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

Proceeding	91196618
Party	Defendant Eastman Chemical Company
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Submission	Other Motions/Papers
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Date	05/08/2013
Attachments	Motion to Dismiss.pdf(86228 bytes)

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

SOLVAY, S.A.)	
)	
Opposer)	
)	
v.)	Opposition No.: 91196618
)	Serial No.: 77/924,132
EASTMAN CHEMICAL COMPANY)	
)	
Applicant)	

**APPLICANT’S MOTION AND MEMORANDUM IN SUPPORT OF MOTION
FOR INVOLUNTARY DISMISSAL OF OPPOSITION
FOR FAILURE TO PROSECUTE**

Under Rules 2.132(a) of the Trademark Rules of Practice, Applicant, Eastman Chemical Company, by counsel, moves for the involuntary dismissal of this opposition on the ground that Opposer, Solvay, S.A., has failed to take testimony or offer any other evidence during its testimony period.¹

“If the time for taking testimony by any party in the position of plaintiff has expired and that party has not taken testimony or offered any other evidence, any party in the position of defendant may, without waiving the right to offer evidence in the event the motion is denied, move for dismissal on the ground of the failure of the plaintiff to prosecute.” Trademark Rule 2.132(a); see *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551 (Fed. Cir. 1991); *Sanyo Watch Co. v Sanyo Elec. Co.*, 691 F.2d 1019 (Fed. Cir. 1982).

Under the Board’s March 14, 2013 Order [Dkt. 19], this matter was suspended for settlement negotiations on the basis of Applicant’s February 18, 2013 consent motion [Dkt 18]. That motion requested a sixty-day extension and set forth a schedule under which a resumed

¹ Applicant files this motion without waiving its right to offer evidence in the event the motion is denied.

opposition would proceed. [Dkt. 18]. That schedule was expressly adopted in the Board's suspension order [Dkt. 19 at 1].

As there has been no settlement, this proceeding therefore resumed on April 19, 2013 and Applicant's Testimony Period closed on April 23, 2013. [Dkt 18].² During that time, Applicant has failed to take testimony or offer any evidence. Accordingly, judgment should be entered against Opposer for its failure to prosecute this opposition.

EASTMAN CHEMICAL COMPANY

By Counsel

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Dated: May 8, 2013

CERTIFICATE OF SERVICE

On May 8, 2013, this document was sent by electronic mail (by agreement) to Mark B. Harrison, VENABLE, Post Office Box 34385, Washington, DC 20043-9998, counsel for Opposer.

/s/ Robert M. Tyler
Robert M. Tyler

² Under that schedule, Applicant's testimony period opens on May 23, 2013. [Dkt. 18.] Accordingly, this motion is timely under Rule 2.132(c).