ESTTA Tracking number: **ESTTA748429**

Filing date: **05/25/2016**

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

Proceeding	91225175
Party	Plaintiff Ms. Brenna Terry
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Submission	Opposition/Response to Motion
Filer's Name	Brenna Terry
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Date	05/25/2016
Attachments	Opposition to Motion for Extension of Time to Respond to Discovery.pdf(16673 bytes) Exhibit A.pdf(25086 bytes)

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

BRENNA TERRY, Opposer, v. THOMAS ICE, Applicant.	Opposition No. 91225175 Application No. 86/635,477

OPPOSER'S OPPOSITION TO
APPLICANT'S MOTION FOR EXTENSION OF TIME
TO RESPOND TO DISCOVERY

Pursuant to Trademark Trial and Appeal Board Manual of Procedure §§ 403.04 and 509, 37 C.F.R. § 2.120, Opposer Brenna Terry ("Opposer") files this Opposition to Applicant's Motion for Extension of Time to Respond to Discovery in the above-captioned proceeding (the "Opposition").

BACKGROUND

On March 17, 2016, Applicant served extensive discovery requests on Opposer, a pro se party, in the form of requests for admissions, interrogatories, and requests for document production, to which Opposer has timely answered and responded and is still in the process of collecting additional responsive documentation. On April 21, 2016, Opposer served her First Set of Interrogatories and First Request for Production of Documents and Things on Applicant. Two and a half weeks later, on May 9, 2016, Applicant filed its Motion to Suspend Proceedings (the "First Motion"), in connection with a lawsuit that Ice Legal, P.A.[1] filed in the Southern District

[1] Applicant made another motion on May 10, 2016, to substitute Ice Legal, P.A. as the Applicant.

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of Florida, naming Opposer as a defendant, stating that Applicant "is serving a copy of the complaint on [Opposer]. Upon receipt of the Executed Return of Summons for the process server, [Applicant] will promptly file it with the District Court" (emphasis added). On May 25, 2016, nearly another two and a half weeks later, Applicant filed its Motion for Extension of Time to Respond to Discovery (the "Second Motion"), stating that "Applicant is in the process of formally serving Opposer with a copy of the Complaint" (emphasis added). To date, nearly a month after Ice Legal, P.A. filed a lawsuit in the Southern District of Florida, Applicant has failed to serve Opposer with any related process.

ARGUMENT

Under Rule 510, 37 C.F.R. § 2.117, if "parties to a pending case are engaged in a civil action . . . proceedings before the Board may be suspended until termination of the civil action." Here, however, the parties are not engaged in a civil action because, despite Applicant's repeated assertions that Opposer will be served, Applicant has failed to do so (notwithstanding the fact that, even if served, the Southern District of Florida has no personal jurisdiction over Opposer). Accordingly, as previously briefed, Applicant's First Motion is premature and will have no practical effect other than to unduly delay discovery and resolution of this proceeding. Indeed, this Second Motion attempts to do just that.

In its Second Motion, Applicant makes much of the fact that discovery efforts would be a waste of the Board's and the parties' time and resources. Applicant has had the benefit of Opposer's answers, admissions, and responses to Applicant's discovery requests, and has had notice of Opposer's discovery requests, since April 21, 2016. It is unclear to Opposer how Applicant's compliance with its discovery obligations would result in a waste of the Board's resources. Moreover, if it is Applicant's position that the lawsuit filed in the Southern District of

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Florida "has a strong bearing on this Opposition," any discovery that Opposer has requested to date would be relevant in such litigation and thus the parties' resources would not be wasted, but will simply be brought closer to parity.

As a general matter, it is Opposer's understanding that a process server's job, as an agent for the attorney who hires him or her, is to follow instructions. Given that nearly (1) a month has passed since Ice Legal, P.A. has filed a lawsuit in the Southern District of Florida and (2) two and a half weeks have passed since Applicant filed its First Motion, it appears that Applicant has not yet given instructions to a process server to serve Opposer with process. If Applicant genuinely desires to effect service upon Opposer, nothing is preventing this endeavor. Opposer is not a citizen or resident of a foreign country. Applicant has Opposer's home and work addresses in New York, which were provided to Applicant on April 21, 2016, and, based on the number of lawsuits in which Applicant's counsel is involved as plaintiff's counsel (see, for example, Exhibit A), it would appear that Applicant's counsel has experience with hiring process servers. Until Opposer is actually served, it cannot be supported that Opposer is "involved in a civil action" because other than simply naming her, Applicant has, under the plain language of Rule 510, 37 C.F.R. § 2.117 and as a matter of law, failed to involve her. Accordingly, it is highly likely that the Board will deny Applicant's First Motion as premature and so Applicant's Second Motion has no practical effect other than to unduly delay discovery and resolution of this proceeding.

Applicant waited until three days before its discovery deadline to make known its desire to extend its time to respond and answer. As a matter of professional courtesy, Opposer agreed to extend Applicant's time to respond to Tuesday, May 31. Instead, Applicant filed this motion a day before its discovery deadline.

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Opposer therefore respectfully requests that the Trademark Trial and Appeal Board deny Applicant's motion for extension of time to respond to discovery.

Dated: New York, New York
May 25, 2016

/s/ Brenna Terry
Brenna Terry

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Opposer, Pro Se

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