

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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November 25, 2025

Opposition No. 91288559 (parent case)
Opposition No. 91291970

Accelleron Switzerland Ltd.

v.

Cummins Inc.

Katerina D. Sparer, Interlocutory Attorney:

This case comes up on Applicant's motion, filed June 18, 2025, to take the discovery depositions of Opposer's foreign witnesses by oral examination via videoconference.¹ 17 TTABVUE. Applicant's motion is fully briefed.²

¹ Opposer's notice of expert disclosures, filed June 16, 2025 (16 TTABVUE), and Applicant's notice of rebuttal expert disclosures, filed August 14, 2025 (27 TTABVUE), are noted, and a schedule for expert discovery is set forth at the end of this order. *See infra*. Applicant's notice of status of foreign proceedings, filed July 3, 2025 (19-23 TTABVUE), is also noted.

Citations to the record are to TTABVUE, the Board's online docketing system. The number preceding "TTABVUE" corresponds to the docket entry number; the number(s) following "TTABVUE" refer to the page number(s) of that particular docket entry, if applicable.

² The Board has considered the parties' briefs, addresses the record only to the extent necessary to set forth its analysis and findings, and does not repeat or address all of the parties' arguments. *See Guess? IP Holder LP v. Knowlux LLC*, No. 92060707, 2015 WL 9702438, at *1 (TTAB 2015).

I. Background

On March 12, 2024, Opposer, a Swiss entity,³ served its initial disclosures, wherein it identified Philip Oh, its communications manager, as an individual likely to have discoverable information. *See id.* at 26.

On June 5, 2024, Opposer served its initial responses to Applicant's discovery request, wherein it identified Dirk Bergmann, its chief technology officer, as an individual likely to have discoverable information. *See* 24 TTABVUE 26.

On May 8, 2025, Opposer noticed the depositions of Applicant-affiliated witnesses Nick Arens, Brian Wilson, and Cecilia Click ("Applicant's Witnesses"), to take place in person in Indiana.⁴ *See* 17 TTABVUE 62-70.

On May 29, 2025, Applicant sent an email to Opposer in which it provided suggested dates for the depositions of Applicant's Witnesses, and inquired whether the previously-noticed dates for the depositions of Mr. Oh and Mr. Bergmann "work[ed]" for Opposer. *Id.* at 55.

In response, on May 30, 2025, Opposer informed Applicant that: (1) Mr. Bergmann was no longer employed by Opposer and would be unavailable for a deposition; and (2) Opposer would instead "rely on Michael Daiber" and serve supplemental initial disclosures identifying him soon.⁵ *Id.* Opposer further stated that, because both

³ Opposer recorded a change of name with the USPTO on December 5, 2024. *See* 18 TTABVUE 1. Opposer's name was changed from Turbo Systems Switzerland Ltd to Accelleron Switzerland Ltd., and the Board's records were updated accordingly. *See id.*

⁴ Applicant is based in Indiana. *See* 17 TTABVUE 4.

⁵ Opposer served supplemental initial disclosures identifying Mr. Daiber, its vice-president of strategy and investor relations, on June 3, 2025. 17 TTABVUE 58.

Opposition Nos. 91288559 and 91291970

Messrs. Oh and Daiber (“Opposer’s Witnesses”) “reside[] in Europe,” Applicant would need to depose these witnesses by written questions, pursuant to TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 404.03(b) (2025). *Id.*

On May 31, 2025, Applicant inquired whether Opposer would “agree to produce [Opposer’s Witnesses] for oral depositions whether virtually or in person in Europe.” *Id.* at 76.

On June 2, 2025, Opposer reiterated that, because Messrs. Oh and Daiber “are foreign residents . . . [Applicant] must depose them by written questions.” *Id.* at 78.

On June 4, 2025, Applicant informed Opposer that, if Opposer did not consent to oral depositions, Applicant would file a motion with the Board concerning the same. *Id.* at 80.

On June 9, 2025, the parties conferred by teleconference (*see* 17 TTABVUE 6), after which Opposer confirmed, on June 10, 2025, that it would “oppose [Applicant’s] motion for oral depositions” (*id.* at 82).

On June 18, 2025, Applicant filed the instant motion. 17 TTABVUE.

II. Legal Standard

Trademark Rule 2.120(c)(1) provides:

The discovery deposition of a natural person residing in a foreign country who is a party or who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, shall, if taken in a foreign country, be taken in the manner prescribed by § 2.124 [i.e., upon written questions] unless the Trademark Trial and Appeal Board, upon motion for good cause, orders that the deposition be taken by oral examination, or the parties so stipulate.

37 C.F.R. § 2.120(c)(1).

What constitutes good cause for a motion to take a discovery deposition orally in a foreign country must be determined on a case-by-case basis, upon consideration of the particular facts and circumstances in each situation.⁶ *Instagram, LLC*, 2023 WL 6786567, at *3; *Orion Grp. Inc. v. Orion Ins. Co.*, No. 91079009, 1989 WL 274396 at *3 (TTAB 1989). In deciding such a motion, the Board weighs the equities, including the advantages of an oral deposition and any financial hardship that the party to be deposed might suffer if the deposition were taken orally in the foreign country. *Id.*, see also *Salutare S.A. de C.V.*, 2021 WL 5983194, at *4 (citing *Jain v. Ramparts Inc.*, No. 91098307, 1998 WL 962200, at *2 (TTAB 1998)).

The taking of the deposition also must comply with any applicable procedural requirements of the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”), and, if a party appropriately seeks to compel a deposition through Chapter I or Article 18 of the Hague Convention, any limitations the Board may impose upon consideration of international comity in light of any local laws given consideration by the Board. *Instagram, LLC*, 2023 WL 6786567, at *3. In granting a motion to take a discovery deposition orally in a foreign country in accordance with any applicable Hague Convention requirements and

⁶ “To facilitate Board review of a motion for leave to take the deposition of a foreign witness by oral examination, the preferred practice is to include with the motion the proposed notice of deposition, letter of request, letter rogatory, or commission, as appropriate.” *Instagram, LLC v. Instagoods Pty Ltd.*, No. 91266266, 2023 WL 6786567, at *8 (TTAB 2023). However, “[t]here is no explicit requirement in the Trademark Rules of Practice that a notice of deposition be served before a party may move to take the deposition of a foreign witness by oral examination.” *Id.* at *8, n.26 (citing *Salutare S.A. de C.V. v. Remedy Drinks Pty Ltd.*, No. 91256556, 2021 WL 5983194, at *9, n.46 (TTAB 2021)).

consistent with the application of international comity and the Board's own rules of practice, the Board may permit a deposition to be taken by remote means. *Id.*

III. The Parties' Arguments

In support of its motion, Applicant argues that there is good cause under Trademark Rule 2.120(c)(1) because, inter alia: (1) Messrs. Oh and Daiber are the only "current employees that are identified in [Opposer's] disclosures and discovery responses" (17 TTABVUE 5); (2) Applicant agrees to "split up the depositions into separate days, if necessary" to accommodate Opposer's Witnesses in view of the nine-hour time difference with Switzerland (*id.* at 11); (3) Opposer is "well positioned to afford to prepare for and defend these depositions via videoconference" (*id.*); (4) Opposer's discovery responses and document production "are incomplete, leaving a number of questions unanswered—questions that Mr. Oh and Mr. Daiber should be able to answer via video depositions" (*id.* at 12); (5) "the Board has specifically and repeatedly acknowledged the numerous advantages of live depositions as opposed to depositions on written questions" (*id.* at 8); (6) "video depositions would cause little inconvenience or hardship to [Opposer]" and any such minor inconvenience or hardship "is clearly and significantly outweighed by the value of live testimony regarding topics solely in [Opposer's] control" (*id.* at 12); (7) Applicant "will . . . abide by any necessary requirements under The Hague Convention, of which Switzerland is a signatory" (*id.* at 9); and (8) if the motion is denied, Opposer "will have the distinct advantage" of deposing Applicant's witnesses in person while Applicant will be

“limited” to deposing Opposer’s “two sole witnesses” by written questions, which would be “unjust and unfair” (*id.* at 12).

In response, Opposer asserts, inter alia, that: (1) Applicant “has not shown good cause to depart from the rule that witnesses residing in foreign countries be deposed by written questions” (24 TTABVUE 4); (2) inasmuch as Opposer’s counsel and Opposer’s Witnesses reside in California and Switzerland, respectively, the nine-hour time difference would make live video depositions “unreasonably burdensome” because, “even if [they] were broken into numerous sessions,” they could not be conducted “during reasonable business hours” (*id.* at 7-9); (3) Applicant provides no authority to support its arguments that Opposer’s “financial capabilities should require that [Opposer’s] witnesses be deposed live” (*id.* at 9) or that it would be “unjust and unfair” if Applicant’s witnesses were deposed in person while Opposer’s witnesses were deposed by written questions (*id.* at 10); (4) Applicant “provides no reason why additional discovery” is necessary and has “never attempted to resolve these alleged disputes in good faith, move to compel, or even alert [Opposer] to the purported issues in the first place” (*id.* at 12) (emphasis omitted); (5) Applicant seeks “common trademark discovery . . . [y]et fails to specifically explain . . . why it requires oral deposition to obtain the discovery it claims it needs” (*id.* at 14); and (6) “this case is so ordinary that, if good cause were found, it would eviscerate Rule 2.120(c)(1)” (*id.* at 4).

In reply, Applicant asserts, inter alia, that: (1) “Opposer effectively concedes that it would suffer no financial hardship” if its witnesses were deposed by video (26

TTABVUE 2); (2) “[s]ince there is no greater cost to Opposer associated with an oral deposition by videoconference as opposed to a deposition upon written questions, this factor weighs in favor of good cause” (*id.* at 7); (3) “video depositions are more efficient and effective than depositions by written questions” (*id.* at 3); (4) “the Board has previously allowed oral depositions of foreign deponents located in . . . foreign locations with an even greater time difference” (*id.*), and “the 9-hour time difference does not outweigh the advantages of depositions by oral examination” (*id.* at 6); (5) “Mr. Oh and Mr. Daiber’s testimony cannot be fully developed through the process of propounding written questions and reviewing written answers, particularly given the gaps in Opposer’s written discovery responses to date” (*id.* at 8); (6) in view of “the indisputable advantages of oral depositions, the lack of financial hardship to Opposer, and the importance of Mr. Oh and Mr. Daiber’s testimony, good cause exists to depose Opposer’s two foreign witnesses orally via videoconference” (*id.* at 2); and (7) Applicant “would be extremely prejudiced if it did not have the opportunity to depose Opposer’s sole two witnesses by oral video depositions given their intimate knowledge and expected testimony regarding the contested issues in this proceeding” (*id.* at 8).

IV. Analysis and Determination

Applicant has failed to show that good cause exists to warrant that the discovery depositions of Opposer’s Witnesses be taken orally. Discovery in this proceeding is currently ongoing, and Applicant has not identified sufficient facts or circumstances that would tip the balance of the equities in favor of granting the instant motion.

Although the Board recognizes that depositions on written questions are a more time-consuming process (*see* TBMP § 404.07(j)), Trademark Rule 2.120(c)(1) requires depositions of foreign witnesses to be made on written questions, absent a showing of good cause or stipulation by the parties. Accordingly, the fact that depositions on written questions are more time-consuming or cumbersome than oral depositions is, in and of itself, insufficient reason to establish good cause for taking a deposition on oral examination.

Applicant's generalized assertion that it would be "unjust and unfair" (17 TTABVUE 12) for Opposer to be afforded the benefit of oral depositions while Applicant is limited to depositions by written questions likewise fails to demonstrate good cause, as it does not distinguish this proceeding from any other where one of the parties is located outside of the United States.

While Applicant contends that the deposition testimony is needed to understand "the selection and adoption of [Opposer's] marks, the relevant consumers at issue, and identification of the individuals with knowledge about these relevant topics" (*id.*), it has not explained how these areas of inquiry, which are common to many Board proceedings involving likelihood of confusion, establish good cause for a deposition on oral examination in this specific proceeding. To the extent Applicant believes that Opposer's discovery responses and document production on these topics are "incomplete" (*see id.*), such issues may be resolved by way of a motion to compel, which Applicant has not filed. *See* Trademark Rule 2.120(f)(2). *Cf. Instagram, LLC*, 2023 WL 6786567, at *4 (finding good cause to take discovery depositions by oral

examination via videoconference where movant had “difficulty obtaining information . . . through written discovery”).

With respect to hardship, Opposer asserts that the nine-hour time difference between Switzerland (where Opposer’s Witnesses reside) and California (where Opposer’s U.S. counsel is located) “is the length of a typical business day,” thus “prohibit[ing] a live examination during business hours.” *See* 24 TTABVUE 8. Opposer contends that an oral deposition would either require Opposer’s Witnesses “to work a full business day and then be deposed late into the night,” or would require Opposer’s counsel to “begin defending a deposition at midnight and finish well after dawn.” *Id.* at 8-9. Opposer further contends that, even if the depositions were “split over multiple sessions,” the outcome would be “extremely disruptive” and “cannot possibly be more efficient than written questions.” *Id.* at 9. While the Board has found good cause to allow oral depositions by videoconference in cases involving substantially larger time differences, the Board agrees with Opposer that, “[a]lthough not intuitive, a 9-hour difference is more challenging than a 17-hour difference.” *Id.* at 4. *Cf. Instagram, LLC*, 2023 WL 6786567, at *4 (finding good cause to take discovery depositions by oral examination via videoconference where movant had “difficulty obtaining information . . . through written discovery” and witnesses were located in Australia).

In short, Applicant has not set forth with sufficient particularity why oral depositions of Opposer’s Witnesses are more advantageous than depositions on written questions, apart from the general advantages of an oral deposition that would

Opposition Nos. 91288559 and 91291970

apply to any witness under any circumstances. In view of the foregoing, upon consideration of the particular facts and circumstances of this proceeding, the Board finds that Applicant has not established good cause for deposing Opposer's Witnesses orally by videoconference. Accordingly, Applicant's motion is **denied**.

V. Expert Discovery

As noted *supra*, Opposer filed its notice of expert disclosures on June 16, 2025 (16 TTABVUE) and Applicant filed its notice of rebuttal expert disclosures on August 14, 2025 (27 TTABVUE). *See supra* note 1. *See also* Fed. R. Civ. P. 26(a)(2)(D).

Upon disclosure of an expert, the Board, on its own initiative, may issue an order regarding expert discovery. *See* Trademark Rule 2.120(a)(2)(iii); *see also* MISCELLANEOUS CHANGES TO TRADEMARK TRIAL AND APPEAL BOARD RULES OF PRACTICE, 81 Fed. Reg. 69,950, 69,960 (October 7, 2016); TBMP § 401.03.

Accordingly, the Board exercises its discretion to **suspend** proceedings for **sixty (60) days from the date of this order**, to allow the parties to take discovery with respect to both parties' experts. To the extent either party requires an extension of the suspension period to complete the expert discovery permitted above, such party may file a motion to extend the suspension period.

VI. Proceeding Schedule

Absent word from the parties, proceedings will automatically resume on **January 24, 2026** pursuant to the following schedule:

Discovery Closes	2/20/2026
Plaintiff's Pretrial Disclosures Due	4/6/2026
Plaintiff's 30-day Trial Period Ends	5/21/2026

Defendant's Pretrial Disclosures Due	6/5/2026
Defendant's 30-day Trial Period Ends	7/20/2026
Plaintiff's Rebuttal Disclosures Due	8/4/2026
Plaintiff's 15-day Rebuttal Period Ends	9/3/2026
Plaintiff's Opening Brief Due	11/2/2026
Defendant's Brief Due	12/2/2026
Plaintiff's Reply Brief Due	12/17/2026
Request for Oral Hearing (optional) Due	12/27/2026

Important Trial and Briefing Instructions

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. *See* TBMP § 801.03. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).