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Filing date: **03/22/2013**

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

Proceeding	92048732
Party	Plaintiff Altwater Gessler - J.A. Baczewski International (USA) Inc. and Altwater Gessler - J.A. Baczewski GmbH
Correspondence Address	Peter S. Sloane Leason Ellis LLP One Barker Avenue, Fifth Floor White Plains, NY 10601 UNITED STATES sloane@leasonellis.com, reuber@leasonellis.com, tmdocket@leasonellis.com
Submission	Opposition/Response to Motion
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Date	03/22/2013
Attachments	Opposition to Motion to Suspend (01014777).PDF ( 4 pages )(144656 bytes ) Sloane Declaration (01014778).PDF ( 3 pages )(73651 bytes )

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

ALTVATER GESSLER –  
J.A. BACZEWSKI INTERNATIONAL (USA)  
INC. and  
ALTVATER GESSLER –  
J.A. BACZEWSKI GMBH,

Petitioners,

v.

RONALD BECKENFELD,

Respondent.

Cancellation No. 92048732

Trademark: **MONOPOLOWA**

Reg. No. 2,731,948

**PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO SUSPEND**

Petitioners Altvater Gessler – J.A. Baczewski International (USA) Inc. and Altvater Gessler – J.A. Baczewski GmbH (“Petitioners”), by and through their counsel Leason Ellis LLP, hereby oppose the Motion to Suspend filed by Respondent Ronald Beckenfeld (“Respondent”) on March 18, 2013.

**I. STATEMENT OF PERTINENT FACTS**

On or about February 4, 2013, the parties exchanged their final discovery requests before the discovery period closed on March 2, 2013. Declaration of Peter S. Sloane (“Sloane Dec.”) at ¶¶ 4, 5. By agreement, the parties extended their respective deadlines to respond until March 18, 2013. *Id.* at ¶ 6. Petitioners timely served their responses. *Id.* at ¶ 7. On March 18, 2013, Respondent served his responses to Petitioner’s requests to admit, but not to Petitioners’ interrogatories or document requests. *Id.* at ¶¶ 8, 9. Rather, on March 18, 2013, Respondent

brought a motion for summary judgment and a one sentence motion to suspend “all proceedings unrelated to Respondent’s Motion for Summary Judgment.” *Id.* at ¶ 10.

## II. LEGAL STANDARD

“A party may seek suspension of proceedings for good cause upon motion.” *Amylin Pharmaceuticals, Inc. v. Amlin Health, LLC*, Opp. No. 91199018, Doc. 32, at 2 (TTAB May 14, 2012), *citing* Trademark Rule 2.117(c).

## III. ARGUMENT

Respondent’s one sentence motion to suspend should be denied because it does not demonstrate “good cause.” In *Amylin Pharmaceuticals*, the applicant sought suspension of the proceeding because its “authorized representative [...] [would] be out of the country to visit and take care of his elderly mother [...]” *Amylin*, Opp. No. 91199018, Doc. 32, at 1. The Board held that the “applicant has not established good cause for suspension.” *Id.*

Here, Respondent sets forth a boilerplate, one sentence motion to suspend “all proceedings unrelated to Respondent’s Motion for Summary Judgment.” Sloane Decl. at ¶ 10. Remarkably, Respondent’s motion proffers no explanation whatsoever as to why the instant proceeding should be suspended. At least in *Amylin*, the applicant attempted to comply with Trademark Rule 2.117(c)’s “good cause” requirement by proffering an (ultimately rejected) explanation.

Moreover, that Respondent filed his motion to suspend on the very day his responses to Petitioners’ interrogatories and document requests were due suggests a calculated attempt to

avoid or, at the very least, delay discovery in this proceeding.<sup>1</sup> Such an evasive stalling tactic cannot demonstrate “good cause.”

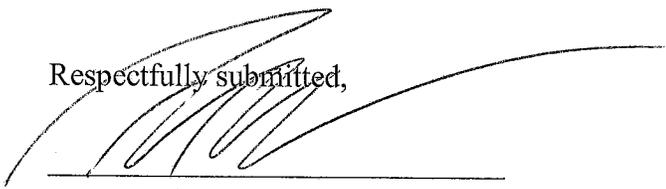
Indeed, failure to respond to outstanding discovery may force Petitioners to move for further discovery under Rule 56(d) of the Federal Rules of Civil Procedure in order to obtain facts necessary to oppose Respondent’s motion for summary judgment. If the Board is inclined to grant the motion to suspend, it should at least require Respondent to respond to the outstanding discovery requests in order to minimize additional motion practice by the parties.

#### IV. CONCLUSION

Based on the foregoing, Petitioners respectfully request that the Board deny Respondent’s unsupported motion to suspend the instant proceeding. Alternatively, if the motion is granted, Petitioners respectfully request that the Board order Respondent to respond to Petitioners’ outstanding discovery requests.

Dated: March 22, 2013  
White Plains, New York

Respectfully submitted,



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*Attorneys for Petitioners*

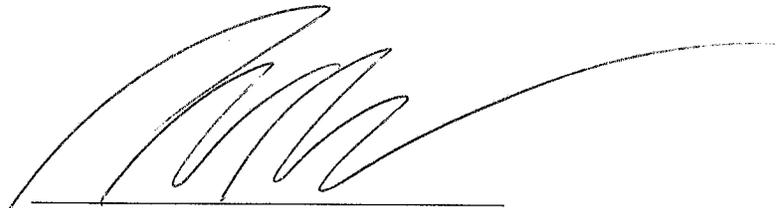
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<sup>1</sup> Respondent is now in default for his failure to timely respond to Petitioners’ document requests and interrogatories. The filing of a summary judgment motion does not, in and of itself, automatically suspend proceedings in a case; rather, proceedings are suspended only when the Board issues an order to that effect. T.B.M.P. §528.03.

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below a true and correct copy of **PETITIONERS' OPPOSITION TO RESPONDENT'S MOTION TO SUSPEND** was served by First-Class Mail, postage prepaid, upon the attorneys for Respondent, this 22nd day of March, 2013, addressed as follows:

Michael L. Lovitz, Esq.  
LOVITZ IP LAW, PC  
9701 Wilshire Blvd., Suite 1000  
Beverly Hills, California 90212

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', is written over a horizontal line. The signature is stylized and cursive.

Peter S. Sloane

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

ALTVATER GESSLER –  
J.A. BACZEWSKI INTERNATIONAL (USA)  
INC. and  
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**DECLARATION OF PETER S. SLOANE**

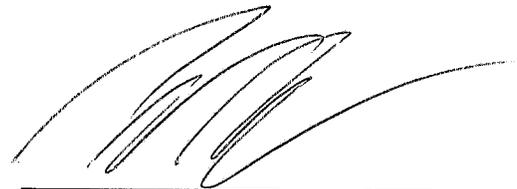
I, PETER S. SLOANE, being duly sworn, hereby declare as follows:

1. I am counsel for Petitioners Altvater Gessler – J.A. Baczewski International (USA) Inc. and Altvater Gessler – J.A. Baczewski GmbH (“Petitioners”) in the above-captioned cancellation proceeding.
2. I am fully familiar with the facts of the instant proceeding.
3. I submit this declaration in support of Petitioners’ opposition to Respondent Ronald Beckenfeld’s (“Respondent”) March 18, 2013 motion to suspend the instant proceeding.
4. On or about February 4, 2013, the parties exchanged discovery requests.
5. The discovery period closed on March 2, 2013.
6. By agreement between the parties, the parties’ responses to their respective discovery requests were due by March 18, 2013.

7. Petitioners served their responses upon Respondent on March 18, 2013.
8. Respondent served his responses to Petitioners' requests for admission on March 18, 2013.
9. Respondent has never served his responses to Petitioners' interrogatories or document requests.
10. On March 18, 2013, Respondent brought a motion for summary judgment and a one sentence motion to suspend "all proceedings unrelated to Respondent's Motion for Summary Judgment."

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: March 22, 2013  
White Plains, New York

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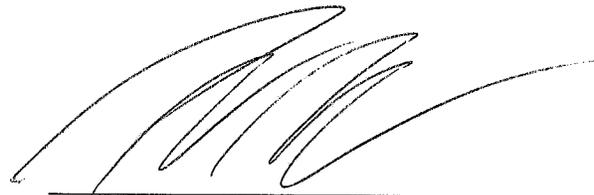
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Peter S. Sloane

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below a true and correct copy of **DECLARATION OF PETER S. SLOANE** was served by First-Class Mail, postage prepaid, upon the attorneys for Respondent, this 22nd day of March, 2013, addressed as follows:

Michael L. Lovitz, Esq.  
LOVITZ IP LAW, PC  
9701 Wilshire Blvd., Suite 1000  
Beverly Hills, California 90212

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Peter S. Sloane