

Law & Practice

UNITED STATES: TTAB Addresses an Issue of First Impression

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In a recent precedential decision, the Trademark Trial and Appeal Board (TTAB) addressed an issue of first impression: the location of a Rule 30(b)(6) deposition when the corporate designee does not reside in the state in which the corporation has a principal place of business. *Andrew R. Flanders v. DiMarzio, Inc.*, Cancellation No. 92064181 (June 12, 2020) [precedential].

Looking to federal court decisions for guidance, the TTAB adopted the general practice that the Rule 30(b)(6) deposition of a corporation should be taken at its principal place of business, subject to the TTAB’s broad discretion to specify the location of a deposition upon a showing of good cause. On the facts of this proceeding, the TTAB did not find good cause to justify departure from the general rule.

Respondent DiMarzio, Inc., a New York State corporation with a principal place of business in New York City, sought a protective order that its Rule 30(b)(6) corporate designee need not be deposed at the location of the respondent’s principal place of business. The respondent argued that its designee, founder, and owner Larry DiMarzio, should not be subjected to the “annoyance and oppressive demands” and

“undue burden and expense” of being deposed in New York City because he lives and works in Bozeman, Montana, and as a “natural person,” must be deposed there.

The petitioner opposed entry of a protective order on the following grounds:

1. Rule 30(b)(6) depositions cover corporate designees, not “natural persons”.
2. A Rule 30(b)(6) deposition should take place at the company’s principal place of business;
3. New York is the only convenient location for all parties; and
4. The respondent previously demanded that its deposition take place in New York City.

The TTAB found that the factors relevant to a good cause determination weighed in favor of deposing the respondent in New York City:

1. Counsel are located in New York City;
2. The respondent is not unduly burdened by the cost of executive travel for its sole witness;
3. The respondent previously asked to be deposed in New York City; and
4. The respondent chose Mr. DiMarzio as its corporate designee and did not contend that he was the only person competent to testify.

The TTAB denied the respondent’s motion for a protective order, holding that the respondent did not show good cause to justify departure from the general practice that the respondent should be deposed in the location of its principal place of business.

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