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

Proceeding	91204897
Party	Plaintiff John G. Marino
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Submission	Motion to Extend
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Date	05/30/2014
Attachments	Marino Motion to Extend Trial Period.pdf(143396 bytes)

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

**In the matter of trademark application Serial No. 85411955
For the mark LAGUNA LAKES Published in the Official Gazette on
February 28, 2012**

Consolidated Opposition No:91204897

91204941

JOHN GERARD MARINO

v.

LAGUNA LAKES COMMUNITY ASSOCIATION, INC.

**JOHN GERARD MARINO'S
MOTION TO EXTEND TRIAL PERIOD
AND MOTION TO TREAT NON-PARTY DEPOSITION
TESTIMONY AS EVIDENCE**

John Gerard Marino (“Marino”), by and through his undersigned counsel hereby moves this Court to extend the trial period and to treat non-party deposition testimony as evidence in this matter and states as follows:

1. The undersigned counsel was involved in trial preparation for a jury trial in West Palm Beach that has been ongoing since 2008, the case of *David Hopkins v. Geltech Solutions, Inc.*, Palm Beach Circuit Court Case **Case No.: 50-2008-CA 017955 MB AF** (special set for trial the week of May 19, 2014). The trial period for Marino ends today, and the undersigned requested a ten-day enlargement of the trial period to file declarations in this matter. The undersigned agreed that such an extension would be similarly provided to

Laguna Lakes. Counsel for Laguna Lakes opposes the requested extension. Counsel for Marino merely seeks a brief extension of the trial period through June 10, 2014. Marino does not seek to otherwise move any other trial deadlines. Thus, counsel for Laguna Lakes would be hard-pressed to argue any prejudice by this brief requested extension. Alternatively, this Board could decide to move all trial deadlines in a corresponding fashion as it is preferable, where such a motion is unconsented, that the motion request that the new deadlines be determined, and any period or periods be set to run, from the date of the Board's decision on the motion. *See* TBMP § 509.02.

2. In this case extensive deposition testimony was taken of non-party board members including: Jeff Kelly, Mary Ann Cowart, Patrick Tardiff and Robert Hajicek. Laguna Lakes was duly noticed and attended these depositions. Marino seeks to have these non-party depositions treated as testimony and evidence in this matter. Counsel for Laguna Lakes also appears to object to this reasonable request. There has already been considerable motion practice dedicated to these depositions, not to mention the time in taking these depositions. Allowing the use of the discovery depositions in this matter saves time and money of both parties. *See, 37 CFR § 2.120(j)(emphasis added). Use of discovery deposition, answer to interrogatory, admission or written disclosure.*

(1) The discovery deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent of a party, or a person designated by a party pursuant to Rule 30(b)(6) or Rule 31(a) of the Federal Rules of Civil Procedure, may be offered in evidence by an adverse party.

*(2) Except as provided in paragraph (j)(1) of this section, the discovery deposition of a witness, whether or not a party, shall not be offered in evidence unless the person whose deposition was taken is, during the testimony period of the party offering the deposition, dead; or out of the United States (unless it appears that the absence of the witness was procured by the party offering the deposition); or unable to testify because of age, illness, infirmity, or imprisonment; or cannot be served with a subpoena to compel attendance at a testimonial deposition; or there is a stipulation by the parties; **or upon a showing that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used.** The use of a discovery deposition by any party under this paragraph will be allowed only by stipulation of the parties approved by the Trademark Trial and Appeal Board, or by order of the Board on motion, which shall be filed at the time of the purported offer of the deposition in evidence, unless the motion is based upon a claim that such exceptional circumstances exist as to make it desirable, in the interest of justice, to allow the deposition to be used, in which case the motion shall be filed promptly after the circumstances claimed to justify use of the deposition became known.*

WHEREFORE, Marino seeks an Order extending the trial periods in this matter until June 10, 2014, for an Order treating discovery depositions of non-parties as evidence in this matter as well as any other relief this Court deems just and proper under the circumstances.

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by electronic mail on this 30 day of May 2014 to: Donna M. Flammang, Esq., Brennan Manna & Diamond, P.L., 3301 Bonita Beach Road, Suite 100, Bonita Springs, FL 34134.

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