

ESTTA Tracking number: **ESTTA171531**

Filing date: **10/29/2007**

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

Proceeding	92044758
Party	Plaintiff ECOLAB INC.
Correspondence Address	Scott W. Johnston Merchant & Gould P.C. P.O. Box 2910 Minneapolis, MN 55402-9944 UNITED STATES hkliebenstein@merchantgould.com, cfiner@merchantgould.com, dockmpls@merchantgould.com, mborg@merchantgould.com
Submission	Motion to Extend
Filer's Name	Heather J. Kliebenstein
Filer's e-mail	hkliebenstein@merchantgould.com, aries@merchantgould.com
Signature	/Heather J. Kliebenstein/
Date	10/29/2007
Attachments	klieb.PDF ( 3 pages )(118915 bytes )

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

Ecolab Inc.,	)	Cancellation No. 92044758
	)	
Petitioner,	)	Mark: <b>ECOSENSE</b>
v.	)	
	)	Registration No.: 2,371,074
Melaleuca, Inc.,	)	
	)	Registration Date: July 25, 2000
Respondent.	)	
_____	)	Filing Date: August 30, 1999

**MOTION FOR AN EXTENSION OF DISCOVERY AND TRIAL DEADLINES**

Ecolab Inc. (“Ecolab”) requests the Trademark Trial and Appeal Board extend all discovery and trial deadlines in this proceeding by 60 days. The close of discovery is currently scheduled for October 28, 2007. This motion is timely filed as October 28, 2007, fell on a Sunday. Ecolab seeks an extension to allow the parties to finalize settlement, and if unsuccessful, take meaningful discovery. Ecolab’s counsel attempted to contact Melaleuca, Inc.’s (“Melaleuca”) counsel to gain their consent, but was unable to timely obtain consent.

Good cause exists for Ecolab’s request. The parties are close to finalizing settlement discussions, as the parties have exchanged several drafts of settlement agreements. If unsuccessful, Ecolab intends to obtain discovery from Melaleuca. Ecolab filed the Petition to Cancel on July 22, 2005. The proceedings were suspended until May 8, 2006, for settlement purposes. The proceedings resumed on May 8, 2006, and Melaleuca filed its Answer on June 7, 2006. Ecolab obtained new counsel on May 31, 2006. The matter was again suspended on December 1, 2006, and proceedings resumed on January 30, 2007.

Ecolab’s counsel, Heather Kliebenstein, contacted Melaleuca’s counsel, H. Dickson Burton, on Friday, October 26 and Monday, October 29, 2007. Ms. Kliebenstein offered a revised draft of the settlement proposal to Mr. Burton on October 26, 2007, and requested an

extension on all discovery and trial deadlines in order to proceed with settlement. Melaleuca's counsel did not respond to either communication. As of the time of filing this motion, Melaleuca's counsel has not responded to the request for extension or settlement proposal.

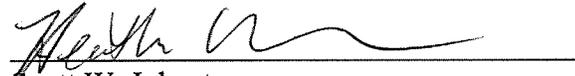
Given that Ecolab's undersigned counsel and Melaleuca's counsel are engaged in productive and ongoing settlement discussions, Ecolab believes an extension is necessary and appropriate. Because settlement has not yet been reached and discovery is set to close October 29, 2007, Ecolab seeks a 60-day extension to allow Ecolab to fully prosecute this proceeding without prejudice.

Respectfully submitted,

ECOLAB INC.

By its Attorneys,

Date: 10-29-2007



Scott W. Johnston

Heather J. Kliebenstein

MERCHANT & GOULD P.C.

80 South Eighth Street, Suite 3200

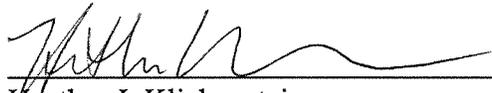
Minneapolis, Minnesota 55402-2215

(612) 332-5300

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing MOTION FOR AN EXTENSION OF DISCOVERY AND TRIAL DEADLINES was served upon the following attorney of record for Registrant by First Class Mail, postage prepaid, this 29th day of October, 2007:

Mr. H. Dickson Burton  
Traskbritt, P.C.  
230 South 500 East, Suite 300  
P.O. Box 2550  
Salt Lake City, Utah 84110



---

Heather J. Kliebenstein