

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

Mailed: April 24, 2012

Cancellation No. 92052260

Steven Westlake

v.

Edgar Alexander Barrera

Cheryl S. Goodman, Interlocutory Attorney:

As background, on September 12, 2011, the Board granted respondent's attorney's request to withdraw as counsel and allowed respondent thirty days to hire new counsel.<sup>1</sup> Respondent moved for additional extensions of time to hire counsel on October 11, 2011, and November 10, 2011, which the Board granted as conceded on December 5, 2011. The Board also made the additional requirement that respondent provide specific factual information regarding his efforts during the entire thirty-day period, if seeking a further extension of time on this basis, as well as a sufficient explanation to show diligence in seeking to hire counsel for any further extension requests. On January 3, 2012, and February 3, 2012, respondent moved for additional extensions of time to hire counsel, which petitioner has opposed.

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<sup>1</sup> The Board found respondent's request to extend time (filed September 9, 2011) to hire counsel moot as the Board provided respondent time to hire counsel in that order.

Respondent provided a reply on February 27, 2012, and amended reply on February 27, 2012. Petitioner filed a surreply on March 9, 2012, and respondent filed a sur-surreply on March 19, 2012. Also, on March 6, 2012, petitioner requested a stay of proceedings.

Before turning to the motions, the Board must comment on respondent's repeated duplicative filings in this case. See docket entry nos. 44, 46, 49, 51, 52, 56, 57, 60, and 62. In addition to filing via the Board's electronic filing system ESTTA, respondent has provided paper copies of all filings by mail. Duplicative filings are completely unnecessary and respondent is hereby ordered to refrain from filing duplicative copies of any papers filed in this proceeding as it creates a confusing record. See TBMP Section 106.03 ("Extra copies of a document should not be submitted"). Accordingly, all future filings by respondent should only be by ESTTA and not by mail. TBMP Section 106.03 ("The Board encourages use of ESTTA for the filing of all submissions in Board proceedings").

Motions to Extend

The Board now turns to the motions to extend.

Both parties have filed surreplies in this case (petitioner's reply affirmation" and "answer to petitioner's reply affirmation"). However, the Board does not consider surreplies. See Trademark Rule 2.127(a); TBMP Section

502.02(b). Accordingly, the Board will not consider the additional filings of the parties with regard to respondent's motions to extend time to hire counsel.

With regard to his January 6, 2012, motion to extend time, respondent points to his hospitalization in December 1-4, 2011, also on December 12, 2011, care of a family member on December 9, 2012, and the directive from medical personnel to avoid stress until December 27, 2012. He advises of his diligent efforts to hire counsel in December 2011 by placing of calls to various attorneys and leaving messages, following up with those attorneys who he left messages with, responses from some receptionists that certain of the attorneys called do not specialize in trademark matters, as well as interviewing four attorneys who did not specialize in trademark law or practice before the TTAB.

With regard to the February 3, 2012, motion to extend, respondent once again points to his December 2011, hospitalization, the directive to avoid stress until December 27, 2012, and the new directive from his physician to "rest until next month, March 2012 and avoid stress." Respondent has provided a February 2, 2012, doctor's letter with regard to his health. His physician advises that he can resume his work schedule in March and needs "30 days of convalescence."

With regard to his efforts to secure counsel, he advises of numerous calls placed to various counsel during the month of January 2012, the results of those phone calls, and conversations with some of the counsel called, none of whom practice trademark law or practice before the TTAB. Respondent asserts that he is "working diligently to secure new legal counsel but it taking longer than expected."

In response petitioner submits that he "doubts the extent of the claim of impairment of health to the respondent." Petitioner further argues that "there are no specifics as to whom the attorneys are that he called" and that "he is wasting everyone's time" when "he includes attorneys that do not specialize in Intellectual Property Law." Petitioner contends that "respondent is merely stalling to drag this matter out."

In reply, respondent argues that petitioner is "not a certified or qualified medical doctor and cannot render such an opinion" regarding respondent's health or impairment, and that petitioner's statements are "pure speculation." With regard to respondent's efforts to hire counsel, respondent contends that he "has made a diligent efforts." Respondent also objects to petitioner's characterization with regard to the attorneys he has contacted arguing that "it was never stated that he was speaking with any attorney who did not specialize in Intellectual Property law" but more

specifically that these attorneys did not practice "this type of trademark law" or "do not practice before the TTAB."

The standard for granting an extension of time is good cause. See Fed. R Civ. P. 6(b) and TBMP § 509 (3d ed. rev. 2011) and authorities cited therein. The Board generally is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See e.g., *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

This is the fourth and fifth extensions of time respondent has sought for hiring counsel. In fact, during the pendency of these motions, respondent has had six months in which to secure counsel. The Board finds that respondent's actions of placing phone calls, leaving messages, speaking with receptionists, and interviewing a few counsel to find that they do not practice trademark law is simply insufficient to establish diligent efforts to hire counsel. Additionally, respondent's motions provide no justification for his failure or inability to obtain new counsel in the substantial amount of time already provided him by the Board. The Board finds that respondent has had adequate time to hire new counsel and that the motions to extend do not support a basis for further extension. Accordingly, the motion for further extension to hire

counsel is denied for lacking good cause. Respondent may proceed pro se,<sup>2</sup> while continuing to seek counsel to represent himself in this proceeding.<sup>3</sup>

The Board now turns to respondent's request to stay.

Respondent seeks an undetermined stay because he "suffered some sort of seizure, was hospitalized, with an "uncertain prognosis." Respondent "will properly respond to the court's proceedings upon discharge from his hospitalization when he is available." The request is filed and signed by Melissa Barrera, Power of Attorney.

The motion to stay is denied. The Board previously accommodated respondent's request for stay due to a medical condition for 11 months. In the Board's order of June 29, 2011, the Board advised that if respondent desired to continue to participate in this proceeding, he must either enlist the assistance of a family member or friend or execute a durable power of attorney in the event he is not sufficiently recovered to participate actively in this case. Apparently, respondent is not sufficiently recovered as evidenced by the motions to extend and now this request for stay. However, it is noted that the request for stay was filed by Melissa Barrera who has Power of Attorney and who

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<sup>2</sup> The Board allows parties to proceed pro se. See TBMP Section 114 and 37 C.F.R. Section 11.14.

<sup>3</sup> Respondent should consider other options for obtaining referrals of qualified trademark counsel, other than the current unsuccessful methods he is using.

has made filings on respondent's behalf (March 14, and March 19, 2012). Accordingly, the Board finds that Melissa Barrera who has Power of Attorney for respondent can, and has, acted on respondent's behalf, and therefore she can participate in this case if respondent is not discharged from the hospital or sufficiently recovered from his recent illness. Accordingly, the Board finds no further stay of this proceeding is necessary on the basis of respondent's medical issues.

In view thereof, the request for stay is denied.

Proceedings are resumed.

Dates are reset as follows:

Initial Disclosures Due <sup>4</sup>	5/23/12
Expert Disclosures Due <sup>5</sup>	9/20/12
Discovery Closes	10/20/12
Plaintiff's Pretrial Disclosures <sup>6</sup>	12/4/12
Plaintiff's 30-day Trial Period Ends	1/18/13
Defendant's Pretrial Disclosures <sup>7</sup>	2/2/13
Defendant's 30-day Trial Period Ends	3/19/13
Plaintiff's Rebuttal Disclosures	4/3/13
Plaintiff's 15-day Rebuttal Period Ends	5/3/13

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

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<sup>4</sup> Information regarding initial disclosures can be located in the Board Manual of Procedure (TBMP) at Chapters 401.02. See also Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii) regarding initial disclosures.

<sup>5</sup> See TBMP Section 401.03 and Fed. R. Civ. P. 26(a)(2) regarding expert disclosures.

<sup>6</sup> See TBMP Section 702 and Fed. R. Civ. P. 26(a)(3) regarding pretrial disclosures.

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.

Pro Se Information

Respondent is reminded that he will be expected to comply with all applicable Rules and Board practices during the remainder of this case. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure and Federal Rules of Evidence govern the conduct of this cancellation proceeding. Respondent should note that Patent and Trademark Rule 11.14 permits any person or legal entity to represent itself in a Board proceeding, though it is generally advisable for those unfamiliar with the applicable rules to secure the services of an attorney familiar with such matters.

If respondent does not retain counsel, then respondent will have to familiarize itself with the rules governing this proceeding. On the World Wide Web, respondent may access most of these materials by logging onto <http://www.uspto.gov/> and making the connection to trademark materials.

The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as

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<sup>7</sup> See note 6.

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the CFR). The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries or online. The Trademark Rules are also located at

<http://www.uspto.gov/trademarks/process/index.jsp> under "Laws & Regulations." Finally, the Board's manual of procedure (TBMP) will be helpful. The third edition (2011) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) has been posted on the USPTO web site at [http://www.uspto.gov/trademarks/process/appeal/Preface\\_TBMP.jsp](http://www.uspto.gov/trademarks/process/appeal/Preface_TBMP.jsp).

Files of TTAB proceedings can now be examined using TTABVue, accessible at <http://ttabvue.uspto.gov/ttabvue/>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.