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

Proceeding	92056206
Party	Plaintiff IML - Instrument Mechanic Labor, Inc.
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Date	10/21/2016
Attachments	IML Consented-To Motion For Extension of Discovery Period.pdf(84616 bytes)

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

In the Matter of Registration No. 3,752,461
For the mark RESISTOGRAPH
Date filed: February 23, 2010

IML – INSTRUMENT MECHANIC
LABOR, INC.

Petitioner,

v.

FRANK RINN

Registrant.

Cancellation No.: 92056206

CONSENTED-TO MOTION FOR EXTENSION OF DISCOVERY PERIOD

Petitioner, IML - Instrument Mechanic Labor, Inc., by and through its attorneys and pursuant to 37 C.F.R. §2.120(a)(2), §2.127, and TBMP §403.04, respectfully files this Consented-to Motion For Extension of Discovery Period. In support of this motion, Petitioner states as follows:

1. In accordance with Registrant Frank Rinn’s Consented-To Motion For Extension of Discovery Period, filed on or about December 16, 2015 with the Trademark Trial and Appeal Board (“TTAB”) and subsequently granted by the TTAB on December 29, 2015, the period for discovery was reset so as to close on June 17, 2016.

2. On or about March 29, 2016, Registrant filed its Motion to Compel Answers to Interrogatories and Responses to Document Requests. The TTAB then suspended the instant proceeding pending disposition of the motion to compel.

3. On or about June 7, 2016, Petitioner served Petitioner's fourth production of documents, Bates-stamped IML 00888 through 01007, responsive to Registrant's First Set of Requests for Production of Documents.

4. On or about July 29, 2016, the TTAB issued its order denying Registrant's motion to compel without prejudice and instructing the parties to attempt to resolve their disagreements regarding discovery through good faith negotiations. The TTAB ordered the proceedings resumed and reset the close of discovery date to October 27, 2016.

5. With the resumption of the proceeding, Registrant conducted a review of Petitioner's fourth production of documents. With almost all of the documents produced being in the German language, this required some time for Registrant to gain an understanding of the contents of these documents.

6. On or about October 18, 2016, the parties participated in a teleconference to discuss the issues forming the basis of the motion to compel and the parties' remaining discovery obligations. The parties agreed that Petitioner would serve supplemental discovery responses by December 2, 2016. The parties further agreed that Registrant then would have fifteen (15) days to review the supplemental responses, with the parties agreeing to work together to resolve any possible remaining written discovery issues; the parties further agreed that in the event they were unable to resolve such issues by means of direct discussion, they would seek informal assistance from the Board to resolve these items.

7. In accordance with the Board's July 29, 2016 order, the parties are working together to resolve various issues arising out of the foregoing activities. Those efforts are being

made in good faith and with the shared goal of fulfilling the parties' discovery obligations as efficiently as possible.

8. This process continues to be complicated by the fact that many of the responsive documents produced are located outside of the U.S. and are written in language(s) other than English, which necessitates the undertaking of translation activities.

9. The parties also have discussed and corresponded about the anticipated taking of depositions by both sides once the above activities are completed relating to written discovery. As previously advised, the logistics are complicated by various facts: the parties' mutual wish to avoid the cumbersome process of depositions upon written questions, the fact that the deponents are located both in Germany and in multiple U.S. states, and the fact that the parties anticipate that it will be necessary to use interpreters for at least some of the depositions, owing to the fact that multiple deponents do not speak English as a first language.

10. The parties also note that the reasons supporting this motion include, but are not limited to, the following:

(i) This is an extensive proceeding, as it includes four grounds for cancellation, specifically, fraud, genericness, priority and likelihood of confusion, and mere descriptiveness.

(ii) Petitioner is a subsidiary of an entity located in the Federal Republic of Germany, and Registrant, Frank Rinn, is a German citizen residing in the Federal Republic of Germany. Accordingly, both Registrant's and Petitioner's counsels continue to devote significant time to understanding the contents of documents produced in the German language and whether particular documents are responsive to the opposing party's requests. This process experiences

further delays as it is reliant upon individuals with limited availability for telephonic conference due to the time difference between Germany and the United States.

(iii) The discovery obligations are substantial: Petitioner's First Set of Interrogatories upon Registrant consists of twenty-six (26) interrogatories; Petitioner's First Request for Production of Documents upon Registrant consists of thirty-one (31) requests for production; Registrant's First Set of Interrogatories upon Petitioner consists of thirty-five (35) interrogatories; and Registrant's First Request for Production of Documents upon Petitioner consists of forty-three (43) requests for production.

11. Although the parties have made significant progress in the previous months, additional time is needed for resolution of any further issues and/or disagreements relating to the parties' written production, and to conduct oral discovery.

12. In accordance with the Board's July 29, 2016 order, the parties provide the following information regarding the issues to be resolved and anticipated resolution dates:

(i) Petitioner to serve further production of supplemental written discovery responses: completed by December 2, 2016;

(ii) Registrant's review of said supplemental responses: completed by December 17, 2016;

(iii) Resolution of various issues and/or disagreements relating to the parties' respective interrogatories and document production requests, as well as the responses and objections relating to same (and taking into account the intervening holidays): completed by January 13, 2017; and

(iv) Further conferring by counsel to the parties so as to coordinate logistics/scheduling for conducting oral discovery depositions of individuals and/or potential witnesses likely to have information that may be used to support or defend the parties' positions: completed by January 25, 2017.

13. Based on the foregoing, the parties request a ninety (90) day extension of the discovery period up to and including January 25, 2017.

14. The Registrant, Frank Rinn, through his attorneys, likewise agrees to this extension and has expressly consented to this motion.

CONCLUSION

For the foregoing reasons, Petitioner, IML – Instrument Mechanic Labor, Inc., acting with the consent of Registrant, Frank Rinn, respectfully requests that the Trademark Trial and Appeal Board grant this Consented-to Motion For Extension of Discovery Period up to and including January 25, 2017.

Respectfully submitted,

Dated: October 21, 2016

By: /s/ Sean Ploen .

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Certificate of Service

I, the undersigned attorney, hereby certify that I caused to be served a true and correct copy of the foregoing document upon the following parties in the manner indicated on this 21st day of October, 2016:

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By:

- U.S. Postal Service, ordinary First Class mail
- U.S. Postal Service, certified or registered mail
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- Other (electronic mail by stipulation of the parties)

By: /s/ Colman Sutter
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