

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: May 29, 2015

Cancellation No. 92052897

Thomas Sköld

v.

Galderma Laboratories, Inc.

Ann Linnehan, Attorney

This case now comes up for consideration of Respondent’s “motion to resume proceedings.” The motion is fully briefed.¹

By way of background, on September 16, 2014 Petitioner notified the Board that it had filed a civil action against the Respondent in the United States District Court for the Eastern District of Pennsylvania. Petitioner included a copy of the complaint. The Board construed such filing as a motion to suspend and subsequently suspended proceedings on January 28, 2015.²

¹ Petitioner filed a response on March 26, 2014 wherein it states that it believes that the motion to resume proceedings “is out of time” but it took no position on the merits of the pending motion. The Board construes such filing as a brief in opposition to the motion and will not, therefore, grant the motion as conceded.

² Even if the intent of Petitioner was not to move to suspend proceedings the result would be the same to the extent that flowing from the Board’s inherent power to schedule the disposition of cases on its docket is the power to stay proceedings, which may be exercised by the Board upon its own initiative and not just upon motion. See TBMP Section 510.01.

Respondent moves to resume proceedings arguing that the Board “should resume this Cancellation as it has been fully litigated and is ready for decision, whereas the civil action is in its infancy with Answers still to be filed, and since the Board’s power to suspend an action pending the outcome of a civil action is discretionary.”

Generally, parties seek resumption of proceedings when the proceeding before the Board has been suspended pending the outcome of another proceeding, and that other proceeding has been finally determined. See TBMP Section 510.02(b). A proceeding is considered to have been finally determined when a decision on the merits of the case has been rendered, and no appeal has been filed therefrom, or all appeals filed have been decided. *Id.* In this instance, there is no indication that the involved civil action has been finally determined. Hence, Respondent’s request for resumption is out of time.³ Nevertheless, the Board notes that that the civil action at issue may have a bearing upon the above-captioned proceeding in that the parties’ rights in the involved marks are at issue.

In the interest of judicial economy, and consistent with the Board's inherent authority to regulate its proceedings to avoid duplicating the efforts of the civil court and the possibility of reaching an inconsistent conclusion, the continued suspension or proceedings is appropriate. See TBMP Section 510.02(a).

The motion is denied. Consideration of the pending motion to strike is deferred.

³ Any request for reconsideration of the Board’s January 28, 2015 order should have been filed within one month of the date thereof. See Trademark Rule 2.127(b).

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Within twenty days after the final determination of the civil action, the parties should notify the Board so that this case may be called up for appropriate action.