

ESTTA Tracking number: **ESTTA68099**

Filing date: **02/24/2006**

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

Proceeding	92044257
Party	Plaintiff YOSHIDA & COMPANY, LTD.
Correspondence Address	PAUL A. WELTER MERCHANT & GOULD P.C. P.O. BOX 2910 MINNEAPOLIS, MN 55402-0910
Submission	Motion to Extend
Filer's Name	Alan W. Kowalchyk
Filer's e-mail	akowalchyk@merchant-gould.com, rfirner@merchant-gould.com, twerner@merchant-gould.com
Signature	/alan kowalchyk/
Date	02/24/2006
Attachments	2006 02 24 Motion for extension.pdf (4 pages)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

YOSHIDA & COMPANY, LTD.)	Cancellation No. 92044257
)	
Petitioner,)	Registration No. 2,131,161
)	
v.)	Mark: PORTER DASH!
)	
PORTER INTERNATIONAL CO., LTD.)	Registered: January 20, 1998
)	
Registrant.)	

**PETITIONER'S MOTION FOR AN EXTENSION OF TIME UNDER RULE 6(b)
AND 37 C.F.R. 2.120(a)**

Petitioner Yoshida & Company, Ltd. hereby moves for an extension of time to respond to Registrant's initial set of discovery requests pursuant to Rule 6(b) and 37 C.F.R. § 2.120(a).¹ The requested extension is for thirty (30) days or one week after Registrant's service of written discovery responses should Registrant's pending motion for an extension of time to respond to discovery be denied. Under Rule 6(b) the Board may exercise its discretion at any time to grant an extension of time for good cause shown. Fed. R. Civ. P. 6(b).

About nine months ago the parties in this matter exchanged initial sets of discovery requests (including requests for production, requests for admission, and interrogatories). After this initial exchange of discovery requests, the parties agreed to dates when their respective responses would be due, including a number of extensions of time. As a result of the agreed upon extensions of time, Registrant's discovery responses

¹ Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a), incorporates the Federal Rules of Civil Procedure in the procedure and practice in *inter partes* proceedings before the Trademark Trial and Appeal Board.

were due February 21, 2006, and Petitioner's responses were due one week later on February 27, 2006.

On the date that Registrant's responses were due, Registrant filed a motion for extension of time to respond to Petitioner's initial set of discovery responses based upon purported ongoing settlement negotiations between the parties. Petitioner opposed this extension of time.

After receiving Registrant's motion to extend time to serve its discovery responses, Petitioner requested a similar extension of time to maintain the scheduled exchange of discovery responses agreed to by the parties. That is, Petitioner asked for Registrant's agreement that Petitioner's responses would not be due until one week after Registrant serves its discovery responses, whenever that may be. Registrant refused this request. Registrant's refusal to grant a reciprocal extension of time was unreasonable and necessitated this motion.

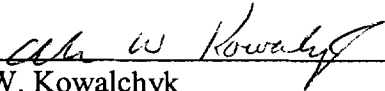
Registrant indicated its pending motion for an extension of time to respond to Petitioner's discovery requests was based on pending settlement discussions. However, it appears that Registrant's motion for an extension of time was actually an attempt to force Petitioner to provide its discovery responses first. Registrant's attempt to use motion practice to change the agreed upon discovery schedule is improper and contrary to Registrant's prior discovery representations. Registrant should not be allowed to use motion practice to abrogate its agreement with Petitioner. To change the terms of the agreed upon timing for the exchange of discovery responses is both unfair and prejudicial to Petitioner.

Petitioner does not believe that any further extensions of time are warranted with respect to these initial sets of discovery requests. In order to maintain the agreed upon discovery schedule, however, Petitioner believes that an extension of time for Petitioner's discovery responses should be granted so that discovery proceeds as originally agreed by the parties regardless of whether the Board grants Registrant's motion for an extension of time. For these reasons, the Board should grant Petitioner an extension of time to respond to discovery one week after Registrant serves its responses, whenever that may be.

Yoshida & Company, Ltd.

By its Attorneys,

Date: February 24, 2006



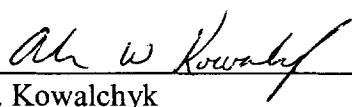
Alan W. Kowalchyk
Todd S. Werner
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of PETITIONER'S MOTION FOR AN EXTENSION OF TIME UNDER RULE 6(b) AND 37 C.F.R. 2.120(a) was served upon the following attorney of record for Registrant by First Class Mail, postage prepaid, and also via e-mail this 24th day of February, 2006:

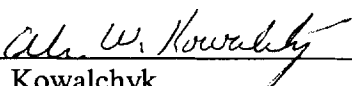
Ms. Ronni S. Jillions
Browdy and Neimark, P.L.L.C.
624 Ninth St., N.W.
Suite 300
Washington, D.C. 20001
Tel: 202-628-5197
Fax: 202-737-3528



Alan W. Kowalchuk

CERTIFICATE OF FILING

I hereby certify that the foregoing PETITIONER'S MOTION FOR AN EXTENSION OF TIME UNDER RULE 6(b) AND 37 C.F.R. 2.120(a) is being filed electronically with the United States Patent and Trademark Office's Electronic System for Trademark Trials and Appeals (ESTTA) on this 24th day of February, 2006.



Alan W. Kowalchuk