

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

Mailed: December 14, 2010

Cancellation No. 92053254

Sensocon, Inc.

v.

Dwyer Instruments, Inc.

George C. Pologeorgis, Interlocutory Attorney:

This case now comes up on respondent's motion (filed December 10, 2010) to suspend this cancellation proceeding pending the final determination of a civil action between the parties in the United States District Court for the Northern District of Indiana.¹ Respondent has submitted a copy of the first amended complaint and answer thereto in the civil action.

Respondent's motion for suspension of the Board proceedings is granted as well taken. It is the policy of the Board to suspend proceedings when the parties are involved in a civil action which may be dispositive of or

¹ Civil Action No. 3:09-cv-00010, styled *Dwyer Instruments, Inc. v. Sensocon, Inc. and Tony E. Kohl*, United States District Court for the Northern District of Indiana, filed on or about January 12, 2010.

have a bearing on the Board case.² See Trademark Rule 2.117(a).

A review of the amended complaint in the civil case indicates that a decision by the district court could be dispositive of, or have a bearing on, the issues in this cancellation proceeding.

Accordingly, proceedings are suspended pending final disposition of the civil action between the parties.

Within twenty days after the final determination of the civil action, the interested party should notify the Board so that this case may be called up for appropriate action. During the suspension period the Board should be notified of any address changes for the parties or their attorneys.

² Moreover, to the extent that a civil action in a Federal district court involves issues in common with those in a Board proceeding, the district court decision would be binding on the Board, whereas the Board decision is merely advisory to the district court. See *American Bakeries Co. v. Pan-O-Gold Baking Co.*, 2 USPQ2d 1208 (D.C. Minn. 1986). Further, Board decisions are appealable to the district court. See Section 21 of the Trademark Act, and *Goya Foods, Inc. v. Tropicana Products Inc.*, 846 F.2d 848, 6 USPQ2d 1950, at 1953 (2d Cir. 1988).