

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Ryan

MAILED: October 1, 2002

Opposition No. 150,298

Baxter International Inc.

v.

Inviro Medical Devices Ltd.

**Before Karyn K. Ryan, Interlocutory Attorney  
Trademark Trial and Appeal Board:**

This case now comes up for clarification of the Board's June 5, 2002 order and for action on opposer's July 22, 2002 motion for leave to amend, applicant's August 19, 2002 response thereto, opposer's August 29, 2002 consented motion to amend the notice of opposition, and opposer's September 12, 2002 motion to extend.

**THE BOARD'S JUNE 5, 2002 ORDER MODIFIED SUCH THAT THE MOTION TO EXTEND TIME TO RESPOND TO WRITTEN DISCOVERY REQUESTS IS GRANTED**

On May 28, 2002, opposer filed a consented motion to extend the parties' time to respond to each other's written discovery requests and a consented motion to extend the discovery period.<sup>1</sup> On June 5, 2002, the Board issued an order

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<sup>1</sup> Opposer's May 28, 2002 motion to extend was not set forth in proper trial order form in accordance with Trademark Rule 2.121(d). **Opposer should take care to file future consented motions to extend in the proper trial order form** to promote the efficient administration of this case and processing of such requests by Board personnel. Opposer's counsel should instruct its staff accordingly.

approving the proposed extension to the discovery period; however, the Board inadvertently overlooked the parties' proposed extension to respond to discovery. Additionally, that order did not set forth the close of discovery and all trial dates in trial order form. The oversight is regretted.

In view thereof, we hereby modify our June 5, 2002 order such that we now grant the parties' motion to extend time to respond to each other's written discovery requests in accordance with the following schedule:

- Applicant's responses to opposer's interrogatories and requests for production are deemed to have been due by June 19, 2002
- Opposer's responses to applicant's written discovery requests are deemed to have been due by July 1, 2002

If the parties seek any further extensions to the trial schedule in this case, any future consented motions to extend should set forth all dates in trial order format. See Trademark Rule 2.121(d).

**OPPOSER'S FIRST MOTION TO AMEND DISREGARDED; DECISION ON OPPOSER'S SECOND MOTION TO AMEND DEFERRED; THE PARTIES ALLOWED THIRTY DAYS TO FILE APPLICANT'S WRITTEN CONSENT TO THE SECOND MOTION TO AMEND**

Opposer on July 22, 2002 filed its first motion to amend its notice of opposition. Applicant submitted its response thereto on August 19, 2002. Then on August 29, 2002, opposer filed a withdrawal of its first motion to amend, combined with a second motion to amend its notice of opposition.

In view thereof, opposer's July 22, 2002 motion to amend has been disregarded.

We turn next to the second motion to amend opposer's pleading. Applicant has already filed its answer to the notice of opposition in this case. In its motion, opposer alleges that applicant has provided its written consent to the amended pleading. However, a copy of that written consent was not submitted with opposer's motion.

After answer, an opposer may amend its pleading by leave of court or by written consent of the adverse party. See Fed. R. Civ. P. 15(a). Under the circumstances and inasmuch as opposer relies on applicant's consent as its ground for amendment, the parties are allowed **thirty** days from the mailing date set forth on page one of this order to submit applicant's written consent to the second motion to amend the notice of opposition. See Fed. R. Civ. P. 15(a).

Decision on the August 29, 2002 motion to amend is hereby **deferred** pending the parties' response to the foregoing.

**DISCOVERY AND TRIAL DATES RESET**

In view of the deferral of the Board's decision on the motion to amend, we reset the close of discovery and all trial dates as follows:<sup>2</sup>

DISCOVERY PERIOD TO CLOSE:	<b>January 30, 2003</b>
30-day testimony period for party in the position of plaintiff to close:	<b>April 30, 2003</b>
30-day testimony period for party in the position of the defendant to close:	<b>June 29, 2003</b>
15-day rebuttal period for party in the position of the plaintiff to close:	<b>August 13, 2003</b>

By our *sua sponte* rescheduling of all dates herein, we have rendered moot opposer's September 12, 2002 motion to extend discovery.

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<sup>2</sup> **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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.