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

Proceeding	91246628
Party	Defendant Hawk Enterprises 2, LLC
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Date	10/29/2019
Attachments	91246628 - Motion for A 90 Day Extension of the Close of Discovery and to Re-set All Remaining Deadlines.pdf(34437 bytes )

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

CYRIL HOURI,

OPPOSER,

v.

HAWK ENTERPRISES 2, LLC,

APPLICANT.

Opposition No. 91246628

Serial No. 76720538

Mark: BAKKT

**MOTION FOR A NINETY-DAY EXTENSION OF THE CLOSE OF THE  
DISCOVERY PERIOD AND TO RE-SET ALL REMAINING CASE DEADLINES**

Pursuant to 37 CFR § 2.116 and TMBP § 509.01, Hawk Enterprises 2, LLC (“Hawk” or “Applicant”), by and through the undersigned counsel, submits this Motion for a Ninety-Day Extension of the Close of the Discovery Period and To Re-Set All Remaining Case Deadlines (the “Motion”) to the Trademark Trial and Appeal Board (“Board”). Through this Motion, Hawk hereby requests that the Board grant an extension of time through, and including, the not yet expired expert disclosure deadline to February 3, 2020, and the Close of Discovery to March 4, 2020.

The new case deadlines would be as follows:

Expert Disclosures Due:	February 3, 2020
Discovery Period to Close:	March 4, 2020
Opposer Pretrial Disclosures:	April 20, 2020
Opposer’s 30-day Trial Period Ends:	June 4, 2020
Applicant’s Pretrial Disclosures:	June 19, 2020

Applicant's 30-day Trial Period Ends:	August 3, 2020
Opposer's Rebuttal Disclosures:	August 18, 2020
Opposer's 15-day Rebuttal Period Ends:	September 17, 2020
Opposer's Opening Brief Due:	November 16, 2020
Applicant's Brief Due:	December 16, 2020
Opposer's Reply Brief Due:	December 31, 2020
Request for Oral Hearing (optional) Due:	January 11, 2021

At present the next deadline is the expert disclosures date of November 3, 2019. 5

TTABVUE.

**A. There is Good Cause to Extend All Non-Expired Deadlines Ninety-Days.**

A motion for an extension of time filed prior to the expiration of the discovery period need only be supported by "good cause." Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509. Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *Amn. Vitamin Prods. Inc. v. DowBrands Inc.*, 22 USPQ 2d 1313, 1315 (TTAB 1992).

The Board should grant Hawk's Motion for good cause because (1) the Parties have not responded to all discovery requests, finished document production, or noticed depositions of the anticipated 5-8 depositions per side; (2) the Parties have outstanding discovery disputes that need resolution, perhaps with the involvement of the Board; (3) Hawk cannot provide expert disclosures on an incomplete record; and (4) Hawk has neither acted negligently nor in bad faith.

First, the Board should grant Hawk's Motion because the Parties have not responded to all discovery requests, finished document production, or noticed depositions of the anticipated 5-

8 depositions per side. The Parties have engaged in written discovery, with each side having served requests and responses, with some responses not yet due. Declaration of Michael Burns (“Burns Decl.”) ¶¶ 4-5. Both Parties are still producing documents. *Id.* ¶¶ 4-5, 8. Neither party has noticed depositions; however, both Parties have indicated an intent to take between 5-8 depositions per side from witnesses across the country, and discussed the potential need to take depositions of foreign witnesses. *Id.* ¶¶ 6-7. Houri’s document production is not substantially complete and, thus, Hawk has neither completed review of Houri’s document production nor noticed depositions. *Id.* ¶ 8. The Motion should be granted to provide time to complete this cross-country and necessary discovery.

Second, the Board should grant Hawk’s Motion because the Parties have outstanding discovery disputes that need resolution, perhaps with the involvement of the Board. For example, even though Houri has indicated in its initial disclosures that a number of individuals are in possession of responsive information related to this dispute, Houri has only collected documents from his attorney and himself. *Id.* ¶¶ 3, 8. Hawk seeks a complete document collection and production from Houri. Collection from all custodians is especially important in this matter because Houri’s purported ground for opposition is prior use, and Hawk has raised illegal use as a defense. 1 TTABVUE at ¶¶ 1-8, 13-21; 9 TTABVUE, Ex. 2 at 9-10 (Twelfth Defense). The Motion should be granted to provide time for Hawk to receive and review Houri’s full document production, and to notice depositions.

In addition, Houri’s written discovery responses are deficient under 37 CFR § 2.120 and TBMP §§ 405-407 through, for example, improper general objections to discovery requests. The Parties exchanged letters about these deficiencies on October 3 and October 10, 2019. Burns Decl. ¶ 8-9. The Parties met-and-conferred on October 16, 2019. *Id.* ¶¶ 7, 10. Hawk is hopeful

that these discovery disputes can be resolved without the Board's intervention. However, a ninety-day extension is necessary to allow the parties to complete written discovery, document production, schedule depositions outside the holidays, take depositions in geographically disparate locations, and (if necessary) to obtain the Board's intervention on discovery disputes.

Third, the Board should grant Hawk's Motion because Hawk cannot provide expert disclosures on an incomplete record. Hawk's request for a ninety-day extension of the discovery period includes the not-yet-closed Expert Disclosures deadline because of the discovery issues outlined above. An extension of the Expert Disclosures Deadline is warranted because the parties have only recently begun exchanging documents, and Houri's discovery responses and document production is incomplete. *Id.* ¶¶ 4-5, 8. Thus, Hawk is still evaluating what expert(s) it may need. To the extent Hawk has identified expert(s) it may need, any disclosures would be incomplete opinions, based on incomplete data. In particular, and as noted above, Houri's first use in commerce and alleged priority is central to the claims in this proceeding, as well as Houri's potential illegal operation of a cryptocurrency exchange. 1 TTABVUE at ¶¶ 1-8, 13-21; 9 TTABVUE, Ex. 2 at 9-10 (Twelfth Defense). To the extent Hawk engages an expert on these topics, the information those expert(s) require is uniquely in the possession, custody, and control of Houri, and has not been produced in full to Hawk.

**B. The Absence of Bad Faith or Negligence by Hawk Justifies an Extension.**

Hawk has neither acted negligently nor in bad faith. Hawk served timely discovery requests and raised concerns about Houri's written discovery responses as soon as they arose. Burns Decl. ¶ 8. The parties have exchanged letters about these issues in October and met-and-conferred on October 16, 2019. *Id.* ¶¶ 7-10.

Hawk also sought a joint motion to extend deadlines, but Hourí refused. On October 16, 2019, counsel for Hawk requested a ninety-day extension of all remaining deadlines to counsel for Hourí. *Id.* ¶ 10. On October 18, 2019, Hourí consented to a thirty-day extension via e-mail, and requested that Hawk take depositions during the “holiday impacted two week period of December 23, 2019 to January 3, 2020”, while also acknowledging that his client had limited availability during that period. *Id.* ¶ 11. On October 23, 2019, counsel for Hawk e-mailed counsel for Hourí outlining the basis for a ninety-day extension and again asked for Hourí’s consent for a stipulated extension. *Id.* ¶ 12. The same day, Hourí denied this request. *Id.* ¶ 13.

This is Hawk’s first unconsented request for an extension of time and is not sought in bad faith to delay the proceedings. *See FWHG IP Holdings LLC v. BR Consulting, Inc.*, Cancellation No. 92061236, 2016 WL 6833515, \*2 (TTAB July 12, 2016) (noting that delay was not present where a petitioner seeking an extension of time had previously sought only a single thirty-day consented suspension previously in the proceeding). Other than a thirty-day consented suspension early in the proceeding, Hawk has not sought a single extension of time. Moreover, the instant motion is not filed immediately before the end of the discovery period and is the result of a careful consideration of the attendant deadlines in the proceeding and the discovery that needs to be conducted.

### **C. Conclusion**

WHEREFORE, in light of the foregoing, Applicant has shown good cause as to why the instant Motion should be granted. This Motion is made in good faith and not for the purpose of delaying proceedings with the Board. As such, Applicant requests that further appropriate action be taken in this proceeding, including the granting of an extension of the deadline for the Expert Disclosure date and the Close of the Discovery Period through and including February 3, 2020,

and March 4, 2020, respectively, and that all subsequent case deadlines be re-set by ninety days accordingly.

Dated: October 29, 2019

Respectfully submitted,

**DLA PIPER LLP (US)**

By: /s/ Paul A. Taufer

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HAWK ENTERPRISES 2, LLC.

**CERTIFICATE OF SERVICE**

The undersigned counsel of record hereby certifies that a true and correct copy of the Motion to Divide Application has been served upon the following:

Brian Roffe  
(516) 448-6435  
patentattorney@comcast.net

via email, this 29th day of October, 2019.

By: /s/ Paul A. Taufer  
Paul A. Taufer



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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CYRIL HOURI,

OPPOSER,

v.

HAWK ENTERPRISES 2, LLC,

APPLICANT.

Opposition No. 91246628

Serial No. 76720538

Mark: BAKKT

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**DECLARATION OF MICHAEL BURNS IN SUPPORT OF HAWK'S  
MOTION FOR A NINETY-DAY EXTENSION OF THE CLOSE OF THE  
DISCOVERY PERIOD AND TO RE-SET ALL REMAINING CASE DEADLINES**

MICHAEL BURNS declares as follows:

1. I am Of-Counsel at the law firm DLA Piper LLP (US), and am attorney of record for Applicant Hawk Enterprises 2, LLC (“Hawk” Or “Applicant”).

2. I submit this Declaration in support of Hawk’s Motion for a Ninety-Day Extension of the Close of the Discovery Period and To Re-Set All Remaining Case Deadlines (the “Motion”). Unless otherwise stated, I have personal knowledge of the matters contained in this Declaration.

3. Houri served initial disclosures on July 8, 2019 identifying Cyril Houri, Christopher Hatch, Julien Regnier, Gabriel Ghnassia, and Arie Aboulafia as having discoverable information and materials in this proceeding. On September 16, 2019, Houri supplemented its initial disclosures adding Carlos Machado, Francesco Hofer, and Noam Livne as having additional information and materials relevant to this proceeding.

4. Thus far, Hawk has served, and Houri has responded to, 55 Requests for Production, 31 Interrogatories, and 16 Requests for Admission between August 29, 2019 and September 18, 2019. Hawk intends to serve additional discovery on Houri after receiving a complete production.

5. Houri has served, and Hawk has responded to, 21 Requests for Production and 32 Requests for Admission between October 3, 2019 and October 28, 2019. Houri served 28 Interrogatories on October 10, 2019, which are due on November 11, 2019. Hawk is also reviewing for production a significant number of documents, which it intends to produce on a rolling basis.

6. Neither Hawk nor Houri has noticed any depositions to date.

7. On a meet-and-confer between myself and Paul Taufer on behalf of the Applicants, and counsel for Opposer, Brian Roffe, on October 16, 2018, both parties indicated an intent to take between 5-8 depositions per side from witnesses across the country, and discussed the potential need to take depositions of foreign witnesses.

8. Hawk has raised deficiencies in Houri's written responses, document collection, and document production in a letter on October 3, 2019. For example, Houri only collected documents from his attorney and himself. Houri has also stated improper objections and general objections such that Hawk cannot determine what Houri is withholding from production.

9. Houri responded to Hawk's October 3, 2019 letter on October 10, 2019.

10. During the October 16, 2019, meet-and-confer, I requested a ninety-day extension of all remaining deadlines. Mr. Roffe declined this proposal.

11. On October 18, 2019, Houri consented to a thirty-day extension via e-mail, and requested that Hawk take depositions during the "holiday impacted two week period of

December 23, 2019 to January 3, 2020”, while also acknowledging that his client had limited availability during that period.

12. On October 23, 2019, counsel for Hawk e-mailed counsel for Houri outlining the basis for a ninety-day extension and again asked for Houri’s consent for a stipulated extension. This e-mail also requested the availability and locations of the individuals identified in Houri’s Initial Disclosures and Supplemental Initial Disclosures.

13. The same day, counsel for Houri denied this request.

14. Counsel for Houri has not provided the availability or locations of the individuals identified in Houri’s Initial Disclosures and Supplemental Initial Disclosures to date except for Mr. Houri.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 29, 2019.

/Michael Burns/  
MICHAEL BURNS