

ESTTA Tracking number: **ESTTA186078**

Filing date: **01/11/2008**

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

Proceeding	91180059
Party	Plaintiff bioMerieux, Inc.
Correspondence Address	George A. Pelletier, Jr. Cantor Colburn LLP 55 Griffin Road South Bloomfield, CT 06002 UNITED STATES tm@cantorcolburn.com, MCiotola@cantorcolburn.com, GPelletier@cantorcolburn.com
Submission	Other Motions/Papers
Filer's Name	Michelle P. Ciotola
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Signature	/Michelle P. Ciotola/
Date	01/11/2008
Attachments	Reply to Response_1-11-2008.pdf (4 pages)(235964 bytes)

In the Response to Opposer's Motion, Applicant indicates that the settlement agreement was received more than five weeks ago. Opposer's Attorney received the settlement agreement from Applicant on November 20, 2007 and immediately forwarded the same to Opposer's local counsel in France on November 20, 2007. Applicant's consent to suspend was originally requested on December 4, 2007. On December 5, 2007, Applicant refused to consent to a Motion to Suspend, at which time Opposer had only 9 business days in which to execute the settlement agreement. Applicant's refusal to consent to suspend after only 9 business days indicates its unwillingness to cooperate with any reasonable request overall.

From the date that the settlement agreement was received by Opposer's Attorney to the date that the Notice of Suspension was filed on December 17, 2007, Opposer had only 16 business days in which to execute and return the settlement agreement. Applicant submitted its Response on December 27, 2007 immediately after the Christmas holidays, after Opposer had only 24 business days in which to execute the agreement, and at a time when many overseas corporations have limited hours or are closed altogether due to the holidays. Given this time frame, Opposer's request for suspension is not unreasonable.

As discussed on multiple occasions with Applicant's counsel, Opposer is actively working to have the settlement agreement executed by the appropriate individual with authority to bind Opposer. Opposer has explained to Applicant that given the holiday season, and that Opposer is

located overseas, difficulty in obtaining the proper signatures and returning a signed copy of the settlement agreement was anticipated.

Opposer has no desire to delay the resolution of this matter and stands to gain nothing from delay or procrastination. Opposer wishes to suspend proceedings in the spirit of settlement and in to order to avoid expending any further resources by either Opposer, Applicant, or by the Trademark Trial and Appeal Board that will necessarily arise while the opposition is active and Opposer's attorney is awaiting the execution of the settlement agreement.

Opposer is willing to accept a suspension shorter than the originally requested six-month suspension should Applicant be willing to consent to such or should this Board see fit.

WHEREFORE, Opposer requests that the opposition be suspended.

Respectfully Submitted,

Cantor Colburn LLP
Attorney for Opposer, bioMérieux, Inc.,



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Dated: January 11, 2008

CERTIFICATE OF SERVICE

I, Michelle P. Ciotola, Esq., counsel to Opposer bioMérieux, Inc in the above-captioned proceeding, hereby certify that, on January 11, 2008, I served a copy of the REPLY TO RESPONSE, via Federal Express, upon:

R. Kent Roberts
Hodgson Russ LLP
The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040

A handwritten signature in black ink, appearing to read "Michelle P. Ciotola", written over a horizontal line.

Michelle P. Ciotola