

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

Cheryl Cooley,	)	
	)	Opposition No.: 91189474
Opposer,	)	
	)	Mark: <b>KLYMAXX</b>
v.	)	
	)	Serial No.: 77/571,759
Bernadette Cooper and	)	
Joyce Irby	)	
	)	
Applicants.	)	

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**Opposer's Cross Application to Reset the Time to Take Opposers' Testimony  
and Opposition to Applicants' Motion for Involuntary Dismissal**

Opposer, Cheryl Cooley, by and through her undersigned attorney hereby submits this Cross Application to Reset Opposer's Time to Take Opposer's Testimony, and in opposition to Applicants' Motion for Involuntary Dismissal for Failure to Take Testimony.

In determining whether or not a cross application to reset the time for Opposer's testimony should be granted, all of the relevant circumstances must be examined, including possible prejudice, which, in this context, would be the unavailability of evidence or witnesses occasioned by Opposer's inadvertent delay.

Here Applicants would not be prejudiced in that all of the evidence is still available; and the Opposer will be the principal witness. On the other hand, dismissal of this Opposition will irreparably prejudice Opposer.



07-30-2010

The Opposer and Applicants all reside in the Los Angeles area. The undersigned will be in Los Angeles, the last 10 days of August, 2010, and intends to take the testimony of Opposer, if the time in which to take Opposer's testimony is reset.

Opposer did not realize that the period to take Opposer's testimony had elapsed until receipt of Applicants' motion for involuntary dismissal. Opposer inadvertently failed to calendar the testimony period for the reasons hereinafter set forth. The delay in seeking to reset the period does not prejudice Applicants nor have a prejudicial impact upon the proceedings herein.

Opposer has acted in good faith; and has a valid and provable Opposition. Applicants' attorney and the undersigned have discussed the possibility of a resolution of this matter without resort to further *inter partes* proceedings but have been unsuccessful, to date, in resolving this matter. Opposer should not be punished for the undersigned's neglect which is excusable.

In November, 2009, after a series of tests including scans and a biopsy, I was diagnosed with cancer of the prostate. Since the diagnosis I have had eight and one half weeks of radiation therapy, been part of a protocol to see if a medicine, effective against one type of cancer, would be effective against prostate cancer, and taken prescribed medicines. Because of the extensive absences from the office arising from the treatment of this condition, it has been difficult to keep track of office matters. Unfortunately, inadvertently, Opposer neglected to calendar Opposer's testimony period. Without the calendared period to remind the undersigned, the period inadvertently elapsed.

In reviewing the file in preparation of the within, I saw a letter dated December 2, 2009, informing me that I had consented to a motion to extend disclosure, discovery and

trial dates. The letter went on to say that “[The] dates are reset in accordance with applicant’s motion”. I have no recollection of this letter at all. If the reset dates had been set forth, in all probability, I would not have let the testimony period elapse.

In reviewing the file, I could not find Applicants’ motion, nor could I recall ever seeing Applicants’ motion. However, I am absolutely sure that the motion papers were properly served on me, and I reconfirm my consent to Applicants’ prior motion to extend discovery and trial dates.

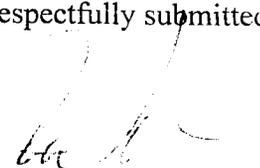
Upon receipt of Applicants’ motion, I asked Applicants, in light of the professional courtesy extended to Applicants set forth in the letter of December 2, 2009, if Applicants would stipulate to reset the time. Unfortunately Applicants refused.

For the foregoing reasons, Opposer’s neglect is excusable and Opposer respectfully moves for an order resetting trial dates so that the time in which Opposer shall take testimony should be reset to close on September 15, 2010, and that all other dates in this proceeding be reset accordingly.

Opposer also further respectfully moves for an order of the Board dismissing Applicants’ motion for involuntary dismissal.

Date: July 29, 2010

Respectfully submitted,

  
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Jack F. Scherer, Esq.  
99 Park Avenue  
3<sup>rd</sup> Floor  
New York, NY 10016  
(212) 421-7140

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing:

CROSS APPLICATION TO RESET THE TIME TO TAKE OPPOSER'S TESTIMONY  
AND OPPOSITION TO APPLICANTS' MOTION FOR INVOLUNTARY DISMISSAL

is being served on July 29, 2010, upon Applicants by depositing a copy of the same in the  
United States mail, first class postage prepaid, addressed as follows:

Jamie R. Sheldon, Esq.  
1760 Suite F, PMB 220, Airline Highway  
Hollister, CA 95023



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Jack F. Scherer

JACK F. SCHERER, P.C.  
ATTORNEY AT LAW

99 PARK AVENUE  
3RD FLOOR  
NEW YORK, N.Y. 10016  
TEL. (212) 421-7140  
FAX (212) 421-7148  
E.MAIL: jscherer@jfsny.com

July 29, 2010

OF COUNSEL  
AHMED MASSOUD  
LISA PASHKOFF

George C. Pologeorgis, Interlocutory Attorney  
Trademark Trial and Appeal Board  
Madison East  
Concourse Level Room C 55  
600 Dulany Street  
Alexandria, VA 22314

Re: Opposition No. 91189474

Dear Mr. Pologeorgis:

Enclosed herewith, please find duly executed **Opposer's Cross Application to Reset the Time to Take Opposer's Testimony and Opposition to Applicants' Motion for Involuntary Dismissal**. Attached thereto, please find duly executed **Certificate of Mailing**.

Very truly yours,



Jack F. Scherer