

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

Mailed: July 5, 2012

Opposition No. 91200436

CardioMEMS, Inc.

v.

Medinol Ltd.

**Robert H. Coggins,
Interlocutory Attorney:**

Suspension for Motion to Amend

On April 26, 2012, applicant filed a motion to amend its answer to assert a counterclaim, and on May 11, 2012, opposer filed a timely brief in opposition thereto. In view thereof, proceedings are suspended pending disposition of the motion to amend.

Further Suspension for Settlement

On May 25 and June 22, 2012, opposer filed consented motions to suspend proceedings pending settlement negotiations. The motions to suspend were filed via ESTTA using the "consent motions" form wizard, and were granted automatically by ESTTA immediately after they were filed.

On May 29, 2012, applicant filed a notice that, in view of the parties' May 25th motion to suspend and the resulting automatically generated order suspending proceedings, it was applicant's position that its deadline to file a reply brief in support of its motion to amend the answer was also suspended.

In view of the apparent intent of the parties to suspend briefing and consideration of the outstanding motion to amend, briefing and consideration are suspending pending settlement negotiations. The Board's automatically generated orders dated May 25 and June 22, 2012, are vacated to the extent they reset dates on the schedules set out in the respective motions; however, briefing of the motion to amend remains suspended through July 22, 2012 (the date granted by the June 22nd motion), pending settlement discussions.

Applicant's reply brief in support of the motion to amend is due fifteen days after suspension of the briefing period ends (i.e., August 6, 2012). Should the parties wish to continue the suspension period for filing a reply, they should not file an ESTTA "consent motions" form wizard, but should attach their own motion in ESTTA clearly stating the length of suspension sought and the date on which a reply brief is due. Once a reply is in -or if no reply is filed

by the deadline allowed therefor- the Board will take up the motion to amend.

Expert Disclosure

On May 4, 2012, applicant filed the expert report of Warren Sherman, MD. Any party disclosing plans to use an expert must notify the Board that it has made the required disclosure (but should not file with the Board copies of the materials provided to adverse parties) to comply with Fed. R. Civ. P. 26(a)(2). See TBMP § 401.03 (3d ed. rev. 2012). In view thereof, and in view of the parties' May 25th motion to suspend which was filed prior to the thirty-day deadline for a rebuttal expert provided by Fed. R. Civ. P. 26(a)(2)(D)(ii), after consideration of the outstanding motion to amend, the Board may continue the suspension of proceedings to allow the parties to comply with Fed. R. Civ. P. 26(a)(2) and exchange discovery limited to planned expert testimony, including that of any rebuttal expert.