

ESTTA Tracking number: **ESTTA44556**

Filing date: **09/08/2005**

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

<b>Proceeding</b>	92044660
<b>Party</b>	Plaintiff KAMAN MUSIC CORP ,
<b>Correspondence Address</b>	DANIEL E. BRUSO CANTOR COLBURN 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002
<b>Submission</b>	Opposition/Response to Motion
<b>Filer's Name</b>	Daniel E. Brusio
<b>Filer's e-mail</b>	DBruso@cantorcolburn.com
<b>Signature</b>	/Daniel E. Brusio/
<b>Date</b>	09/08/2005
<b>Attachments</b>	Opposition.Motion.Extend.Time.Answer.pdf ( 5 pages )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 2,860,682: LPX

Date of Issue: July 6, 2004

KAMAN MUSIC CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92044660
	)	
GIBSON GUITAR CORP.	)	
	)	
Respondent.	)	

**PETITIONER’S OPPOSITION TO RESPONDENT’S  
MOTION TO EXTEND TIME TO ANSWER PETITION TO CANCEL**

Kaman Music Corporation (“Petitioner”), hereby submits is Opposition to Respondent Gibson Guitar Corp.’s (“Respondent”) Motion To Extend Time To Answer Petition To Cancel, all pursuant to TMBP § 509.01(a). In support thereof, Petitioner relies upon the pleadings filed to date and states as follows.

**I. ARGUMENT**

The Board should deny Respondent’s Motion for at least three reasons. First, Respondent fails to comply with TMBP § 509.01(a) by setting forth with particularity the good cause supporting its Motion. Second, Respondent fails to demonstrate that that the requested extension is not necessitated by its lack or diligence or unreasonably delay in responding to the Petition during the initial response period **and** during the initial thirty-day extension agreed to by Petitioner. Third, granting the requested extension will do nothing except cause further delay.

By way of review, Petitioner and its predecessors have, for many years, been using the trademark “LP” as part of a family of marks used to advertise and sell of a wide variety of percussion musical instruments. Petitioner holds several registrations for its LP family of marks.

Respondent holds a registration for the “LPX” mark (the “Mark”) in the field of stringed musical instruments, namely, electric guitars. Respondent’s claimed date of first use occurred long after Petitioner began using its marks.

Petitioner seeks to cancel the Mark because, *inter alia*, Respondent’s use of the Mark is likely to cause confusion, mistake or deception within the relevant market, Respondent has abandoned the Mark and Respondent’s registration and/or use of the Mark is injuring Respondent.

Petitioner commenced this action on June 22, 2005, by filing a Petition For Cancellation with the Board. Respondent’s answer was due on August 2, 2005; however, Petitioner agreed to extend the deadline to September 1, 2005, “so that Registrant... [could]... further investigate the allegations in the Petition to Cancel.” *See* Respondent’s August 1, 2005 Motion To Extend Time To Answer Petition To Cancel, p. 1.

Instead of responding to the Petition For Cancellation, Respondent waited until the last day of the initial extension period to file a second motion for extension. Respondent seeks until October 1, 2005, to respond to the Petition For Cancellation, claiming that “[t]he additional thirty days is required to further investigate the allegations made in the Petition and to formulate Applicant’s defenses.” *See* Motion, p. 2.

Respondent’s Motion fails on its face to comply with the plain language of TMBP 509.01(a), which provides that “[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.” TMBP § 509.01(a) (emphasis supplied). Respondent’s Motion, however, is little more than a conclusory claim that Respondent needs additional time to respond. Respondent completely fails to set forth any facts setting forth the reasons why additional time is required, or why the initial extension was not sufficient. Instead, Respondent relies upon the wholly inadequate statement that it needs additional time to investigate, which was the same reason that it gave when Petitioner consented to the first extension. Such a statement simply fails to comply with the particularity requirements of TMBP 509.01(a).

Respondent also fails to comply with the second paragraph of TMBP § 509.01(a), which provides that “a party moving to extend time **must** demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay....” Respondent fails to show what, if anything, it has done to investigate the basis for Petitioner’s claim or why it could not respond during the ten (10) weeks that passed between the filing of the Petition For Cancellation and agreed upon deadline for Respondent to answer. Indeed, Respondent does not even attempt to satisfy this requirement, making no allegations that it has diligently investigated Petitioner’s claims or that the requested extension is due to anything other than Respondent’s undue delay in addressing this matter. Once again, TMBP § 509.01(a)’s clear requirements are not satisfied.

Establishing good cause, diligence and the absence of undue delay is mandatory. In particular, TMBP 509.01(a) provides that “[t]he Board will ‘scrutinize carefully’ any motion to extend time, to determine whether the requisite good cause has been shown.” Respondent’s failure to demonstrate any of these elements is fatal to its request. Moreover, in view of Respondent’s failure to provide the Board with any basis for the requested extension, granting

the extension will only delay this proceeding and increase the damage that Petitioner suffers and continues to suffer as a result of Respondent's improper registration of the Mark.

## II. CONCLUSION

TMBP § 509.01(a) requires parties seeking extensions of time to set forth, with particularity, the basis for their request, and to demonstrate that the extension is not the product of lack of diligence or undue delay on the part of the moving party. Respondent has failed to demonstrate any of the required elements. Moreover, Respondent has failed to demonstrate that granting the request will do anything except to further delay resolution of this proceeding. Accordingly, the Board should deny Respondent's Motion.

THE PETITIONER  
KAMAN MUSIC CORP.

Date: September 8, 2005

By: /s/ Daniel E. Bruso  
Daniel Bruso, Esq.  
Curtis Krechevsky, Esq.  
Cantor Colburn LLP  
55 Griffin Road South  
Bloomfield, CT 06002  
(860) 286-2929  
(860) 286-0115 (facsimile)  
Attorneys for Kaman Music Corporation

**CERTIFICATE OF SERVICE**

I, Daniel E. Bruso, Esq., counsel to Petitioner Kaman Music Corp. in the above-captioned proceeding, hereby certify that, on September 8, 2005, I served a copy of PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO EXTEND TIME TO ANSWER PETITION TO CANCEL via first class mail, postage prepaid, upon:

Edward D. Lanquist, Jr., Esq.  
Waddey & Patterson  
414 Union Street  
Suite 2020  
Bank Of America Plaza  
Nashville, TN, 37219

/s/ Daniel E. Bruso