

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

Mailed: May 24, 2011

Opposition No. **91199018**

Amylin Pharmaceuticals, Inc.

v.

Amlin Health, LLC

Cheryl S. Goodman, Interlocutory Attorney:

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference on May 23, 2011 with Board participation.<sup>1</sup>

Participating in the conference were Christina Hillson and Jennifer Fraser, counsel for opposer, and Matthew Swyers, counsel for applicant; also present was Jamie Reynolds, paralegal for applicant's counsel. Present for the Board was the above-identified interlocutory attorney.

This order memorializes what transpired during the conference.

The parties' did not stipulate to e-mail service but agreed to send courtesy copies via e-mail.

The Board advised the parties of the imposition of the Board's standard protective agreement for confidential

information.<sup>2</sup> The parties were advised that if they seek to modify the standard protective agreement, they should file a motion with the Board. The parties were further advised that information relating to the protective agreement can be found in the revised Trademark Board Manual of Examining Procedure, (3d ed. 2011) ("TBMP"). The TBMP is located at the following web address:

[http://www.uspto.gov/trademarks/process/appeal/TBMP Master Document May 2011.pdf](http://www.uspto.gov/trademarks/process/appeal/TBMP%20Master%20Document%20May%202011.pdf).

The Board provided the parties with general information regarding the nature of the parties' initial disclosures under Fed. R. Civ. P. 26(a)(1)(A) and (B)<sup>3</sup>, expert disclosures, and pretrial disclosures. The Board directed the parties to the TBMP, third edition for more information. Disclosures are subject to supplementation as set forth under the federal rules of civil procedure.

The parties were advised that generally, initial and expert disclosures are not to be filed with the Board unless the filing is in connection with a discovery motion, motion for summary judgment or notice of reliance. Similarly, the parties were advised that pretrial disclosures, need not be

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<sup>1</sup> Opposer's request for Board participation in the discovery conference was made via telephone on May 11, 2011.

<sup>2</sup> The Board's "standard protective agreement" can be viewed using the following web address:  
<http://www.uspto.gov/trademarks/process/appeal/guidelines/stndagmnt.jsp>.

filed with the Board unless the disclosures are related to a motion (e.g., a motion to strike witness testimony or to quash). The parties were advised that formal discovery (i.e., interrogatories, request for production, depositions, request for admissions) may be taken only after service of initial disclosures.<sup>4</sup> In addition, no summary judgment motion (i.e., those not involving claim or issue preclusion or jurisdiction) may be filed until after service of initial disclosures.

The Board reviewed the parties' pleadings and found them acceptable.<sup>5</sup>

The parties were advised that the consent suspension and extension motion forms available on ESTTA should not be used until after the deadline for initial disclosures has passed.<sup>6</sup> Prior to that date, the parties should file any motion to extend or suspend in ESTTA as a general filing with the proposed disclosure, discovery and trial schedule set forth in the motion.<sup>7</sup>

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<sup>3</sup> Fed. R. Civ. P. 26(a)(1)(C)-(D) are not applicable.

<sup>4</sup> Traditional discovery may be served concurrently with the service of initial disclosures. TBMP Section 403.02.

<sup>5</sup> Although opposer took issue with regard to applicant's failure to provide partial admissions to certain facts, the Board found the pleading acceptable. See *C.R. Bard Inc. v. Foley Bag Catheter, Inc.*, 394 F.2d 582, 157 USPQ 579, 589 n.3 (CCPA 1968) (no reversible error in Board finding answer, which consisted of general denial of every averment in notice, was proper pleading).

<sup>6</sup> The Board recommends that the parties file papers via the Board's electronic filing system, ESTTA.

<sup>7</sup> In ESTTA, the parties should check the "What's New in ESTTA" alert for further information.

The Board informed the parties regarding the possibilities to streamline the proceeding and save time and expense by considering Accelerated Case Resolution ("ACR") or ACR like efficiencies which may include limiting discovery, shortening the discovery period, and taking advantage of stipulations. The Board further advised the parties that such stipulations should be filed with the Board and, if the parties agree to an abbreviated schedule for discovery or trial, such agreement also should be filed with the Board.<sup>8</sup> If the parties agree to ACR, it is preferable to notify the Board early in the discovery period so that a revised discovery and briefing schedule can issue.<sup>9</sup>

The parties were advised of the availability of telephone conferences with the assigned interlocutory attorney to resolve disputes between the parties or to expedite issuance of orders on certain matters or to discuss proceeding with ACR.

The parties indicated they are not interested in settlement discussions at this time.

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<sup>8</sup> Other options available to settle this dispute including third party mediation and arbitration, at the parties' expense.

<sup>9</sup> For more information regarding accelerated case resolution see TBMP Sections 528.05(a)(2) and 702.04. For information regarding utilizing stipulations in non-ACR Board cases see TBMP Sections 702.04(e) and 705. The parties can also view the ACR case list at the following web address <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

The Board reminded the parties that if they were not prepared to discuss all the topics identified in the notice of institution or identified under Fed. R. Civ. P. 26(f) at the discovery conference, they should schedule a date to reconvene to discuss these topics.

Discovery opens on May 25, 2011. Dates remain as set in the Board's institution order.