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

Proceeding	91176707
Party	Defendant INNERCAP Technologies, Inc.
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Date	12/18/2008
Attachments	motion for permission to withdraw as counsel.pdf ( 4 pages )(34247 bytes )

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

**In the matter of: Trademark Application Serial No. 78/874,352 for the mark  
ASPIRINPLUS, filed May 2, 2006.**

Bayer AG,	)	Opposition No.: 91176707
	)	
Opposer,	)	
	)	
v.	)	
	)	
INNERCAP Technologies, Inc.,	)	
	)	
Applicant.	)	
	)	

**MOTION FOR PERMISSION TO WITHDRAW AS COUNSEL FOR APPLICANT**

In accordance with 37 C.F.R. Section 10.40, Craig S. Fochler and Diane G. Elder (“Attorneys”) and the law firm of Foley & Lardner LLP (“Foley”), respectfully move this Honorable Board for permission to withdraw as counsel for applicant, INNERCAP Technologies, Inc. (“Applicant”) in the above entitled proceeding. The grounds for this motion are set forth below.

**Memorandum in Support of Motion**

In support of the foregoing motion for permission to withdraw, Attorneys and Foley state as follows:

1. Continued representation will result in an unreasonable financial burden on Attorneys and Foley. Applicant has failed to pay invoices rendered by Attorneys and Foley in connection with this matter and others for an unreasonable period of time. Specifically, Applicant is in arrears for payment of invoices issued by Foley on November 15, 2007; December 11, 2007; January 9, 2008; February 27, 2008; March 24, 2008; April 30, 2008; May

23, 2008; June 18, 2008; July 22, 2008; August 29, 2008; September 17, 2008 and October 29, 2008. The last payment from Applicant was received on August 11, 2008. This payment was applied to the outstanding November 15, 2007 invoice and covered less than twenty-five percent (25%) of the November 15, 2007 invoice. Applicant is in arrears to Foley for an aggregate of hundreds of thousands of dollars in fees and costs, for which this matter accounts for only a small percentage. There are no unearned fees to be refunded to Applicant.

2. After protracted negotiations to resolve outstanding issues regarding the representation of Applicant, on November 26, 2008, attorney Fochler and Foley notified Applicant of their intention to seek the Board's permission to withdraw as counsel. In its letter of November 26, attorney Fochler and Foley advised that they would forbear submitting a request for permission to withdraw as counsel for Applicant until December 15, 2008. Accordingly, Attorneys and Foley submit that they have provided Applicant with a reasonable time to obtain new counsel.

3. Applicant notified Attorneys and Foley in writing that as of December 16, 2008, it would appoint new counsel to take over representation for Applicant in this proceeding. To date, however, Applicant has not informed Attorneys and Foley of the identity of new counsel.

4. As indicated above, irreconcilable differences and a conflict of interest have arisen between Applicant, on the one hand, and Attorneys and Foley, on the other hand.

5. On December 17, 2008, via overnight delivery, Attorneys and Foley sent to Applicant all papers and property relating to this proceeding to which Applicant is entitled.

6. Discovery is currently set to close on January 29, 2009. Opposer's testimony period is scheduled to close on May 2, 2009 and Applicant's testimony period is scheduled to close on June 29, 2009.

Attorneys and Foley respectively submit that the foregoing demonstrates that they are entitled to withdraw as counsel for Applicant, and, further that Applicant has had sufficient time to associate new counsel. Accordingly, Attorneys and Foley request that the Board grant Attorneys and Foley permission to withdraw.

*December 18, 2008*

FOLEY & LARDNER LLP



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Attorneys for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of December 2008, a true and correct copy of the MOTION FOR PERMISSION TO WITHDRAW AS COUNSEL FOR APPLICANT was served upon the following applicant and counsel for opposer in the manner indicated:

**Via U.S. First Class Mail and Facsimile Transmission**

Christina M. Hillson, Esq.  
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Fred H. Miller  
Chief Executive Officer  
INNERCAP Technologies, Inc.  
9745 International Court North  
St. Petersburg, Florida 33716

Dated: December 18, 2008

  
\_\_\_\_\_  
Diane G. Elder