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Filing date: **02/10/2012**

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

Proceeding	92053787
Party	Plaintiff Everett W. James aka Tad James
Correspondence Address	MARTIN E HSIA CADES SCHUTTE LLP 1000 BISHOP STREET, SUITE 1200 HONOLULU, HI 96813 UNITED STATES mhsia@cades.com, cmiwa@cades.com, bhairston@cades.com
Submission	Motion to Extend
Filer's Name	Martin E. Hsia, Reg. No. 32,471
Filer's e-mail	mhsia@cades.com, cmiwa@cades.com, bhairston@cades.com
Signature	/Martin E. Hsia/
Date	02/10/2012
Attachments	Motion to Extend Discovery Deadline and Testimony Periods.pdf (2 pages) (12176 bytes) Declaration of Counsel.pdf (2 pages)(11466 bytes) Certificate of Service.pdf (1 page)(9825 bytes)

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

EVERETT W. JAMES aka TAD JAMES,)	
)	
Petitioner,)	
)	Cancellation No. 92053787
v.)	
)	Registration No. 3,467,675
METAGENICS, INC.,)	
)	
Respondent.)	
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**PETITIONER’S MOTION TO EXTEND
DISCOVERY DEADLINE AND TESTIMONY PERIODS**

Pursuant to 37 CFR § 2.120(a), Petitioner EVERETT W. JAMES aka TAD JAMES (“**Petitioner**” or “**Plaintiff**”), through its undersigned attorney of record, hereby moves for an order extending the close of discovery and the testimony periods for ninety (90) days in the above-captioned proceeding, in view of the following.

The Close of Discovery is currently set for February 25, 2012. Plaintiff’s 30-day Testimony Period is set to end on May 25, 2012. Defendant’s 30-day Testimony Period is set to end on July 24, 2012. Plaintiff’s 15-Day Rebuttal Period currently ends on September 7, 2012.

Respondent METAGENICS, INC. (“**Respondent**” or “**Defendant**”) has previously consented to extensions of the close of discovery and testimony periods – once, for settlement discussions, on August 9, 2011, and again on November 16, 2011, given the unresolved status of Petitioner’s Motion To Amend Petition For Cancellation and to Join Party Defendant, filed on September 21, 2011 (the “**Motion to Amend**”).

Because Petitioner’s Motion to Amend has not yet been ruled upon by the Board, and because it would be a waste of resources to proceed with discovery and related matters until

the Motion to Amend is decided (thereby determining the scope of relevant discovery, among other things), Petitioner's counsel attempted to contact Respondent's counsel to obtain its consent to another extension. See Declaration of Counsel attached hereto at ¶ 3. However, as of this date, Respondent's counsel has not responded. Id. at ¶ 4.

Based on the above, it is anticipated that the Motion to Amend will be resolved in the next 30-60 days. In the meantime, however, the Close of Discovery is set for February 25, 2012, and Petitioner's testimony period opens on April 24, 2012 (closing on May 25, 2012).

WHEREFORE, Petitioner respectfully requests that the current Close of Discovery, testimony periods, and related deadlines be extended for a period of 90 days, to allow the scope of discovery to be resolved pursuant to the Board's ruling on the pending Motion to Amend, as follows:

Close of Discovery:	May 25, 2012
Plaintiff's Pretrial Disclosures:	July 9, 2012
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	August 23, 2012
Defendant's Pretrial Disclosures:	September 7, 2012
Testimony period for party in position of defendant to close: (opening thirty days prior thereto)	October 22, 2012
Plaintiff Rebuttal Disclosures:	November 6, 2012
Rebuttal testimony period to close: (opening fifteen days prior thereto)	December 6, 2012

DATED: Honolulu, Hawaii, February 10, 2012.

/s/ Martin E. Hsia
Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE
A Limited Liability Law Partnership
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Tel: (808) 521-9200
Attorney for Petitioner
EVERETT W. JAMES aka TAD JAMES

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DECLARATION OF COUNSEL

I, MARTIN E. HSIA, hereby declare as follows:

1. I am a partner of Cades Schutte A Limited Liability Law Partnership, counsel for Petitioner, and am duly authorized to make this declaration, which is based upon my personal knowledge and information unless otherwise stated.

2. Respondent METAGENICS, INC. (“**Respondent**” or “**Defendant**”) has previously consented to extensions of the close of discovery and testimony periods – once, for settlement discussions, on August 9, 2011, and again on November 16, 2011, given the unresolved status of Petitioner’s Motion To Amend Petition For Cancellation and to Join Party Defendant, filed on September 21, 2011 (the “**Motion to Amend**”).

3. Because Petitioner’s Motion to Amend has not yet been ruled upon by the Board, and because it would be a waste of resources to proceed with discovery and related matters until the Motion to Amend is decided, Petitioner’s counsel attempted to contact Respondent’s counsel to obtain its consent to another extension.

4. However, as of this date, Respondent’s counsel has not responded.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

DATED: Honolulu, Hawaii, February 10, 2012.

/s/ Martin E. Hsia
MARTIN E. HSIA

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a true and correct copy of
PETITIONER’S MOTION TO EXTEND DISCOVERY DEADLINE AND TESTIMONY
PERIODS; DECLARATION OF COUNSEL was mailed by U.S. First Class Mail, postage
prepaid, to:

DENNIS H. CAVANAUGH, ESQ.
D H Cavanaugh Associates
555 Fifth Avenue, 17th Floor
New York, NY 10017

DATED: Honolulu, Hawaii, February 10, 2012.

/s/ Martin E. Hsia
Martin E. Hsia, Reg. No. 32,471
CADES SCHUTTE
A Limited Liability Law Partnership
1000 Bishop Street, Suite 1200
Honolulu, HI 96813
Tel: (808) 521-9200

Attorney for Petitioner
EVERETT W. JAMES aka TAD JAMES