

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

DUNN

Mailed: March 3, 2016

Cancellation No. 92062866

Futurefly Oy

v.

Interactive Corporation AKA Interactiv

Elizabeth A. Dunn, Attorney (571-272-4267):

On February 24, 2016, the Board issued an order requiring Respondent to file a change of correspondence address (with a phone number which is regularly checked for messages) by February 29, 2016, and requiring both parties to appear by phone on March 2, 2016 for a conference with the Board to expedite decision on the pending contested motion to extend Respondent's time to file its answer.

Respondent neither filed the change of address nor appeared for the conference.

The Board's December 17, 2015 institution and trial order set February 6, 2016 as the deadline for the answer. On January 20, 2016, James Chu, who signed the application underlying the subject registration as CEO on April 23, 2012, filed a motion to extend Respondent's time to answer by sixty days to allow Respondent additional time to investigate Petitioner's claims, making April 6, 2016 the new due

date for the answer.¹ On January 25, 2016, Petitioner filed its opposition to the extension on the ground that sixty days is excessive for preparation of the answer when the claims of abandonment, and fraud based on nonuse at the time the application was filed, are based on information which is already in Respondent possession , and that there is no need for further delay. On February 1, 2016, Respondent filed a reply which reiterated that Respondent needs time to investigate the claim, and adds that its ability to do so was hampered by service of the petition to cancel to cancel just before the December holidays, and that Respondent also requires time to seek counsel.

PARTIAL EXTENSION GRANTED

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Cir. P. 6(b). What constitutes good cause sufficient to justify the modification of a scheduling order necessarily varies with the circumstances of each case." Charles Alan Wright et al., 8B FED. PRAC. & PROC. CIV. § 1522.2 (3d ed., October 2015). "[T]he Board is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extension is not abused." *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

The Board strongly encourages parties to seek legal representation, and generally provides a thirty day suspension of proceedings to allow them to do so.

¹ The motion did not include Mr. Chu's present title or a phone number for Respondent.

See Trademark Trial and Appeal Board Manual of Procedure (TBMP) §513.01 (October 2015) (“If the request to withdraw is granted, the Board will suspend proceedings and allow the party a stated period of time (usually 30 days) in which to appoint a new attorney or other authorized representative (and inform the Board thereof), or to file a paper stating that it desires to represent itself.”). The Board was willing to hold a conference with the parties in which Respondent would be allowed to supplement its motion with additional detail as to why double the usual amount of time to obtain counsel was necessary in this case. However, as noted, Respondent failed to appear for the conference. The Board finds that Respondent’s motion does not show good cause for an extension of sixty days.

Accordingly, Respondent’s motion to extend its time to answer is granted only as to THIRTY DAYS, making its answer due March 7, 2015, failing which the Board may issue notice of default.

REQUIREMENTS FOR THE ANSWER

One purpose of the petition to cancel and answer, known as “the pleadings”, is to make clear whether there are any points of agreement, so that the parties have notice as to which numbered allegations in the petition to cancel remain in dispute and which points must be proven at trial. Any discussion of the merits of the parties’ respective positions on the pleaded claims, including statements of the evidence to be submitted or the likelihood of the claims being proven, is premature.

The petition to cancel herein consists of 17 paragraphs setting forth the basis of Petitioner’s claim of damage. Thus, in accordance with Fed. R. Civ. P. 8(b), it is

incumbent on Respondent to answer the petition to cancel by specifically admitting or denying the allegations contained in each paragraph. If Respondent is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, it should so state and this will have the effect of a denial.²

AUTHORITY AND PHONE NUMBER OF SIGNER

In addition to its answer, Respondent must file a statement indicating that a corporate officer signed the motion for extension. If the motion was not signed by a corporate officer, Respondent must ratify the statements made in the motion. Every filing must indicate the title for the signer, and a telephone number which is regularly checked for messages. TBMP §106.02 (“A document filed in a proceeding before the Board should include the name, in typed or printed form, of the person who signed; a description of the capacity in which he or she signed [e.g. as the individual who is a party, if the filing party is an individual; as a corporate officer if the filing party is a corporation; as the filing party’s attorney]; and his or her business address and telephone number.”).

FAILURE TO APPEAR AS ORDERED

In addition, Respondent must file a statement indicating why Respondent did not appear before the Board as ordered. The Board’s order was sent to Respondent at its email address, with a hard copy of the order mailed to Respondent’s postal

² Fed. R. Civ. P. 8(b)(1) provides, in part, that “In responding to a pleading, a party must: (A) state in short and plain terms its defenses to each claim asserted against it; and (B) admit or deny the allegations asserted against it by an opposing party. [and] (5) A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.”

address. If both methods of delivery failed, it is Respondent's responsibility to take steps to ensure that the problem is not repeated. If Respondent cannot ensure timely receipt of mail or email, Respondent must check the Board's website daily to remain apprised of the status of this case and any outstanding orders.

REPRESENTATION

Although Patent and Trademark Rule 11.14 permits an entity to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure. Respondent may have counsel appear on its behalf at any time, and is encouraged to do so.

This inter partes proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs.

The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with

the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules. Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the TBMP, and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page: <http://www.uspto.gov/trademarks/process/appeal/index.jsp>. Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. See *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

SUMMARY

By March 7, 2016, Respondent must file:

1. Its answer to the petition to cancel;
2. A statement indicating whether a corporate officer filed the January 19, 2016 motion for extension; and
3. a statement indicating why Respondent did not appear before the Board as ordered.

Any paper which does not indicate the author of the signer and list a phone number may be denied consideration.

Dates are reset as follows:

Deadline for Discovery Conference	4/6/2016
Discovery Opens	4/6/2016
Initial Disclosures Due	5/6/2016
Expert Disclosures Due	9/3/2016
Discovery Closes	10/3/2016
Plaintiff's Pretrial Disclosures	11/17/2016
Plaintiff's 30-day Trial Period Ends	1/1/2017

Defendant's Pretrial Disclosures	1/16/2017
Defendant's 30-day Trial Period Ends	3/2/2017
Plaintiff's Rebuttal Disclosures	3/17/2017
Plaintiff's 15-day Rebuttal Period Ends	4/16/2017

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.