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

Proceeding	91177469
Party	Defendant H-Tech, Inc.
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Date	12/10/2007
Attachments	Apple Motion to Extend.pdf (88 pages)(2286231 bytes)

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

APPLE INC.,

Opposer

vs.

H-TECH, INC.,

Applicant.

Opposition No. 91177469

In re: Application No. 78/780,888

Published: January 23, 2007

Applicant: H-Tech, Inc.

Mark: **AQUA POD**

U.S. Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**MOTION TO EXTEND
DISCOVERY AND TRIAL PERIODS**

The discovery in this opposition is currently set to close on December 9, 2007. H-Tech, Inc. requests that such date be extended for 60 days, or until February 7, 2008, and that all subsequent dates be reset accordingly:

30-day testimony period for party in position of
plaintiff to close:

May 7, 2008

30-day testimony period for party in position of
defendant to close:

July 6, 2008

15-day rebuttal testimony period to close:

August 20, 2008

The grounds for this request are that the Opposer has failed to provide any meaningful responses to Applicant's discovery requests, and as a consequence, Applicant is unable to complete discovery and testimony during the assigned period.


Applicant has requested Opposer's consent to this extension request, but Opposer has refused to consent.

Applicant submits herewith a Memorandum of Law and Declaration of Robert W. Smith
in support of this Motion to Extend Discovery and Trial Periods.

Respectfully submitted,

Date: December 10, 2008

By:



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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO EXTEND
DISCOVERY AND TRIAL PERIODS**

Applicant submits this Memorandum in support of its Motion to Extend Discovery and Trial Periods in this proceeding. Applicant seeks this relief due to Opposer's utter failure to provide any meaningful discovery in response to Applicant's discovery requests. As a result, Applicant seeks an extension of the discovery and trial periods in this proceeding to permit Applicant adequate time to resolve the deficiencies in Opposer's discovery responses and conduct any required follow-up discovery based upon those responses.

FACTUAL BACKGROUND

On June 29, Applicant served its First Request for Production of Documents and First Set of Interrogatories upon Opposer (the "Requests"). On October 15, 2007, Opposer served wholly deficient responses to the Requests. Opposer's responses failed to provide basic information to which Applicant is clearly entitled based upon Opposer's claims in this proceeding.

On November 16, 2007, counsel for Applicant sent a letter to Opposer demanding that Opposer supplement its responses to the Request to provide all of the requested information. On November 29, 2007, counsel for Opposer advised that she had received that deficiency letter, but had not yet had an opportunity to respond. Counsel for Opposer advised that a response would be forthcoming, but Applicant has yet to receive any response.

ARGUMENT

I. Applicant is entitled to an Extension of the Discovery Period and Corresponding Trial Dates.

Rule 6(b) of the Federal Rules of Civil Procedure states, in relevant part "[w]hen by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before expiration of the period originally prescribed or as extended by a previous order. . . ." F.R.C.P. 6(b). In addition, § 509.01 of the Trademark Trial & Appeal Board Manual of Procedure (1st Edition, Sept. 1995) states that "[I]f the motion is filed prior to the expiration of the period as originally set or previously extended, the motion is a motion to extend, and the moving party need only show good cause for the requested extension." Id.

The discovery period in this matter is set to close on Sunday, December 9, 2007. Applicant can show good cause in that Opposer has not fully complied with Applicant's discovery requests and has yet to respond to Applicant's deficiency letter. Applicant has diligently attempted to complete discovery within the applicable period, but has not yet received meaningful responses from Opposer to Applicant's Requests.

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