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

Proceeding	91240520
Party	Plaintiff Omega Capital Management, LLC
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Submission	Opposition/Response to Motion
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Date	06/09/2020
Attachments	20200609 Response to Motion to Extend.pdf(34229 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OMEGA CAPITAL)	
MANAGEMENT, LLC, a)	Opposition No.: 91240520
Delaware limited liability)	
company,)	IN THE MATTER OF
)	
Opposer,)	Application Serial No.: 86/883,902
v.)	Filed: January 22, 2016
)	Mark: OMEGA BANK
)	Class: 36
F.N.B. CORPORATION, a)	Published: February 6, 2018
Florida corporation,)	
Applicant.)	
)	

**OPPOSER’S RESPONSE AND OBJECTION TO
APPLICANT’S MOTION FOR EXTENSION OF TIME**

Opposer Omega Capital Management, LLC (“Opposer”) hereby objects to Applicant F.N.B. Corporation’s (“Applicant”) Motion for Extension of Time to File Responses to Opposer’s Motion to Compel and Motion to Test the Sufficiency of Responses to Requests for Admission (“Motion to Extend”). In support, Opposer states:

1. Opposer’s Motion to Compel and Motion to Test the Sufficiency of Responses to Requests for Admission were filed on May 21, 2020.
2. On June 8, 2020—two days prior to the due date for its Responses—Applicant filed its Motion to Extend.
3. Pursuant to TBMP Rule 509.01(a) (2019), “[a] motion to extend must set forth with particularity **the facts** said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient.” (Emphasis added.)
4. The Motion to Extend only contains conclusory allegations, and does not identify any particular facts which might be considered to constitute good cause for an extension. Instead,

the Motion to Extend identifies only the following two reasons for the requested extension, and nothing else:

Current circumstances have caused a need for additional time in responding to the present motions. In addition, the parties have been involved in settlement discussions and Applicant believes those to be ongoing at this time.

5. Unspecified “current circumstances” are not particular facts, and are insufficient to meet the burden required for a motion to extend. *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1373 (TTAB 2001) (opposers had not come forward with “detailed facts” required to carry their burden explaining their inaction); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999) (sparse motion contained insufficient facts on which to find good cause). At a minimum, Applicant must explain the facts that constitute such “current circumstances.” Here, they have not.

6. Moreover, a reference to settlement negotiations, without more, does not justify an extension. *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000) (mere existence of settlement negotiations or proposals, without more, would not justify delay in proceeding with testimony). This is especially true where, as here, Applicant has refused to respond in any manner whatsoever to Opposer’s initial settlement proposal, which was made over 10 months ago, on July 25, 2019. Applicant’s silence has persisted despite multiple, consistent attempts by Opposer to follow-up with Applicant on this topic. *See* Opposer’s Motion to Compel, ¶ 9 and Ex. E. Although Applicant has implied to Opposer that a settlement counter-offer or discussion would be forthcoming in response to Opposer’s settlement offer, Applicant has not made any settlement counter-offer or attempted to hold settlement discussions with Opposer at any point in time. Silence for almost a year by a party to alleged settlement negotiations cannot possibly constitute “bilateral settlement negotiations” sufficient to support an unconsented extension of

time under any reasonable interpretation. *Instruments SA Inc. V. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) (extension denied where plaintiff's claim of ongoing bilateral settlement negotiations was rebutted by defendant, and no other reason for plaintiff's failure to proceed with discovery was shown).

7. Up to this point in time, Applicant has failed to: (1) respond in any meaningful way to Applicant's settlement proposal made over ten months ago or provide any other settlement proposal of any kind, (2) respond in any meaningful way to Opposer's multiple requests to discuss Applicant's objections to discovery requests, (3) respond in substance to any discovery requests whatsoever, and (4) state any particular facts that would justify the need for an extension of time.

WHEREFORE, Opposer respectfully requests that this Tribunal deny Applicant's Motion to Extend so as not to cause an unreasonable delay in the proceedings.

RESPECTFULLY SUBMITTED,

Dated: June 9, 2020

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S RESPONSE AND OBJECTION TO APPLICANT'S MOTION FOR EXTENSION OF TIME was served by electronic transmission on the 9th day of June, 2020, on counsel for Applicant at ttabmail@whitelawfirm.com.

/Penina Michlin Chiu/
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