

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: May 16, 2006

Cancellation No. 92044660

Kaman Music Corp.

v.

Gibson Guitar Corp.

Andrew P. Baxley, Interlocutory Attorney:

The discovery and trial schedule herein was last reset in the Board's June 28, 2005 order with the discovery period closing on December 23, 2005 and petitioner's thirty-day testimony period closing on March 23, 2006.¹

On May 12, 2006, i.e., the twentieth day of respondent's testimony period, petitioner filed a combined motion to compel and to reopen discovery. Inasmuch as the motion to compel discovery was filed nearly three months after the commencement of trial herein, that motion is denied as untimely.² See

¹ Accordingly, petitioner's testimony period commenced on February 22, 2006. The Board notes that petitioner filed no evidence and appears to have taken no testimony during its testimony period. See Trademark Rule 2.132(a); TBMP Section 534 (2d ed. rev. 2004).

² As the final rule notice published in the Federal Register on September 9, 1998, prior to the enactment of Rule 2.120(e)(1) as amended, states, a motion to compel "deals with pre-trial matters and should be filed and determined prior to trial." 63 Fed. Reg. 48081, 48088. As such, petitioner's motion to compel should have been filed by not later than February 21, 2006.

Trademark Rule 2.120(e)(1); TBMP Section 523.03 (2d ed. rev. 2004).

Notwithstanding the foregoing, respondent is reminded that it has a duty to make a good faith effort to satisfy petitioner's discovery needs. See TBMP section 408.01 (2d ed. rev. 2004). The parties are further reminded that they are under an obligation to respond to their adversary's requests for discovery during the time allowed therefor under the applicable rules, irrespective of their adversary's failure to respond to a pending request for discovery. See Fed. R. Civ. P. 26(d); *Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067, 1070 (TTAB 1990) and *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626, 632 (TTAB 1986); TBMP Section 403.03 (2d ed. rev. 2004). The parties are reminded in addition that, when a party, without substantial justification, fails to disclose information required, or fails to amend or supplement a prior response, as required, that party may be prohibited from using as evidence the information not so disclosed. See Fed. R. Civ. P. 37(c)(1).

The stipulated protective agreement that petitioner filed as an exhibit to its motion to compel is noted. The parties are referred, as appropriate, to TBMP Sections 412.03-.05 (2d ed. rev. 2004).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing Trademark Rules 2.27(d) and (e), which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

Proceedings herein are suspended pending disposition of petitioner's motion to reopen discovery. See Trademark Rules 2.117(c). Any paper filed during the pendency of this motion that is not relevant thereto will be given no consideration.