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Filing date: **09/01/2015**

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

Proceeding	91210985
Party	Plaintiff Dermatology Rx LLC
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Submission	Stipulated/Consent Motion to Extend
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Date	09/01/2015
Attachments	DRX-100_MotionforExtension1.pdf(36913 bytes)

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

In the matter of U.S. Trademark Application Serial No.: 85/665,399

Mark: Rotation Skin Therapy

Filed: June 29, 2012

Published in the *Official Gazette*: December 11, 2012

Dermatology Rx LLC,)	
)	
)	
Opposer,)	
)	Opposition No. 91210985
v.)	
)	
Grayson Beauty Advances LLC,)	
)	
Applicant.)	

**OPPOSER’S MOTION TO EXTEND CLOSING DATE OF DISCOVERY PERIOD
WITH CONSENT**

Opposer Dermatology Rx LLC, by and through its counsel, moves to extend the closing date of the discovery period in the above-identified proceeding for ninety (90) days with a corresponding resetting of all other dates in this proceeding, as follows:

Time to Answer	CLOSED
Deadline for Discovery Conference	CLOSED
Discovery Opens	CLOSED
Initial Disclosures Due	CLOSED
Expert Disclosure Due	11/08/2015
Discovery Closes	12/08/2015
Plaintiff’s Pretrial Disclosures	01/22/2016
Plaintiff’s 30-day Trial Period Ends	03/07/2016
Defendant’s Pretrial Disclosures	03/22/2016

Defendant's 30-day Trial Period Ends	05/06/2016
Plaintiff's Rebuttal Disclosures	05/21/2016
Plaintiff's 15-day Rebuttal Period Ends	06/20/2016

The extension of the closing date of the discovery period is requested, as it will allow the parties to continue to finalize a settlement agreement, a draft of which is currently being considered by the parties. Alternatively, if settlement is not quickly reached, the extension will allow the parties to conduct formal, yet focused discovery to proceed with the opposition.

Through its counsel, Applicant has consented to this motion.

Settlement Progress Report

In its Order dated July 23, 2015, the Board indicated that any future motion to extend or suspend which is based on settlement must be supported by a detailed report setting forth what progress the parties have made toward settlement. The report must set forth, at a minimum, 1) all dates on which the parties communicated, and the method of each communication (e.g. telephone, email, in-person meeting), 2) the general nature of each communication, 3) the issues that have been resolved, 4) the issues that remain to be resolved or that remain for trial, and 5) a proposed timetable for the resolution of the unresolved issues. Opposer addresses each of these points below:

All Dates on Which the Parties Communicated / General Nature of Each Communication

At a minimum, the following communications have occurred between the parties:

Date	Type	General Nature
On or around November 14, 2014	Telephone	Informed Applicant's counsel of move to new firm – Young Basile. Coordinated consent for suspension of proceedings; Discuss framework for document exchange.
March 13, 2015	Email	Coordinated consent for suspension of proceedings. Coordinate on setting a date to discuss settlement.

March 27, 2015	Email	Advised Applicant's counsel that additional time was needed to finalize a declaration for document exchange.
March 31, 2015	Email	Advised Applicant's counsel that Opposer was ready for document exchange; attempted to coordinate on a date to conduct the exchange.
April 1, 2015	Telephone / Email	Advised Applicant's counsel that Opposer was ready for document exchange. Coordinated on a date to conduct the exchange.
April 3, 2015	Email	Advised Applicant's counsel that Opposer was ready for document exchange. Coordinated on a date to conduct the exchange.
April 7, 2015	Email / Telephone	Informal exchange of documents occurred; Opposer provided documents evidencing its seniority of use.
April 16, 2015	Email	Coordinated consent for suspension of proceedings.
May 22, 2015	Email	Informed Applicant's counsel of move to new firm - Darrow Mustafa PC (change occurred on May 12, 2015). Coordinated consent for suspension of proceedings.
June 25, 2015	Telephone	Further discussion of documents exchanged; discussed framework for settlement agreement in view of case. Generally, the settlement terms included Applicant expressly abandoning its application and Opposer withdrawing its opposition.
August 24, 2015	Email	Draft settlement agreement sent to Applicant's counsel for review

Opposer's undersigned counsel notes that he has changed firms twice during the course of this proceeding. In particular, the undersigned counsel changed firms in September 2014, resulting in a move from Florida to Michigan in early October 2014. The undersigned counsel does not have detailed records of the communications between the parties prior to October 2014. However, to the undersigned counsel's recollection, the discussions that occurred were mostly by telephone, and there was some email correspondence. These discussions concerned various

topics with the goal of settling the case. For instance, the initial discussions concerned the terms of a settlement agreement that was being considered at the time the Notice of Opposition was filed. Opposer was represented by different counsel with respect to the drafting of that settlement agreement. Alternative settlement arrangements were discussed. The discussions also centered on a discussion of various points of law implicated by this case (e.g., concerning interstate v. intrastate commerce and whether intrastate commerce could be used to successfully oppose an application). These discussions also involved a discussion of the underlying facts relating to these issues. The parties began to discuss mechanisms to informally exchange evidence to support the parties' contentions, which could lead to the parties being comfortable with a different settlement structure than what was originally proposed.

The undersigned counsel was with the firm Young Basile from September 2014 to May 2015. The undersigned counsel has copies of emails that were saved to Young Basile's document management system, but these emails do not appear to reflect all of the communications between the parties within this time period, particularly between November 2014 and March 2015. Opposer's counsel does not have notes of these discussions. Based on the undersigned counsel's recollection, the discussions concerned alternative settlement terms and culminated in an informal document exchange on April 7, 2015.

Resolved / Remaining Issues

The parties have not reached agreement on any factual or legal issues. From Opposer's perspective, one of the main issues remaining in this opposition is seniority of use. The parties have informally provided evidence of their respective first use dates; however, the informal document exchange does not appear to have resolved the issue.

Proposed Time Table for Resolution

Opposer believes that a 90 day extension of the dates in this proceeding will allow the parties to finalize a settlement agreement between them. However, if settlement is not quickly reached, then Applicant believes that there is sufficient time within the extension period to conduct formal discovery. Opposer believes the key issues in this case are narrow in scope. As such, Opposer expects the discovery to be contained with a particular focus on the parties' dates of first use.

In view of the above, Opposer respectfully requests the Board to grant this motion to extend.

Respectfully submitted,

DERMATOLOGY RX LLC

By its Attorneys,

/Mark M. Zylka/

Mark M. Zylka

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Date: September 1, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION TO EXTEND CLOSING DATE OF DISCOVERY PERIOD WITH CONSENT has been served on this 1st day of September 2015, via electronic mail (by agreement of the parties), to:

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/ MARK M. ZYLKA /

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