applicant's consent to a 60-day extension of discovery deadlines. Applicant's counsel declined to consent, but offered to agree to a 30-day extension.

6. On December 20, counsel for the parties held a teleconference to meet & confer regarding the extension and Applicant declined to consent to a 60-day extension. Later that day Applicant provided a response to Opposer's deficiency letter and a supplemental production of 20 pages.

Argument

7. At all times, Opposer has worked diligently to pursue this case in a timely manner, and to resolve discovery disputes without involving the Board. Other than Applicant's failure to timely Answer, neither party has sought any extensions of case deadlines to date.

8. The months surrounding the holiday shopping season (both leading up to, and recovering from) are extremely busy for Opposer, who is the largest specialty jewelry retailer in the United States.

9. As of the filing of this motion, Applicant has produced only a handful of additional documents. Opposer requires more complete documents and information in order to prepare for depositions, which have not yet been scheduled, and to conduct supplemental discovery as necessary. Applicant's delay, in addition to the holiday season, have impacted Opposer's ability to finish discovery under the Current Schedule.

10. Opposer is concerned that a short 30-day extension will be insufficient to resolve remaining discovery disputes, take depositions, and complete discovery. Opposer believes, however, that 60 days will be sufficient time for both parties to collect any remaining documents and schedule and take depositions without undue pressure and expense on the parties.

11. Opposer respectfully submits that good cause exists for this extension as described above. This request is not brought for purposes of undue delay. *See* TBMP 509.01(a).

Dated this 21st day of December 2018.

Respectfully submitted,

/s/Emily J. Cooper

Emily J. Cooper

Amy J. Tindell

HOLLAND & HART LLP

P.O. Box 8749

Denver, CO 80201

(303) 473-2792 (phone)

(303) 473-2700 (fax)

**Attorneys for Opposer
Sterling Jewelers, Inc.**

CERTIFICATE OF SERVICE

I certify that on December 21, 2018, I served a copy of the above OPPOSER'S MOTION TO
EXTEND DEADLINES via email on Applicant's counsel at the following address:

gregwood@woodipdr.com
amy@agilelegal.com

/s/ Amy Tindell
Amy Tindell

11245158_1