

ESTTA Tracking number: **ESTTA183349**

Filing date: **12/27/2007**

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

Proceeding	91180059
Party	Defendant VIVIDAS TECHNOLOGIES PTY LIMITED
Correspondence Address	R. Kent Roberts Hodgson Russ LLP The Guaranty Building , 140 Pearl Street Suite 100 Buffalo, NY 14202-4040 UNITED STATES kroberts@hodgsonruss.com
Submission	Opposition/Response to Motion
Filer's Name	R. Kent Roberts
Filer's e-mail	kroberts@hodgsonruss.com
Signature	/R. Kent Roberts/
Date	12/27/2007
Attachments	restomot.pdf ( 5 pages )(126301 bytes )

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

bioMérieux, Inc.	)	Serial No. 78/325,031
	)	
Opposer,	)	Opposition No. 91180059
vs.	)	
	)	
Vividas Technologies Pty Limited	)	
	)	
Applicant.	)	

**RESPONSE TO MOTION**

On December 17, 2007, bioMérieux, Inc. (the “Opposer”) filed a motion to suspend the opposition proceedings on grounds that the parties are engaged in settlement discussions. It is respectfully requested that Opposer’s motion be denied, and that Opposer be instructed to conclude this matter promptly for the following reasons.

FIRST: there are no settlement discussions currently underway. Opposer proposed a written settlement agreement, the agreement was modified, and the parties verbally agreed to the terms and conditions of the settlement agreement. The settlement agreement was signed by Vividas Technologies Pty Limited (the “Applicant”) and sent promptly to Opposer’s U.S. counsel. Opposer’s counsel received the settlement agreement more than five weeks ago. Opposer has yet to return a signed copy of the settlement agreement.

SECOND: Since sending the signed settlement agreement to Opposer’s counsel, Applicant made several inquiries regarding the status of Opposer’s efforts to sign the settlement agreement. Opposer has yet to provide a reasonable explanation for not returning a signed copy of the settlement agreement.

THIRD: The deadline for concluding discovery in this opposition is May 2, 2008. Opposer has more than four months remaining before the deadline. Opposer has ample time to conduct discovery, if that is Opposer's intent. Therefore, granting Opposer's motion to suspend is premature.

FOURTH: Applicant has repeatedly offered to consent to a 30-day suspension, if Opposer has a reasonable basis for suspending the opposition. To date, Opposer has not provided a reasonable basis for suspending the opposition, nor is a reasonable basis provided in Opposer's motion.

FIFTH: Applicant remains willing to consent to a 30-day suspension of the opposition proceedings, if Opposer provides a reasonable basis for suspending the opposition. However, Applicant is unwilling to consent to a suspension of the opposition merely to allow the opposition to conclude at a later date, and the TTAB should similarly discourage Opposer from attempting to unnecessarily postpone the resolution of this opposition.

SIXTH: The amount of time requested (six-months) in Opposer's motion is excessive, and serves to illustrate that Opposer seeks to delay resolution of this matter. In Opposer's motion, Opposer failed to indicate why six-months is needed to conclude the so-called settlement discussions. All that remains to be done to conclude the so-called settlement discussions is for Opposer to sign the settlement agreement - it is unfathomable why that act should take six-months.

SEVENTH: Granting Opposer's motion-to-suspend will only serve to delay resolution of this matter, and will allow Opposer to procrastinate with regard to signing the settlement agreement. Delay and procrastination have no place in an opposition, and the TTAB should not provide an environment in which such activity is encouraged. Granting Opposer's motion would provide such an environment, and therefore Opposer's motion should be denied.

**WHEREFORE**, Applicant requests that Opposer's motion-to-suspend the opposition proceedings be DENIED, and that Opposer be directed to conclude this opposition promptly.

Dated: Buffalo, New York  
December 27, 2007

Hodgson Russ LLP  
Attorneys for Applicant, Vividas Technologies Pty Ltd.

By:   
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R. Kent Roberts  
140 Pearl Street, Suite 100  
Buffalo, New York 14202-4040  
(716) 848-1510

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the *Answer to Notice of Opposition* was served on  
December 27, 2007 by First Class Mail in an envelope addressed to:

Michelle P. Ciotola, Esq.  
George A. Pelletier, Jr., Esq.  
Cantor Colburn LLP  
55 Griffin Road South  
Bloomfield, Connecticut 06002-1353



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R. Kent Roberts, Attorney for Applicant

**CERTIFICATE OF FILING**

I hereby Certify that this the *Answer to Notice of Opposition* is being electronically filed with the United States Patent And Trademark Office on December 27, 2007.

  
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R. Kent Roberts