

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Winter/vb

Mailed: December 16, 2008

Opposition No. 91186984

Medtronic Minimed, Inc.

v.

Athena ISG/GTXtreme, Inc.

Elizabeth J. Winter, Interlocutory Attorney:

The Board notes applicant's consented motion filed December 8, 2008 to extend the discovery conference deadline for sixty days (or until February 23, 2009) for the parties' settlement discussions and to reset all dates commensurate therewith. Said motion is **DENIED** to the extent that the parties' deadline for conducting the discovery conference will not be extended.

In its announcement of the final rule requiring discovery conferences, the Board stated:

The Board anticipates it will be liberal in granting extensions or suspensions of time to answer, when requested to accommodate settlement talks or submission of the dispute to an arbitrator or mediator. However, if a motion to extend or suspend for settlement talks, arbitration or mediation is not filed **prior to answer,**

then the parties will have to proceed, after the answer is filed, to their discovery conference, one point of which is to discuss settlement. It is unlikely the Board will find good cause for a motion to extend or suspend for settlement if the motion is filed after answer but prior to the discovery conference, precisely because the discovery conference itself provides an opportunity to discuss settlement.

"Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242, 42245 (Aug. 1, 2007) (emphasis added). Here, an answer has been filed.¹ In view thereof, the deadline for conducting the discovery conference remains as set in the Board's institution order mailed on October 15, 2008, *i.e.* December 24, 2008.

Nonetheless, in view of the parties' on-going settlement discussions, this proceeding will be **SUSPENDED** for *SIXTY DAYS* from the deadline for the discovery conference, subject to the right of either party to request resumption at any time. See Trademark Rule 2.117(c), 37 C.F.R. § 2.117(c).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall

¹ Applicant's November 24, 2008 answer to the amended notice of opposition is noted. Applicant's change of correspondence address is also noted and made of record.

resume without further notice or order from the Board on
February 22, 2009.

Disclosure dates, the discovery period, and trial dates
are reset as shown below:

Discovery Opens	2/22/2009
Initial Disclosures Due	3/24/2009
Expert Disclosures Due	7/22/2009
Discovery Closes	8/21/2009
Plaintiff's Pretrial Disclosures	10/5/2009
Plaintiff's 30-day Trial Period Ends	11/19/2009
Defendant's Pretrial Disclosures	12/4/2009
Defendant's 30-day Trial Period Ends	1/18/2010
Plaintiff's Rebuttal Disclosures	2/2/2010
Plaintiff's 15-day Rebuttal Period Ends	3/4/2010

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. See Trademark Rule
2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark
Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An

Opposition No. 91186984

oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.



NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>