

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: September 26, 2002

Opposition No. 91122405
Opposition No. 91122633

BAUSCH & LOMB INCORPORATED

v.

P-COR, L.L.C.

David Mermelstein, Attorney:

On May 14, 2002, the Board granted opposer's consent motion to suspend this matter for six months in view of the parties' settlement discussions, "subject to the right of either party to request resumption at any time." Now before the Board is opposer's motion to resume proceedings, filed August 16, 2002, and applicant's response thereto.¹

Opposer states in its motion that "settlement talks have concluded unsuccessfully," and requests that proceedings be resumed and dates reset. Although applicant says that it does not "oppose" the motion to resume, it also argues that resumption is inappropriate at this time because "settlement negotiations are still proceeding..." We have

¹ We also note applicant's motion for an extension of time to respond to opposer's discovery requests, filed September 16, 2002. Inasmuch as the time to respond to applicant's motion has not expired, the Board will not take up applicant's latest motion at this time.

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accordingly not treated opposer's motion as uncontested.

See Trademark Rule 2.127(a).

While the question of whether the parties are or are not discussing settlement is rather strange, to say the least, we find it irrelevant. That is because even if the parties were earnestly discussing settlement, either party is entitled to insist on proceeding with litigation pursuant to the Board's rules at any time. While the Board encourages settlement of disputes, we have no authority to force parties to negotiate. Absent the agreement of both parties, we will not deny the plaintiff its right to proceed with its case.²

Accordingly, opposer's motion is GRANTED, and proceedings herein are resumed.

Trial dates, including the close of discovery, are reset as follows:

DISCOVERY PERIOD TO CLOSE:	November 1, 2002
Thirty day testimony period for party in position of plaintiff to close:	January 30, 2003
Thirty day testimony period for party in position of defendant to close:	March 31, 2003
Fifteen day rebuttal testimony period to close:	May 15, 2003

² Needless to say, the Board does not intend to discourage settlement negotiations in this (or any other) proceeding. Absent agreement to the contrary, however, such discussions must

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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 be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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take place while the parties prosecute their case before the Board.