

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**P.O. Box 1451**  
**Alexandria, VA 22313-1451**

Mailed: June 29, 2011

Cancellation No. 92052260

Steven Westlake

v.

Edgar Alexander Barrera

Cheryl S. Goodman, Interlocutory Attorney:

As background, the Board has previously granted three extension requests based on respondent, Mr. Barrera's, motions to extend (October 8, 2010 (consented), January 7, 2011, and April 6, 2011) due to his medical condition.<sup>1</sup> The Board's April 18, 2011 order stated that

Respondent must make a business decision as to whether he desires to continue to participate in this proceeding. To the extent respondent wishes to continue to participate in this case, the Board highly encourages respondent to enlist assistance from a family member or friend or, more preferably, execute a durable power of attorney in order to assist respondent's counsel of record herein in defending this matter in the event respondent has not sufficiently recovered to participate actively in this case.

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<sup>1</sup> Although the extension request was pending, respondent did timely file an answer to the amended petition to cancel on May 27, 2011. As the Board noted in the order of June 15, 2011, the next date to be reset in this proceeding is initial disclosures, as discovery is open and the parties have already conducted their discovery conference with Board participation.

**Cancellation No. 92052260**

On May 26, 2011, respondent sought a further extension "for at least 90 days" with an accompanying statement from his physician. On June 3, 2011, respondent supplemented his motion to extend whereby "respondent maintains his inability to proceed despite filing an answer herein."

In response, petitioner argues that pancreatitis "is not an illness that would totally incapacitate a person for the nearly 11 consecutive months . . . . [t]he disease should have been sufficiently resolved by now. Petitioner argues that its business is being adversely affected by the extensions.

The standard for granting an extension of time is good cause. See Fed. R Civ. P. 6(b) and TBMP § 509.01(a) (3d ed. 2011) and authorities cited therein. A motion to extend time must set forth the facts in sufficient detail to establish good cause for an extension. *Id.*

A review of the physician's note indicates that respondent, Mr. Barrera, is "making real progress recovering from pancreatitis" but mentions another "non-life threatening" "medical condition flared up", namely "dystonia" which causes "involuntary neck spasms." The physician notes that Mr. Barrera needs to "avoid unnecessary stress, which would definitely include testifying in a legal case" and that his dystonia would make it difficult for Mr. Barrera to give testimony or otherwise participate in legal

proceedings." The physician suggests resumption of proceedings "after Labor Day."

Mr. Barrera's note from his physician provides limitations only as to his ability at this time to provide testimony in this case but no limitations are placed on his ability to provide written disclosures or written discovery or to otherwise participate in this case.<sup>2</sup> Dystonia, or neck spasms, in no way impedes Mr. Barrera's ability to provide disclosures, produce documents or answer interrogatory requests or requests for admissions. By Mr. Barrera's physician's own admission, dystonia is a chronic but not life threatening medical condition. With regard to Mr. Barrera's recovery from gastritis, there is no specific reference to this condition with respect to Mr. Barrera's ability to participate in this proceeding other than a

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<sup>2</sup> The Board construes the reference to testimony to relate to the taking of a discovery deposition as well as a testimonial deposition, both of which are taken outside of the presence of the Board. In Board proceedings a discovery deposition is a broad discovery device used by a party to obtain from an adversary information about the adversary's case, or to obtain from a nonparty information that may be helpful to the deposing party's case. The discovery deposition is taken of the adversary or a nonparty, or an official or employee of the adversary or a nonparty. A testimony deposition, on the other hand, is a narrower device used by a party to present evidence in support of its own case. During a party's testimony period, testimony depositions are taken, by or on behalf of the party, of the party himself or herself (if the party is an individual), or of an official or employee of the party, or of some other witness testifying (either willingly or under subpoena) on behalf of the party. TBMP Section 404.09 (3d ed. 2011). If the parties stipulate, respondent can provide its testimony by affidavit. TBMP 703.01(b). A party may move for the taking of a deposition for shorter periods over several days if appropriate. TBMP Section 404.06(c).

**Cancellation No. 92052260**

general statement from his physician that Mr. Barrera needs to "avoid stress".

Nonetheless, the Board shall grant the motion to extend through September 5, 2011, to afford respondent time to further recover and/or to identify an individual (e.g., friend or family member) or appoint a personal representative or durable power of attorney to assist his counsel and act on his behalf in this proceeding. That is, if respondent is unable to participate in this litigation as of the September 6, 2011 date, he must appoint a personal representative, power of attorney, or identify a friend or family member to participate in the litigation on his behalf.

By the granting of this extension, respondent has had nearly 11 months to recover from his gastritis. Although the Board is sympathetic to a litigant's ill-health, continuous delay is not an option. Petitioner's right to a just and speedy determination of his claims cannot be delayed indefinitely by respondent's claims of ill-health.

Dates are reset as follows:

Initial Disclosures Due	9/6/11
Expert Disclosures Due	1/4/12
Discovery Closes	2/3/12
Plaintiff's Pretrial Disclosures	3/19/12
Plaintiff's 30-day Trial Period Ends	5/3/12
Defendant's Pretrial Disclosures	5/18/12
Defendant's 30-day Trial Period Ends	7/2/12
Plaintiff's Rebuttal Disclosures	7/17/12
Plaintiff's 15-day Rebuttal Period Ends	8/16/12

**Cancellation No. 92052260**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

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