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

Proceeding	91182572
Party	Plaintiff Peter Mignola d/b/a Metrosonic
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Submission	Stipulated/Consent Motion to Extend
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Date	11/09/2010
Attachments	CONSENT MOTION FOR EXTENSION OF TIME ON NOV. 9, 2010.pdf ( 5 pages )(202258 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

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PETER MIGNOLA d/b/a METROSONIC,

Opposition No. 91182572

Plaintiff/Opposer,

In re Application Serial No. 77/086,256

-against-

METROSONICS CONCEPTS LIMITED,

Defendant/Applicant.

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**CONSENT MOTION FOR EXTENSION OF TIME**

The Plaintiff/Opposer PETER MIGNOLA d/b/a/ METROSONIC (herein after "Opposer") by and through his newly appointed counsel Intellectulaw, The Law Offices of P.B. Tufariello, P.C., hereby moves for the entry of an order extending his time to respond to the Trademark Trial and Appeal Board's (hereinafter "TTAB" or "the Board") Order to Show Cause dated September 15, 2010, from October 15, 2010 to December 8, 2010. Applicant Metrosonics Concepts Limited (herein after "Applicant") is in agreement with the proposed extension of time. In support of this Motion, Opposer states as follows:

I. INTRODUCTION

1. Opposer initiated this Opposition proceeding against Applicant on February 15, 2008, requesting that registration of Applicant's mark, i.e. U.S. Application Serial No. 77/086,256, be denied.
2. On March 20, 2008 the parties filed their Consent Motion for a 30-day Extension of Time to Answer citing as a basis for such extension the fact that the parties had begun settlement negotiations.
3. The Board granted the Parties' Consented Motion on April 22, 2008.
4. On May 1, 2008 (TTAB Doc. No. 6), May 28, 2008 (TTAB Doc. No. 8), June 30, 2008

(TTAB Doc. No. 10), and August 4, 2008 (TTAB Doc. No. 12), respectively, the parties filed a Consented Motion for a 30-day Extension of Time to Answer, citing, once again, as a basis for such requests, the fact that the parties were still engaged in settlement negotiations.

5. The Board granted each and every one of the Parties' Consented Motions, except that on August 12, 2008, the Board suspended the proceedings till February 12, 2009, on the basis of the parties' engagement in negotiations for settlement (TTAB Doc. No. 13).
6. On February 19, 2009, Applicant changed counsel (TTAB Doc. No. 14) and on March 9, 2009, Applicant filed its Answer (TTAB Doc. No. 15).
7. On May 8, 2009, the parties filed another Motion for Suspension for Settlement with Consent.
8. On May 8, 2009, the Board granted the parties' Motion to suspend the proceedings, through July 7, 2009. Further, the Board ordered that "upon conclusion of the suspension period, proceedings shall resume without further notice or order from the board, upon the schedule set out in the Motion." (TTAB Doc. No. 17).
9. The Schedule set out in the Motion is as follows:

Time to Answer : CLOSED

Deadline for Discovery Conference : CLOSED

Discovery Opens : CLOSED

Initial Disclosures Due : CLOSED

Expert Disclosure Due : 11/05/2009

Discovery Closes : 12/05/2009

Plaintiff's Pretrial Disclosures : 01/19/2010

Plaintiff's 30-day Trial Period Ends : 03/05/2010

Defendant's Pretrial Disclosures : 03/20/2010

Defendant's 30-day Trial Period Ends : 05/04/2010

Plaintiff's Rebuttal Disclosures : 05/19/2010

Plaintiff's 15-day Rebuttal Period Ends : 06/18/2010

10. On September 15, 2010, the Board issued an order noting that Opposer had failed to file a brief in view of the board's Order of May 8, 2009, and 37 C.F.R. 2.128(a)(3), and providing Opposer to show cause by October 15, 2010 "why the Board should not treat Opposer's failure to file a brief as a concession of the case, failing which a judgment dismissing the notice of opposition with prejudice will be entered against opposer." (TTAB Doc. No. 18).

II. GROUNDS FOR THE EXTENSION OF TIME

11. Opposer was unaware of the Board's Order of May 8, 2009 (Mignola Decl. ¶ 18 ).
12. Opposer was unaware of the Board's Order of September 15, 2010 (Mignola Decl. ¶ 19 ).
13. Opposer first became aware of both of the Board's Orders for the very first time when Opposer approached new counsel Intellectulaw, The Law Offices of P.B. Tufariello, P.C. for the purpose of retaining them in connection with the prosecution of his currently pending Trademark Application Serial No. 77/968,879. (Mignola Decl. ¶ 23-24).
14. At no time had Opposer's prior counsel, Nicholas A. Penkovsky, informed him that the proceedings had resumed (Mignola Decl. ¶ 17-19).
15. Furthermore, on July 6, 2009, one day before proceedings were due to resume in accordance with the Board's Order of May 8, 2009, all that the prior counsel saw fit to state to Opposer in an e-mail is as follows:

I am reviewing the revised proposed settlement agreement from the other side and will forward same to you with my comments. I have also attached the final bill in this matter. There is a disbursement for filing your trademark application. There are no further charges for concluding this matter or filing the Trademark application as we had previously agreed upon. (Emphasis added). (Mignola Decl. ¶ 11).
16. Upon learning of the Board's orders on October 29, 2010, Opposer immediately retained his present counsel (TTAB Doc. No. 19) and filed his Notice of Substitution of Counsel (TTAB Doc. No. 20).

17. The parties' counsel have conferenced a number of times, and notwithstanding the foregoing, have agreed to continue to pursue settlement negotiations. (Mignola Decl. ¶ 28; *see also* Mignola Decl. Ex. 11).
18. To this end, counsel for Applicant has agreed to forward Opposer's counsel "a copy of the settlement agreement which had been prepared last year as soon as practicable" and has consented to an extension of time for filing a response to the Board's Order to Show Cause regarding filing a brief in the above proceedings for 30 days from November 8, 2010, i.e. the new date for filing of the Response is December 8, 2010. (Mignola Decl. Ex. 11).
19. The parties agree that a final settlement may be obtainable if given the opportunity to negotiate further without unnecessary expense.

WHEREFORE, Opposer respectfully requests an entry of an order extending his time to respond to the Board's September 15, 2010 Order to Show Cause, to December 8, 2010.

Respectfully Submitted,

INTELLECTULAW - THE LAW OFFICES  
OF P.B. TUFARIELLO, P.C.

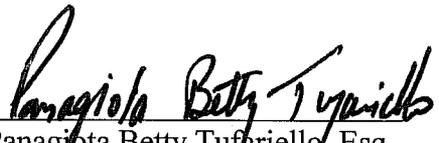
  
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Attorneys for Opposer  
Peter Mignola d/b/a Metrosonic

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing CONSENT MOTION FOR EXTENSION OF TIME has been filed and served upon the following via ESTTA:

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