

TTAB



05-06-2003

U.S. Patent & TM Ofc/TM Mail Rcpt Dt. #11

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**Trademark Trial and Appeal Board**

2900 Crystal Drive

Arlington, Virginia 22202-3513

Mailed: April 28, 2003

Aquarius Medical Corporation

7525 E. Camelback Road Suite 210

Scottsdale, AZ 85251

**Cancellation No. 92041914**

Reg. No. 2258517

RICHARD C. GILMORE

WORKMAN, NYDEGGER & SEELEY

1000 EAGLE GATE TOWER, 60 EAST SOUTH TEMPLE

SALT LAKE CITY, UT 84111

EDWARDS LIFESCIENCES CORPORATION

V.

Aquarius Medical Corporation

**Kimberly Linton, Legal Assistant:**

A petition, a copy of which is attached, has been filed to cancel the above-identified registration.

Proceedings will be conducted in accordance with the Trademark Rules of Practice.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof.

(See Patent and Trademark Rule 1.7 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that became effective October 9, 1998. See Notice of Final Rulemaking published in the *Official Gazette* on September 29, 1998 at 1214 TMOG 145. Slight corrections to the rules, resulting in a correction notice, were published in the *Official Gazette* on October 20, 1998 at 1215 TMOG 64. A copy of the recent amendments to the Trademark Rules, as

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well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), is available at <http://www.uspto.gov>.

**Discovery and testimony periods are set as follows:**

Discovery period to open:	<b>May 18, 2003</b>
Discovery period to close:	<b>November 14, 2003</b>
30-day testimony period for party in position of plaintiff to close:	<b>February 12, 2004</b>
30-day testimony period for party in position of defendant to close:	<b>April 12, 2004</b>
15-day rebuttal testimony period for plaintiff to close:	<b>May 27, 2004</b>

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

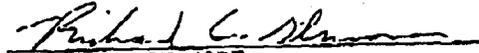
Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "*Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board*," 1235 TMOG 68 (June 20, 2000). A hard copy of the *Official Gazette* containing this notice is available for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (Telephone (202) 512-1800). The notice is also available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

I hereby certify that this correspondence is being  
Deposited with the United States Postal Service  
As United States Postal Service Express Mail,  
EL751310495US, in an envelope addressed to:  
Box: TTAB, Assistant Commissioner for Trademarks,  
2900 Crystal Drive, Arlington, VA 22202 3513  
on February 24, 2007.

TRADEMARK CANCELLATION  
File No. 11051.127

  
RICHARD C. GILMORE

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

In the matter of Trademark Registration No. 2,258,517  
Registration Date: July 6, 1999  
Mark: AQUARIUS & DESIGN  
International Class: 10

EDWARDS LIFESCIENCES CORPORATION	)	Cancellation No. [_____]
	)	
Petitioner,	)	
	)	
v.	)	PETITION FOR CANCELLATION
	)	
AQUARIUS MEDICAL CORPORATION	)	
	)	
Registrant.	)	

Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Sir:

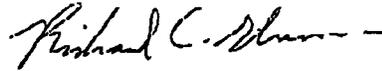
Transmitted herewith is Petition for Cancellation for entry against the  
above-identified registration. Also included herewith is:

Duplicate copy of the Petition for Cancellation.

- A Certificate of Mailing by "Express Mail" by use of Express Mail Label No. EI.751310495US.
- Credit Card Payment Form in the amount of \$300.00.
- The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 23-3178. Triplicate copies of this sheet are attached.

Dated this 24 day of February 2003.

Respectfully submitted,

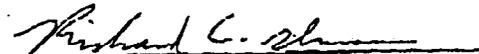


Richard C. Gilmore, Registration No. 37,335  
Attorneys for Petitioner  
WORKMAN, NYDEGGER & SEELEY  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533 9800

RCG:dff  
W:\11051\127\DFR0000001263V001.DOC

I hereby certify that this correspondence is being Deposited with the United States Postal Service As United States Postal Service Express Mail, EL751310495US in an envelope addressed to: Box: TTAB, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on February 24, 2003.

TRADEMARK CANCELLATION  
File No. 11051.127

  
Richard C. Gilmore

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

In the matter of Trademark Registration No. 2,258,517  
Registration Date: July 6, 1999,  
Mark: AQUARIUS & DESIGN  
International Class: 10

EDWARDS LIFESCIENCES CORPORATION	Cancellation No. [_____]
Petitioner,	
v.	PETITION FOR CANCELLATION
AQUARIUS MEDICAL CORPORATION.	
Registrant.	

Petitioner Edwards Lifesciences Corporation ("Petitioner"), a Delaware corporation, having a principal place of business at One Edwards Way, Irvine, California 92614, believes it will be damaged by the above-referenced registration and hereby petitions the Trademark Trial and Appeal Board to cancel the same.

As grounds for this Petition it is alleged:

1. Upon information and belief, Registrant Aquarius Medical Corporation ("Registrant"), a Delaware corporation, having an address of 7525 E. Camelback Road, Suite 210, Scottsdale, Arizona 85251, has registered the mark "AQUARIUS & DESIGN" as a

trademark to be used in connection with "devices used in the manipulation of body core temperature, namely, a body core re-warming or cooling device; and, fluid management devices used in surgery." Registrant filed United States Trademark Application Serial No. 75/304,425 for registration of the mark AQUARIUS & DESIGN on June 6, 1997. The registration issued on July 6, 1999, as Registration No. 2,258,517.

2. The records of the United States Patent and Trademark Office list the attorney of record for Registrant as Rosemary Fanelli at the law firm of Werbel & Carnelutti in New York, New York.

3. Counsel for Petitioner attempted to contact Registrant's attorney of record, Ms. Fanelli, to inquire if Registrant was still using the mark AQUARIUS. The law firm of Werbel & Carnelutti discontinued operations in 1999, according to a Dun & Bradstreet comprehensive report prepared for counsel for petitioner. Further attempts to locate Ms. Fanelli were unsuccessful. The Lawyer Locator database of Martindale-Hubbell, a division of Reed Elsevier Inc., a well-known provider of information on attorneys, has no listing for Rosemary Fanelli.

4. Counsel for Petitioner attempted to contact Registrant in Scottsdale, Arizona, but there is no telephone listing for Registrant in Arizona. A Dun & Bradstreet comprehensive report prepared for counsel for Petitioner revealed that Aquarius Medical Corporation no longer conducts any business in Scottsdale, Arizona. Counsel for Petitioner continued its investigation but could not locate Aquarius Medical Corporation anywhere in the United States nor could Petitioner identify any company that currently makes or sells devices used in the manipulation of body core temperature, namely a body core re-warming or cooling device; and, fluid management devices used in surgery in connection with the mark AQUARIUS & DESIGN in the United States.

5. Upon information and belief, Registrant Aquarius Medical Corporation was acquired by Kobayashi Pharmaceutical Co., Ltd. of Japan in February 1997. Upon information and belief, Kobayashi Pharmaceutical Co., Ltd. liquidated Aquarius Medical Corporation because there was little prospect of successful commercialization of the product it had been reading to market.

6. Counsel for Petitioner unsuccessfully attempted to determine the disposition of Aquarius Medical Corporation's assets, including its registered trademark. Counsel for Petitioner found no evidence that the mark was sold to other entities or that the mark is currently being used in connection with the identified goods anywhere in the United States.

7. Upon information and belief, Registrant is no longer in existence.

8. Upon information and belief, Registrant has abandoned the mark **AQUARIUS & DESIGN.**

9. In view of the foregoing, Registrant is not entitled to maintain federal registration of its claimed mark because Registrant has abandoned its mark.

WHEREFORE, Petitioner prays that this petition be granted and that the United States Trademark Registration Serial No. 2,258,517 be cancelled.

A duplicate of this Petition to Cancel and the required fee under 37 C.F.R. § 2.6(a)(16) is enclosed.

All correspondence and telephonic communications should be directed to the undersigned.

DATED this 24 day of February, 2003.

By: Richard C. Gilmore  
Richard C. Gilmore, Reg. No. 37,335

**WORKMAN, NYDEGGER & SEELEY**  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 534-9800  
Facsimile: (801) 328-1707

Attorneys for Petitioner  
**EDWARDS LIFESCIENCES CORPORATION.**



Date: 04/22/2003

Fax Transmission To: Postal Customer  
Fax Number: 703-308-7082

Dear Postal Customer:

The following is in response to your 04/22/2003 request for delivery information on your Express Mail item number EU795747188US. The delivery record shows that this item was delivered on 01/25/2003 at 11:25 AM in ARLINGTON, VA 22202 to D BARFIELD. The scanned image of the recipient information is provided below.

Signature of Recipient:

*D. Barfield*  
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service

TO:Auto-reply fax to 703 308 7082 COMPANY:

### Auto-Reply Facsimile Transmission



**UNITED STATES  
PATENT AND  
TRADEMARK OFFICE**  
★★★★

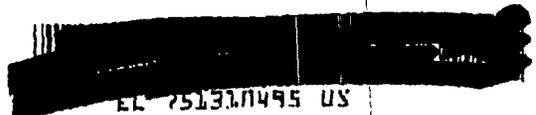
TO: Fax Sender at 703 308 7082  
Fax Information  
Date Received: 4/23/03 10:36:18 AM (Eastern Daylight Time)  
Total Pages: 1 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page  
=====>

04/23/03 10:34 FAX 703 308 7082	TTAB	0001
<b>UNITED STATES DEPARTMENT OF COMMERCE</b> Patent and Trademark Office Trademark Trial and Appeal Board 2900 Crystal Drive Arlington, Virginia 22202-3513		
mc/	Mailed: April 23, 2003	
	Cancellation No. 92041106	
	A.G. EDWARDS & SCNS, INC.	
	v.	
	MERCANTILE BANKSHARES CORPORATION	
<p>On February 11, 2003<sup>1</sup>, the Board sent a notice of default to respondent because no answer had been filed. The record shows no response thereto. Accordingly, judgment by default is hereby entered against respondent. The petition to cancel is granted, and Registration No. 2,179,473 will be cancelled in due course. See Fed. R. Civ. P. 55, and Trademark Rule 2.114(a).</p>		
<i>By the Trademark Trial and Appeal Board</i>		
<small><sup>1</sup> In order to correct an inadvertent error, use 1 of the office action mailed February 11, 2003 is amended by substituting December 3, 2002, for December 3, 2002. The error is regretted.</small>		
<small>Received from &lt;703 308 7082&gt; at 4/23/03 10:36:18 AM (Eastern Daylight Time)</small>		

TO THE TRADEMARK TRIAL AND APPEAL BOARD,  
 PLEASE STAMP AND RETURN  
 TRANSMITTED: Transmittal Letter (2 pages, in triplicate);  
 EXPRESS MAIL LABEL NO. EL751310495US  
 REGISTRANT: Aquarius Medical Corporation  
 PETITIONER: Edwards Lifesciences Corporation  
 MARK: AQUARIUS & DESIGN  
 REG. NO: 2,258,517  
 DOCKET NO: 11051,127  
 DATE MAILED: February 21, 2003



**POST OFFICE  
 TO ADDRESSEE**

ORIGIN (POSTAL USE ONLY)			DELIVERY (POSTAL USE ONLY)		
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Time	Year	\$	Delivery Date	Time	Employee Signature
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# WORKMAN NYDEGGER & SEELEY

ATTORNEYS AT LAW  
A PROFESSIONAL CORPORATION  
1000 EAGLE GATE TOWER  
80 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84111  
TELEPHONE (801) 503-9000  
FACSIMILE (801) 328-1707

NICK D. NYDEGGER  
DAVID O. SEELEY  
WILLIAM F. WORMER  
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INTERNET

HOME PAGE: <http://www.wnsplaw.com>  
GENERAL E MAIL: [info@wnsplaw.com](mailto:info@wnsplaw.com)

April 19, 2003

## VIA FACSIMILE

Ms. Kimberly Litton  
United States Patent and Trademark Office  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

Re: United States Trademark Application  
Mark: AQUARIUS  
Reg. No.: 2,258,517  
Reg. Date: July 6, 1999  
Class: 9  
Goods: Scales and weighing apparatus to be used with fluid balance monitor and systems for various treatments in the field of renal replacement therapies; scales and weighing apparatus to be used with a fluid balance monitor and system comprised of an extracorporeal blood circuit and a substitute and a filtrate circuit

Our Ref. No.: 11051.127

Dear Ms. Litton:

It was a pleasure to talk with you on April 18, 2003 in connection with the Petition for Cancellation of registration no. 2,258,517. Attached is a copy of the previously filed petition. Please call me at 801-533-9800 if you have any questions.

Sincerely,

WORKMAN, NYDEGGER & SEELEY

*Richard C. Gilmore*  
RICHARD C. GILMORE

Enclosure

RCC:ele  
WA110511127CLC0000003286V001.doc

**WORKMAN, NYDEGGER & SEELEY**

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
1000 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UTAH 84111  
TELEPHONE (801) 533-9800  
FAX (801) 328-1707

April 21, 2003

**FACSIMILE COVER LETTER**

Please deliver the following pages to:

Kimberly Litton  
United States Patent and Trademark Office  
2900 Crystal Drive  
Arlington, VA 22202-3513

Telecopier Phone: 703-308-7082

Phone: 703-308-9300, ext. 134

Number of Pages Including Cover Letter: 8 pages

From: Richard C. Gilmore

Docket: 11051.127

Comments:

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

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**TTAB NOTICE CONCERNING CORRESPONDENCE ADDRESS  
(TRADEMARK RULE 2.18)**

The Trademark Trial and Appeal Board will mail correspondence to only one address for each party.

If a party is located in the U.S., correspondence will be sent to the party's own address, unless (1) papers filed with the Board are filed by a party's attorney, (2) a written power of attorney is filed, (3) a written authorization of some other person entitled to be recognized is filed, or (4) the party requests in writing that correspondence be sent to another address. In these situations, correspondence will be sent, respectively, to (1) the attorney filing papers, (2) the attorney named in the power of attorney, (3) the other person designated in the written authorization, or (4) the other address specified by the party.

When one attorney or other authorized representative makes an appearance on behalf of a party, his address is noted on the proceeding file as the correspondence address. If a second attorney or other authorized representative makes an appearance on behalf of the party, and requests that correspondence be directed to him, the correspondence address on the proceeding file will be changed, and future correspondence will be sent to the second attorney or other authorized representative, rather than to the first one. If the second attorney or other authorized representative does not request that correspondence be sent to him, the Board will continue to send correspondence to the first attorney or authorized representative.

If a power of attorney from a party to one attorney has been filed, and thereafter another attorney or authorized representative makes an appearance on behalf of the party and asks that correspondence be sent to him, the second attorney or authorized representative will be required to submit authorization, from the party or from the first attorney, for the requested change in correspondence address.

If a power of attorney from a party to one attorney has been filed, and thereafter a power of attorney from the party to another attorney is filed, the second power of attorney will be construed as a written request to change the correspondence address from the first attorney to the second one, even if there is no revocation of the first power, unless the party or the first attorney directs otherwise. Likewise, if an attorney makes an appearance on behalf of a party, and thereafter the party files a written power of attorney to another attorney, the Board will send subsequent correspondence to the appointed attorney.

If a power of attorney from a party to one attorney has been filed, and thereafter that attorney files an "associated power of attorney" to another attorney, the correspondence address will remain unchanged, and the Board will continue to send correspondence to the first attorney, unless the first attorney or the party directs otherwise.

In the case of a party whose application is the subject of a Board proceeding, any appearance or power of attorney (or designation of other authorized representative) of record in the application file at the time of the commencement of the Board proceeding is considered to be effective for purposes of the proceeding, and correspondence will be sent initially to that address. Thereafter, the correspondence address may be changed as described in Trademark Rule 2.18.

In the case of a party whose registration is the subject of a Board proceeding, any representative which may be of record in the registration file at the time of the commencement of the Board proceeding is not considered to be effective for purposes of the Board proceeding. Rather, correspondence is sent to the registrant itself unless and until another correspondence address is established in the manner described in Trademark Rule 2.18.

## THE TRADEMARK TRIAL AND APPEAL BOARD WOULD LIKE YOU TO KNOW:

The TTAB Customer Service Center is available to

- \*answer telephone inquiries
- \*explain pertinent legal provisions and related administrative practices as they apply to specific cases
- \*provide status information on pending cases
- \*provide access to the files of pending cases
- \*resolve problems

The telephone number for the TTAB Customer Service Center is (703) 308-9300, extension 0 [zero].

The Patent and Trademark Office has two special boxes for expedited processing and distribution of documents filed with the TTAB. Envelopes and transmittal letters for TTAB should be addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202, followed by one of the following designations

"Box TTAB Fee": for papers filed with the TTAB that include filing fees, such as notices of opposition, petitions to cancel, and notices of ex parte appeal

and

"Box TTAB": for all non-fee papers filed with the TTAB, such as requests for extensions of time to file notices of opposition and motions.

The TTAB Customer Service Center makes every effort to provide public access to application files, opposition files, cancellation files and concurrent use files immediately upon request for access. Files located will be made available in a central storage area accessible to the public. You can also access information about TTAB proceeding files online. Go to <http://www.uspto.gov/web/offices/dcom/ttab/> and click the "BISX LINK".

Any questions, comments, or suggestions concerning TTAB service should be directed to Jean Brown, TTAB Technical Program Manager, at (703) 308-9300, extension 123 or Afendi Ziad, Supervisory Legal Assistant at (703) 308-9300, extension 205.

## NOTICE CONCERNING ALTERNATIVE DISPUTE RESOLUTION (ADR)

The Trademark Trial and Appeal Board encourages you to consider alternative dispute resolution as a means of settling the issues raised in this opposition or cancellation proceeding. Although more than 95% of Board proceedings are decided prior to trial (by settlement or by entry of pre-trial judgment), alternative dispute resolution techniques might produce an earlier, mutually agreeable resolution of your dispute or might, at least, narrow the scope of discovery or the issues for trial. In either case, alternative dispute resolution might save you time and money.

Many non-profit organizations, both inside and outside the intellectual property field, offer alternative dispute resolution services. Listed below are the names and addresses of organizations that have indicated that they can make arrangements for alternative dispute resolution. The listings are given for your convenience; the Board does not sponsor nor endorse any particular organization's alternative dispute resolution services.

International Trademark Association Telephone: (212) 642-1726 Fax: (212) 768-7796 <a href="http://www.inta.org/adr/index.shtml">www.inta.org/adr/index.shtml</a> e-mail: <a href="mailto:lstigliano@inta.org">lstigliano@inta.org</a>	CPR Institute for Dispute Resolution Telephone: (212) 949-6490 Fax: (212) 949-8859 <a href="http://www.cpradr.org">www.cpradr.org</a> e-mail: <a href="mailto:info@cpradr.org">info@cpradr.org</a>
American Intellectual Property Law Association (AIPLA) 2001 Jefferson Davis Highway Suite 203 Arlington, Virginia 22202 Telephone: (703) 415-0780 Fax: (703) 415-0786	
American Arbitration Association (AAA) Headquarters 140 West 51 <sup>st</sup> Street New York, New York 10020-1203 Telephone: (212) 484-3266 Fax: (212) 307-4387	

Finally, if the parties consider using alternative dispute resolution in this proceeding, the Board would like to know; and if the parties actually engage in alternative dispute resolution, the Board would be interested to learn what mechanism (e.g., arbitration, mediation, etc.) was used and with what general result. Such a statement from the parties is not required but would be helpful to the Board in assessing the value of alternative dispute resolution in Trademark Trial and Appeal Board proceedings.

**PROCEEDING SYNOPSIS**

**United States Patent and Trademark Office - Trademark Trial and Appeal Board**  
**Trademark Opposition and Cancellation Proceedings Under 15 USC 1063, 1064; 37 CFR 2.101 et. seq.**

**FILING OPPOSITION/CANCELLATION**

Any person (Opposer) may file a Notice of Opposition within 30 days against any mark published under 15 USC 1062(a) in Official Gazette; may oppose in whole or part.<sup>1</sup>

Time for filing Notice may be extended by written request to TTAB. A first extension for not more than 30 days will be granted upon request. Further extensions may be granted for good cause. Extensions aggregating more than 120 days from pub. date not granted unless consented to by applicant or extraordinary circumstances. 37 CFR 2.102(c). Request should be in triplicate. 37 CFR 2.102(d).

Any person (Petitioner) may file a Petition to cancel a registration in whole or in part, but only under conditions set forth in 15 USC 1064.<sup>2</sup> Geographic limitation will be considered by TTAB only in concurrent use proceeding. 37 CFR 2.99(h), 2.133(c).

Opposer/Petitioner is in position of Plaintiff and Applicant/Respondent is Defendant. 37 CFR 2.116(b).

Notice/Petition corresponds to complaint in civil action. 37 CFR 2.116(c).

Amendment to pleadings in accord with Rule 15, Fed. Rules of Civil Procedure (FRCP). 37 CFR 2.107, 2.115.

**MAILING PROCEDURES**

Certificate of Mailing or Transmission and Express Mail procedures effective for all papers. 37 CFR 1.8, 1.10.

**INSTITUTION OF PROCEEDING; WITHDRAWAL**

TTAB examines Notice/Petition for formal requirements and sends notification to Defendant, generally within few weeks of filing date. Duplicate copy of Notice/Petition and Exhibits sent to Defendant. 37 CFR 2.105, 2.113.

Notice/Petition may be withdrawn without prejudice before Defendant files Answer. 37 CFR 2.106(c), 2.114(c). With written consent of Defendant, later withdrawal may be without prejudice.

Defendant may not abandon application or surrender registration without prejudice except with written consent of Plaintiff. 37 CFR 2.135, 2.134.

**ANSWER; MOTIONS**

Time for Answer set by TTAB for 40 days from Notification mailing date.<sup>3</sup> Counterclaim should be filed with answer or promptly upon discovery of information supporting Counterclaim. 37 CFR 2.106(b), 2.114(b).

Time for reply to Counterclaim set by TTAB for not less than 30 days from TTAB action mailing date. 37 CFR 2.106(b), 2.114(b).

Motions may be brought before TTAB in writing and with Brief in support. Brief in opposition thereto, 15 days (30 days for summary judgment motion). Briefs limited to 25 pages. Reply Brief, if filed, 15 days, limited to 10 pages. Reconsideration 30 days after decision; Opposition Brief, 15 days. 37 CFR 2.127. Most motions used in Federal practice are applicable.

Motions for Summary Judgment, to Compel, and to Test Sufficiency of Responses to Requests for Admissions, if filed, due before Plaintiff testimony period opens. 37 CFR 2.127(e), 2.120(e), 2.120(h).

**TRIAL DATES**

TTAB issues Order setting opening and close of Discovery and Trial dates. Discovery set for period of 180 days; 30-day Pl. Testimony period closes 90 days after close of Discovery period; 30-day Def. Test. period closes 60 days after Pl. Test. period; 15-day Pl. Rebuttal Test. period, closes 45 days after Def. Test. period. 37 CFR 2.120(a), 2.121.

In cases where Counterclaim filed, TTAB sets additional time periods for testimony and briefing.

**DISCOVERY PERIOD**

Interrogatories, Reqs. for Prod. Of Docs. & Things, and Reqs. for Adm., if served, must be served by last day of Discovery period. Written Responses within 30 days from date of service of Disc. Reqs. FRCP apply except as otherwise provided. 37 CFR 2.116, 2.120(a). Extension of Time to respond to discovery granted upon cause or by stipulation.<sup>4</sup>

Interrogatories limited to proceeding total of 75, counting subparts; additional interrogatories allowed upon motion for good cause or by stipulation. 37 CFR 2.120(d)(1).

Discovery Depositions (noticed and taken within Disc. Period) in District where deponent resides or is employed. 37 CFR 2.120(a), 2.120(b). Either party may request designation of witnesses under FRCP 30(b)(6), 31(a).

**PLAINTIFF'S TRIAL PERIOD**

Plaintiff's Testimony-In-Chief. Opens 60 days after Discovery Period closes, and runs for 30 days (refer to Order).

Testimony taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Plaintiff serves Transcript of testimony and copies of documentary exhibits on adverse party within 30 days after completion of taking testimony. Certified transcript and exhibits filed with TTAB. 37 CFR 2.125.

Notice of Reliance as appropriate on Discovery Deps., Adms. and Int. Answers, with copies of same, due before close of Test. 37 CFR 2.120.<sup>5</sup>

Involved app. or reg. files are in evidence for relevant and competent purposes. Publications in gen. Circ. or in libraries, and official records, may be received if appropriate Notice of Reliance is filed and copies submitted within Test. period. 37 CFR 2.122.

Motion under 37 CFR 2.132, if filed, due after close of Pl.'s Test. period & before opening of Def.'s.

**DEFENDANT'S TRIAL PERIOD**

Opens 30 days after close of Pl.'s Test. period. Runs for 30 days.

Test. taken by deposition upon oral examination or upon written questions. 37 CFR 2.123, 2.124.

Notice of Reliance on Discovery responses also due within Test. period, if filed. 37 CFR 2.120.

Notice of Reliance on gen. circ. publ. and official records due within Test. period, if filed. 37 CFR 2.122.

Def. serves Test. transcript on Pl. within 30 days and files certified transcript and exhibits with TTAB. 37 CFR 2.125.

**PLAINTIFF'S REBUTTAL PERIOD**

Rebuttal Test. period for Pl. opens 30 days after close of Def.'s Test. period and runs for 15 days.

Pl. may file Notice of Reliance under 37 CFR 2.120, 2.122, with matter relied on, and take Test. to rebut Def. Test. and other evidence.

Pl. serves and files Transcript of Rebuttal Test. and exhibits in accordance with 37 CFR 2.125.

**BRIEFS; ORAL HEARING**

Pl. Brief due 60 days after Rebuttal period closing.<sup>6</sup>

Def. Brief, if filed, due 30 days after Pl. Brief due.

Pl. Reply Brief, if filed, due 15 days after Def. Brief due. 37 CFR 2.128.

Separate Request for Oral Hearing, if filed, due not later than 10 days after Reply Brief due. 37 CFR 2.129.

TTAB Notice of Oral Hearing sent to all parties.

❖ Oral Hearing before panel of at least three TTAB judges. 30 minutes for each party. 37 CFR 2.129.

DECISION; RECONSIDERATION; APPEAL

❖ TTAB Deliberation. Writing of Opinion and Decision in due course.

❖ Request for rehearing, reconsideration or modification, if filed, due within one month. Brief

in opposition due within 15 days. 37 CFR 2.129(c).

❖ Any Appeal from TTAB Decision due within two months of Decision or two months after denial of req. for recon. See especially 37 CFR 2.129(d).

**NOTE: Footnotes and TTAB addresses and telephone number appear on the back of this sheet.**

**FOOTNOTES**

- (1) Opposer may be any legal entity including a corporation. Opposer must believe that opposer would be **damaged by** registration of the mark and state the reasons. 15 USC 1063 and 37 CFR 2.101. Notice of Opposition need not be verified. \$200 required fee for each class for each person opposing. 37 CFR 2.6, 2.101(b). May be signed by attorney. 37 CFR 2.101(b). Duplicate copy including exhibits required. Order status and title copies of pleaded registrations in advance and attach to Notice/Petition or introduce as evidence during Testimony-in-Chief period. 37 CFR 2.122.
- (2) Action, grounds and requirements (Footnote 1) for initiation of Cancellation proceeding are similar to those for an Opposition proceeding and are covered in 15 USC 1064, 1092 and 37 CFR 2.111, 2.112. \$200 required fee per class, per person. Duplicate copy required.
- (3) Except Notice/Petition, each paper must be served on opponent. Statement of service (date and manner) is required. Period to respond to Motions and Discovery Requests is extended 5 days when service is by first-class mail, "Express Mail," or overnight courier. 37 CFR 2.119. Action due on weekend or D.C. holiday can be taken on next business day. 37 CFR 1.7.
- (4) Resetting of time to respond to Discovery Request does not result in extension of Discovery period and subsequent testimony periods unless requested. 37 CFR 2.120(a). All consented extensions of time should be filed in triplicate and list specific dates for all subsequent periods affected.
- (5) Except for 37 CFR 2.122(e) documents, documents produced in response to Requests for Production cannot be made of record by Notice of Reliance alone. 37 CFR 2.120(j)(ii).
- (6) Briefs should be typewritten or printed, double-spaced, in at least pica or eleven-point type, on letter paper (8 1/2 x 11). Three copies of briefs required. Alphabetical index of cases required. Length limit of 55 pages, including table of contents, index of cases, description of record, statement of issues, recitation of facts, argument, and summary. Reply brief 25 pages total. 37 CFR 2.128(b).

**ADDRESSES AND TELEPHONE**

**All papers not requiring a fee should be mailed to:**

**Box TTAB No Fee  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513**

**NOTE: For papers with fee, use "Box TTAB Fee"**

**TTAB Office Location and Telephone Number**

**2900 Crystal Drive  
South Tower, Suite 9B40  
Arlington, Virginia 22202-3513**

**Telephone: (703) 308-9300**

United States Patent and Trademark Office  
Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513  
If Undeliverable Return in Ten Days

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