

ESTTA Tracking number: **ESTTA614393**

Filing date: **07/08/2014**

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

Proceeding	91204850
Party	Defendant Owen Roe, LLC
Correspondence Address	HILLARY A BROOKS MARGER JOHNSON & MCCOLLOM PC 210 SW MORRISON ST , STE 400 PORTLAND, OR 97204-3189 UNITED STATES litigationdocketing@techlaw.com, lisa.riley@techlaw.com, hillary@techlaw.com, delfina.homen@techlaw.com, amandabernardy@techlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Delfina S. Homen
Filer's e-mail	delfina.homen@techlaw.com, hillary.brooks@techlaw.com, litigationdocketing@techlaw.com
Signature	/Delfina S. Homen/
Date	07/08/2014
Attachments	2014_07_08 FINAL Applicant's Opposition to Opposer's Motion to Extend Time to Reply to Motion to Quash (7007-0029).pdf(44351 bytes) 2014_07_08 FINAL Homen Dec ISO Applicant's Opposition to Opposer's Motion to Extend Time to Reply to Motion to Quash (7007-0029).pdf(15412 bytes) 2014_07_08 Exhibit 1 to Homen Dec ISO Applicant's Opposition to Opposer's Motion to Extend Time to Respond.pdf(794970 bytes) 2014_07_08 Exhibit 2 to Homen Dec ISO Applicant's Opposition to Opposer's Motion to Extend Time to Respond.pdf(813694 bytes) 2014_07_08 Exhibit 3 to Homen Dec ISO Applicant's Opposition to Opposer's Motion to Extend Time to Respond.pdf(800063 bytes) 2014_07_08 Exhibit 4 to Homen Dec ISO Applicant's Opposition to Opposer's Motion to Extend Time to Respond.pdf(770304 bytes) 2014_07_08 Exhibit 5 to Homen Dec ISO Applicant's Opposition to Opposer's Motion to Extend Time to Respond.pdf(765331 bytes)

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

FRANCISCAN VINEYARDS, INC.)	
)	Opposition No. 91204850
Opposer,)	
)	
v.)	
)	
OWEN ROE, LLC,)	
)	
)	
Applicant.)	

**APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO EXTEND ITS TIME TO RESPOND
TO APPLICANT’S MOTION TO STRIKE AND QUASH**

Applicant Owen Roe, LLC (“Applicant”) hereby opposes Opposer Franciscan Vineyards, Inc.’s (“Opposer”) Motion to Extend Its Time (By 5 Days) to Respond to Applicant’s Motion to Strike Opposer’s Pretrial Disclosures and Quash Deposition of Opposer’s Witnesses (38 TTABVUE) (hereinafter “Motion to Extend”).

Opposer’s Motion to Extend, filed on the last day for Opposer to reply to Applicant’s pending Motion to Strike and Quash (*see* 36 TTABVUE), claims Opposer needs an additional five days to reply to Applicant’s Motion because 1) the signing attorney, Mr. Rannells, was out of the office for approximately one week prior to the reply due date for a family medical issue, and 2) Mr. Rannells allegedly “has primary responsibility for the case and is the only attorney in the office with sufficient knowledge of the case to properly respond.” (38 TTABVUE at 1.)

Applicant is sympathetic to Mr. Rannells’ family medical issue and, if this were the first time Opposer had sought an extension of time—or were even the second or third time—Applicant might not have opposed the request. However, this is not the first, second, or even third time Opposer has sought an extension; it is the *seventh* requested extension and, indeed, there is now an eighth request¹ pending as well. (*See* 40 TTABVUE at 7 (chart of Opposer’s requested extensions).) The extension opposed herein

¹ In the form of a request to reopen discovery and trial dates that is really an untimely motion for reconsideration of a Board order, *see* 39 TTABVUE, which is separately opposed.

is merely one more example of Opposer's well-documented attempts to stall advance of this proceeding—a proceeding that Opposer, not Applicant, instituted, and which has been pending for more than two years.

Moreover, although Opposer provides some explanation for its failure to act for the last week of its response period, Opposer provides no explanation whatsoever for its failure to act during the first two weeks of its response period. Opposer also provides an inadequate explanation for why no other attorneys in Mr. Rannells' firm—all of whom hold themselves out as practicing trademark law—could not have familiarized himself with the facts relevant to Applicant's Motion to Strike and prepared and filed a timely response when it became evident that Mr. Rannells would not be able to do so.

The real issue here appears to be that Opposer still does not know who two unnamed witnesses are, and, knowing that it has missed its deadline for expert disclosures, missed its requested extension of time for amended pretrial disclosures, and failed to timely correct deficiencies in its initial disclosures, Opposer is doing anything that it can to keep alive the prospects of bringing in the two still unnamed witnesses. Opposer's tactics cannot be countenanced, particularly where, as here, Opposer has failed to provide sufficient facts to constitute good cause for the requested extension, an extension that is demonstrably necessitated by Opposer's own lack of diligence and unreasonable delay.²

ARGUMENT

Motions to extend time “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.” TBMP 509.01(a). “[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 in taking the required

² There are currently four separate pending motions for extensions of time that have been filed by Opposer. See 34 TTABVUE (Opposer's motion to extend by two weeks its time to serve supplemental pretrial disclosures, filed May 16, 2014, which Applicant has already opposed, see 35 TTABVUE); 37 TTABVUE (Opposer's motion to suspend and extend trial dates pending resolution of Applicant's motion to strike and quash, filed June 5, 2014, which Applicant has already opposed, see 40 TTABVUE); 38 TTABVUE (Opposer's motion to extend its time to respond to Applicant's motion to strike and quash, filed June 18, 2014, to which the instant opposition is responsive); 39 TTABVUE at 1-3 (Opposer's motion to reopen and reset discovery and trial dates, filed June 23, 2014, to which Applicant is concurrently herewith filing an opposition). The instant Opposition is responsive to Opposer's motion found at 38 TTABVUE.

action during the time previously allotted therefor.” *Id.* The Board will “scrutinize carefully” motions for extensions of time to determine whether good cause has been shown, including the diligence of the moving party during period in question. *See Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999).

In its Motion to Extend, Opposer requests an additional five days to respond to Applicant’s motion to strike and quash because Opposer’s attorney “has been occupied with a family medical issue since this past Thursday and has not been to the office until today.” (38 TTABVUE at 1; 38 TTABVUE, Rannels Decl. ¶ 4.) Notably, this statement only accounts for the period from June 12, 2014 (the “this past Thursday” mentioned in Opposer’s motion) to June 18, 2014, the response due date and date Opposer filed its Motion to Extend. However, Applicant’s Motion was filed on May 29, 2014, two weeks before the alleged family medical issue. Opposer does not explain why no action was taken to prepare the response in the first two weeks of the response period. Instead, it appears Opposer failed to act for the majority of its response period, only seeking an extension of time on the last day to respond rather than, for example, a week earlier when the family medical issue first arose.

In *HKG Industries Inc. v. Perma-Pipe Inc.*, 49 USPQ2d 1156, 1157 (TTAB 1998), the movant failed to establish good cause for reopening its testimony period by alleging the death of its attorney who was “responsible for all aspects” of the proceeding. The attorney’s death would only constitute good cause if it “occurred at a time relatively contemporaneous with the opening and closing of the plaintiff’s testimony period.” *Id.* at 1158. Because the movant failed to provide any information about when the attorney died, there was “no evidence of record that his death occurred at such a time as to prevent petitioners from going forward with their testimony period.” *Id.* Accordingly, the Board denied the motion to reopen the testimony period, and dismissed the proceeding for failure to prosecute. *Id.*

Here, too, Opposer fails to provide information indicating that its attorney’s family medical issue was sufficiently contemporaneous with the opening and closing of Opposer’s time to respond to Applicant’s Motion to Strike. To the contrary, Opposer’s information indicates the issue was *not* contemporaneous with the opening and closing of Opposer’s response period by claiming the issue arose

in the final week of the period. (See 38 TTABVUE at 1.) Opposer does not explain why it failed to act in the first two weeks of its response period. “[M]ere unexplained delay in initiating action in an affected time period does not constitute good cause.” *Procyon Pharma. Inc. v. Procyon Biopharma Inc.*, 61 USPQ2d 1542, 1543 (TTAB 2001). Under these circumstances, the family medical issue does not provide good cause for an extension. See, e.g., *HKG Indust.*, 49 USPQ2d at 1157-58 (denying motion for extension where attorney’s death did not occur contemporaneously with the opening and closing of the period).

Opposer’s claim that Mr. Rannells “has primary responsibility for the case and is the only attorney in the office with sufficient knowledge of the case to properly respond” (38 TTABVUE at 1) likewise does not provide good cause for the requested extension. In *HKG Industries*, in addition to failing to provide sufficient information concerning the responsible attorney’s death, the movant failed to provide a sufficient explanation as to why other attorneys in the deceased attorney’s office could not have assumed responsibility for the case. *HKG Indus.*, 49 USPQ2d at 1158. The movant’s claim that the deceased attorney “was responsible for all aspects” of the proceeding was insufficient in light of the fact that there were several other attorneys who could have taken the matter over. See *id.* at 1157-58; see also *FirstHealth of the Carolinas Inc. v. CareFirst of Maryland Inc.*, 81 USPQ2d 1919, 1922 (Fed. Cir. 2007) (affirming Board’s denial of motion to reopen where movant failed to explain why another attorney in the firm did not assume responsibility for the case when the responsible attorney had a family medical emergency).

Here, too, there are several other attorneys who could have taken the response over when Mr. Rannells became indisposed. Review of Opposer’s attorney’s firm website shows that there are at least five other attorneys who practice trademark law in the firm. (See Homen Decl. Ex. A-E.) Opposer provides no explanation as to why one of these five attorneys could not have responded to the Motion to Strike. Tellingly, Opposer refers to Mr. Rannells as having “primary responsibility,” indicating that another attorney is involved in the matter.

The Motion to Strike is on a discrete set of facts. An attorney need not have knowledge of every

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.