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

Proceeding	92046058
Party	Plaintiff MASIMO CORPORATION
Correspondence Address	DEBORAH S. SHEPHERD KBOBBE, MARTENS, OLSON & BEAR, LLP 2040 MAIN STREET, 14TH FLOOR IRVINE, CA 92614 UNITED STATES efiling@kmob.com, shalpern@kmob.com
Submission	Motion to Suspend for Settlement Discussions
Filer's Name	Diane M. Reed
Filer's e-mail	efiling@kmob.com
Signature	/Diane M. Reed/
Date	05/11/2010
Attachments	MASIMOT.068CN-MOTION.pdf (4 pages)(179717 bytes)

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

MASIMO CORPORATION,

Petitioner,

v.

MEDTRONIC, INC.,

Registrant.

MEDTRONIC, INC.,

Counterclaim Petitioner,

v.

MASIMO CORPORATION,

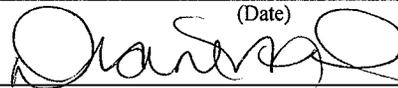
Counterclaim Registrant.

Cancellation Nos. 92046064, 92046058

I hereby certify that this correspondence and all marked attachments are being electronically filed with the Trademark Trial and Appeal Board through their web site located at <http://esta.uspto.gov> on

May 11, 2010

(Date)



CONSENTED MOTION TO SUSPEND PROCEEDINGS

Pursuant to TBMP § 510 *et seq.* and 37 C.F.R. §2.117(c), Petitioner and Counterclaim Registrant Masimo Corporation (“Masimo”) hereby moves that the Trademark Trial and Appeal Board (the “Board”) suspend the above-captioned consolidated cancellation proceedings by ninety (90) days, as shown in the amended schedule below, for the purpose of facilitating the parties’ continued settlement discussions. Petitioner has secured the express consent of counsel for Registrant and Counterclaim Petitioner Medtronic, Inc. (“Medtronic”) to this suspension. The suspension request is for facilitating settlement negotiations between the parties without the added pressure, cost and inconvenience of simultaneously responding to discovery, engaging in pre-trial motion practice, and undertaking testimony, is supported by good cause, and is not for the purpose of delay.

Amended Schedule

30-day testimony period for party in position of plaintiff in the cancellation to close:	November 5, 2010
30-day testimony period for defendant in the cancellation and as plaintiff in the counterclaim to close:	January 4, 2011
30-day testimony period for defendant in the counterclaim and its rebuttal testimony as plaintiff in the cancellation to close:	March 5, 2011
15-day rebuttal testimony period for plaintiff in the counterclaim to close:	April 19, 2011
Brief for plaintiff in the cancellation due:	June 18, 2011
Brief for defendant in the cancellation and as plaintiff in the counterclaim due:	July 18, 2011
Brief for defendant in the counterclaim and its reply brief (if any) as plaintiff in the cancellation due:	August 17, 2011
Reply brief (if any) for plaintiff in the Counterclaim due:	September 1, 2011

In the order of the Board dated August 8, 2009, the Board indicated that any further motion to extend dates or suspend proceedings must be accompanied by a report on discovery or settlement negotiations and must include: a recitation of discovery taken to date, a statement of issues that have been resolved and issues that remain to be resolved, and a firm timetable for resolution. Masimo notes that Medtronic has served interrogatories and requests for production of documents and things, the deadline to respond to which would be extended until August 4, 2010, as agreed by the parties. Masimo served discovery requests on May 10, 2010, and the amended deadline to serve responses would be September 12, 2010, based upon the 90-day suspension.

Since the last progress report, the parties have continued settlement negotiations and have made significant progress towards the resolution of the consolidated proceedings. Although the precise terms of the proposals are highly-confidential, the parties are narrowing discussion to specific terms that must be agreed-upon before the settlement can be finalized. To help resolve

the remaining issues and provide a business-side perspective, the parties have involved internal decision-makers in settlement negotiations, who have been engaging in candid, good-faith discussions regarding issues relevant to the use and registration of the marks at issue. Several drafts of settlement proposals have been exchanged and the parties are awaiting approval for further modifications to move the discussions closer to an end.

The parties are hopeful that the remaining issues will be expeditiously resolved with the assistance of business decision-makers, hopefully within ninety (90) days. The parties note that a personnel change within Petitioner has slowed the process and will require a transition period to bring the new contact into the fold. In spite of this, the parties are confident that the suspension will help avoid unnecessary costs associated with discovery, pre-trial motion practice, and testimony, and could avert costs to the Board as well. Moreover, Masimo submits that Medtronic had consented to this motion, which indicates that Medtronic would not be prejudiced by any delay associated with the suspension.

In light of the foregoing, Masimo moves the Board to suspend the proceeding by a term of ninety (90) days to provide an opportunity for the parties to complete settlement negotiations without incurring the costs associated with discovery and testimony. Masimo respectfully submits that this suspension is supported by good cause and has been consented to by Medtronic.

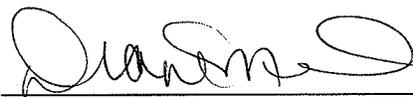
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: _____

5/11/10

By: _____



Diane M. Reed
Jeffrey H. Larson
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Masimo Corporation

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing CONSENTED MOTION TO SUSPEND PROCEEDINGS upon Medtronic's counsel by electronic mail and first-class mail, as agreed by the parties, on MAY 11, 2010, addressed as follows:

Dean R. Karau
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
mloussaert@fredlaw.com, ip@fredlaw.com


Theresa C. Bishop

9029310