ESTTA Tracking number: **ESTTA458542**
Filing date: **02/27/2012**

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

| | |
|---|---|
| Proceeding | 92052260 |
| Party | Defendant<br>Edgar Alexander Barrera |
| Correspondence Address | ALEXANDER BARRERA<br>10 CASTANIA CT<br>ST AUGUSTINE, FL 32086<br>UNITED STATES<br>axlellism@netbusiness.com |
| Submission | Other Motions/Papers |
| Filer's Name | Edgar Alexander Barrera |
| Filer's e-mail | axlellism@netbusiness.com |
| Signature | /EdgarAlexanderBarrera/ |
| Date | 02/27/2012 |
| Attachments | TTAB 2.pdf ( 8 pages )(3424464 bytes ) |

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

| | | |
|---|---|---|
| STEPHEN A. WESTLAKE, | ) | |
| | ) | |
| Petitioner, | ) | Cancellation No. 92/052,260 |
| | ) | (Serial No. 77/378,015) |
| | ) | |
| EDGAR ALEXANDER BARRERA | ) | |
| | ) | |
| Respondent. | ) | |

**RESPONSE TO OPPOSITION TO MOTION FOR A FURTHER EXTENSION OF TIME TO SECURE NEW LEGAL COUNSEL**

Comes now the Respondent EDGAR ALEXANDER BARRERA and hereby submits his Response to Opposition to Motion for a Further Extension of Time to Secure New Legal Counsel in the above-captioned Opposition proceeding.

**NOTE:** *If Petitioner's co-counsel, Mr. Guyette is so precise with his information, can he inform everyone why he has deliberately given his address to the TTAB and those associated with these proceedings as: 19 Chenango St. #1101, Binghamton, NY 13901-2904?*

*The "Prosecution History" will clearly demonstrate multiple mailings from the TTAB to Mr. Guyette's office have been returned as* ***"Unable to Deliver."*** *The Respondent can also attest to this as well, as multiple correspondence sent to Mr. Guyette has also been returned the same way in each instance. Now, Mr. Guyette suddenly appears from nowhere with a "new address" given as 136 Court Street, Binghamton, New York 13901.*

*Isn't anyone who represents either a Petitioner or a Respondent supposed to at all times make sure his proper address is provided?*

**ANSWER TO OPPOSITION**

In response, to Petitioner's Opposition, a point-by-point rebuttal follows:

**1. Petitioner's Declaration/Certification:** "Petitioner doubts the extent of the claim of impairment to health of the respondent."

**Respondent's Answer: Petitioner and his co-counsel are not certified or qualified medical doctors and cannot render such an opinion as it is completely unqualified and without any merit whatsoever. Since this proceeding began Respondent's health has been seriously impaired for most of this time. Respondent has attempted to resume a normal work**

**schedule as much as he possibly can, and is still in considerable pain. Respondent's medical problems have been fully documented for the court in several letters from his physician, Dr. Gohar S. Khan, M.D.**

**A Declaration is supposed to be made based upon on the Declarant's personal knowledge.**

**Every statement made that is not based on the Declarant's personal knowledge is pure speculation.**

**Petitioner and his co-counsel are not doctors, and not physicians and have never seen the patient and cannot make such a Declaration within their own personal knowledge.**

**Therefore, it is pure speculation, based on hearsay, innuendo, suppositions, insinuation, unsubstantiated allegations and therefore must be disregarded, as it is inadmissible and lacks any evidentiary basis whatsoever.**

**2. <u>Petitioner's Declaration/Certification</u>:** "According to information which is available to anyone on the internet, treatment for acute pancreatitis requires a few days stay in a hospital for intravenous fluids, antibiotics, and medication to relieve pain. Unless complications arise, acute pancreatitis resolves in a few days."

**<u>Respondent's Answer</u>: Anything can be found on the Internet and cannot invalidate a qualified medical opinion which is an audacious claim on the part of the Petitioner. Likewise, the broad, ambiguous and vague assertion of "according to information available to anyone on the internet" is without any merit. Furthermore, petitioner does not attach any so-called documentation to support his claim.**

**A Declaration is supposed to be made based upon on the Declarant's personal knowledge.**

**Every statement made that is not based on the Declarant's personal knowledge is pure speculation.**

**Petitioner and his co-counsel are not doctors, and not physicians and have never seen the patient and cannot make such a Declaration within their own personal knowledge.**

**Therefore, it is pure speculation, based on hearsay, innuendo, suppositions, insinuation, unsubstantiated allegations and therefore must be disregarded, as it is inadmissible and lacks any evidentiary basis whatsoever.**

3. **Petitioner's Declaration/Certification**: "The treatment for chronic pancreatitis may require hospitalization for pain management, IV hydration and nutritional support. Nasal gastric feedings may be necessary for several weeks if the person continues to lose weight."

**Respondent's Answer: Again, this is the Petitioner and his co-counsel attempting to be a physician when neither one has any qualifications to do so and is totally without any basis of fact as Mr. Guyette nor Mr. Westlake are qualified medical doctors.**

**A Declaration is supposed to be made based upon on the Declarant's personal knowledge.**

**Every statement made that is not based on the Declarant's personal knowledge is pure speculation.**

**Petitioner and his co-counsel are not doctors, and not physicians and have never seen the patient and cannot make such a Declaration within their own personal knowledge.**

**Therefore, it is pure speculation, based on hearsay, innuendo, suppositions, insinuation, unsubstantiated allegations and therefore must be disregarded, as it is inadmissible and lacks any evidentiary basis whatsoever.**

4. **Petitioner's Declaration/Certification**: "There has been no indication that the respondent has lost weight due to this condition, nor has there been specification of whether the condition is acute or chronic."

**Respondent's Answer: If Petitioner would refer back to previous Motions, petitioner would see that the Respondent lost weight due to his serious medical condition and is suffering from "acute pancreatitis."**

**Dr. Khan has previously stated when respondent first encountered this serious medical problem that: "Mr. Barrera is still experiencing severe fatigue, along with various gastronomical symptoms common during recovery. These include bloating, abdominal pain, loss of appetite, difficulty swallowing, and weight loss."**

**A Declaration is supposed to be made based upon on the Declarant's personal knowledge.**

**Every statement made that is not based on the Declarant's personal knowledge is pure speculation.**

**Petitioner and his co-counsel are not doctors, and not physicians and have never seen the patient and cannot make such a Declaration within their own personal knowledge.**

**Therefore, it is pure speculation, based on hearsay, innuendo, suppositions, insinuation, unsubstantiated allegations and therefore must be disregarded, as it is inadmissible and lacks any evidentiary basis whatsoever.**

**5. Petitioner's Declaration/Certification:** "What does appear chronic is the respondent's failure to cooperate with his attorney which led to his withdrawal."

**Respondent's Answer: Petitioner's allegations are totally false about the Respondent's failure to cooperate with his attorney which led to his withdrawal. Petitioner's statements are based on innuendo, insinuation, unsubstantiated allegations and therefore must be disregarded as pure speculation.**

**6. Petitioner's Declaration/Certification:** "While the respondent includes his so-called list regarding his efforts to secure counsel, it should be noted that there are no specifics as to whom the attorneys are that he called."

**Respondent's Answer: Respondent has made a diligent effort and fully complied with the TTAB's requests and in many respects has provided more information than requested at the time. Petitioner's statements are based on innuendo, insinuation, unsubstantiated allegations and therefore must also be disregarded as pure speculation.**

**7. Petitioner's Declaration/Certification:** "Further, he includes attorneys that do not specialize in Intellectual Property Law, therefore, he is wasting everyone's time."

**Respondent's Answer: Again, Petitioner nor his co-counsel, Mr. Guyette have fully read the Motions respondent filed as it was never stated that he was speaking with any attorney who did not specialize in Intellectual Property Law but instead clearly stated "they do not specialize in this type of trademark law" which centers around publishing, which requires further specialization in Intellectual Property matters, and they "do not specialize in this type of trademark litigation." There are many trademark attorneys and a number of them do not practice before the TTAB as anyone, except apparently Petitioner and his co-counsel. This was clearly stated in the Motion for a Further Extension of Time to Secure New Legal Counsel submitted on February 2, 2012.**

**Also, petitioner's co-counsel, Mr. Guyette states clearly that if "attorneys do not specialize in Intellectual Property Law, therefore, he is wasting everyone's time." Is the Petitioner's co-counsel, Mr. Guyette perhaps referring to himself here as he is wasting everyone's time with this Motion as Mr. Guyette does not specialize in Intellectual Property Law and does not a have a law degree to practice in this type of law?**

**So maybe, Mr. Guyette can shed some light on his skills specifically as a licensed trademark attorney as he is not an Intellectual Property Attorney, then he by his own admission, he "is wasting everyone's time" based on his own declaration/certification. Mr. Guyette is therefore stating he is not qualified to participate in these proceedings and for all intents and purposes has disqualified himself. Based on this alone, the Petitioner's Motion should be inadmissible.**

**Mr. Guyette's Facebook page listed as Law Offices of Kevin F. Guyette on Facebook.com states: "Handling personal injury, criminal, workers' comp, civil rights, family court/support. Admitted in NY, PA and FL state and federal court. 23 years experience in court."**

**"Kevin F. Guyette has developed a reputation of fighting for just results, whether it be against insurance companies, police agencies, employers or recalcitrant spouses. Kevin handles each case personally and is therefore intimately familiar with his clients' problems. He fights to provide solutions for these problems. In personal injury cases, Kevin does not attempt a quick settlement at the expense of the full value for the client. In criminal cases, Kevin has the experience to know what motions to file and the wisdom when to file them. Kevin works patiently to fully develop the medical records in workers' comp cases."**

**There is no mention of Petitioner's co-counsel to practice Intellectual Property Law, yet he boldly asserts that nobody should deal with any "attorneys [who] do not specialize in Intellectual Property Law" as "therefore, he is wasting everyone's time."**

**8. <u>Petitioner's Declaration/Certification</u>:** "The respondent claims to be so sick that he cannot participate in the proceedings, yet he is not so sick that he cannot drive a sick relative to a doctor's appointment."

**<u>Respondent's Answer</u>: It is apparent that Petitioner and his co-counsel have not read Respondent's motions. The Respondent has never stated that he "drove" a sick relative to a doctor's appointment. Respondent went with his sick relative to his doctor's appointment. If anything it has been very difficult on the Respondent and it has further impaired his health in the process. It has placed the Respondent in a terrible hardship position as there is nobody to care for his sick relative, except to help transport him to**

**medical appointments. Petitioner's statements are based on innuendo, insinuation, unsubstantiated allegations, suppositions, and therefore must be disregarded as pure speculation.**

**9. Petitioner's Declaration/Certification**: While he claims to be disadvantaged with "Mr. McAuliffe's abrupt and unexpected withdrawal the case", during the time that Mr. McAuliffe represented him, he did nothing to assist Mr. McAuliffe in this matter; apparently, he did not pay his legal fees.

**Respondent's Answer: Again, petitioner and his co-counsel, Mr. Guyette are totally distorting the facts. Mr. McAuliffe did not discuss Respondent's legal bill with his client. In fact, it was the Respondent who first initiated such a conversation with Mr. McAuliffe. So Petitioner and his co-counsel are once more making wrongful assumptions about Respondent's legal bill. Mr. McAuliffe insisted to the Respondent not to worry about anything, that his health came first and the legal bill wasn't an issue. Respondent paid a substantial retainer when the case started. Mr. McAuliffe had given Respondent every assurance that he would continue to be his counsel. His request to withdraw was sudden and unexpected. Respondent cooperated with his counsel at all times, so again, Petitioner and his co-counsel have once more clearly distorted the facts. The Petitioner's statements are based on innuendo, insinuation, unsubstantiated allegations and therefore must be disregarded as pure speculation.**

**10. Petitioner's Declaration/Certification:** "It is further beyond comprehension how the respondent who lives in St. Augustine, Florida can travel to see his doctor whose office is located in South Daytona, which is at least 2 hours away by car."

**Respondent's Answer: Petitioner and his co-counsel wrongly assume, that the Respondent drives himself to his appointments which are only 45 minutes away driving time (not "at least 2 hours away by car," as Petitioner claims) from St. Augustine to South Daytona, Florida. Respondent stays with a friend in Daytona Beach, Florida when he has to go to doctor's appointments. If "anyone" who uses the Internet as petitioner and his co-counsel state they would clearly see that a Google Map alone would completely refute their assertions that the doctor "is at least 2 hours away by car" Google Map clearly states 1 hour and 12 minutes, which is not two hours. But again, Petitioner and his co-counsel incorrectly assume that the Respondent drives himself from St. Augustine to South Daytona.**

**A Declaration is supposed to be made based upon on the Declarant's personal knowledge.**

**Every statement made that is not based on the Declarant's personal knowledge is pure speculation.**

**Petitioner's statements are based on innuendo, insinuation, unsubstantiated allegations and therefore must be disregarded as pure speculation.**

**11. Petitioner's Declaration/Certification:** "Clearly if he was really experiencing severe fatigue, it is unfathomable how he could travel the distance to see his own doctor let alone take a sick relative to their doctor's appointment, while making all of these phone calls."

**Respondent's Answer: Again, Petitioner and his co-counsel are taking on the role of being a certified medical doctor, and what has just been stated clearly demonstrate how absurd their allegations truly are. Likewise making a few phone calls a day is tiring on the Respondent but he has wanted to demonstrate good faith and did it against medical orders as clearly demonstrated in the Motion filing. In spite of this, Respondent has worked very diligently to obtain new legal counsel.**

**12. Petitioner's Declaration/Certification:** "It appears that the respondent is merely stalling to drag this matter out, for reasons which apparently are his own at this time."

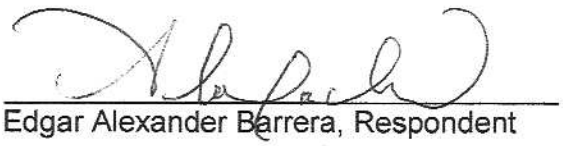
**Respondent's Answer: The Respondent is not dragging anything out and once again Petitioner and his co-counsel's declarations are based on innuendo, insinuation, unsubstantiated allegations and therefore must also be disregarded as pure speculation.**

13. Therefore, Petitioner's Opposition to Motion should be disregarded as it is all pure speculation, based on hearsay and double hearsay, innuendo, suppositions, insinuation, unsubstantiated allegations and therefore must be disregarded as they have no foundation and lacks any evidentiary basis whatsoever.

The interests of justice will be served if the Opposition to Motion for a Further Extension of Time is denied.

**WHEREFORE, Respondent respectfully seeks this Opposition to Motion for a Further Extension of Time to Secure New Legal Counsel to be denied based upon the foregoing reasons.**

Certified and Respectfully submitted by:



Edgar Alexander Barrera, Respondent

10 Castania Ct.
St. Augustine, FL 32086

Telephone (386) 852-0012

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing instrument was placed in the United States Mail, postage prepaid, this 27th day of February, 2012, addressed to:

Mark Levy, 700 Security Mutual Bldg., 80 Exchange Street, Binghamton, NY 13902
and
Kevin Guyette, 19 Chenango St. #1101, Binghamton, NY 13901-2904
and
Kevin Guyette, 136 Court Street, Binghamton, NY 13901