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

Proceeding	91175745
Party	Plaintiff Alticor Inc.
Correspondence Address	Jeffrey A. Nelson Warner Norcross & Judd LLP 111 Lyon Street N.W.900 Fifth Third Center Grand Rapids, MI 49503 UNITED STATES trademarks@wnj.com, jnelson@wnj.com
Submission	Motion to Suspend for Settlement Discussions
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Date	12/03/2007
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of applications Serial Nos. 78/787,498 and 78/789,820
Published in the Official Gazette on October 24, 2006

Alticor Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91175745
)	
Bruce D. Burrows,)	
)	
Applicant.)	

**OPPOSER’S MOTION TO SUSPEND PROCEEDINGS FOR SIXTY (60) DAYS WHILE
THE PARTIES CONTINUE SETTLEMENT NEGOTIATIONS**

Alticor, Inc., (“Opposer”) by and through its attorneys, Warner Norcross & Judd LLP, hereby moves to suspend proceedings pursuant to Rule 2.117(c) of the Trademark Rules of Practice and Trademark Trial and Appeal Board Manual of Procedure § 510. As set forth in the attached memorandum, Opposer respectfully requests that the proceedings in the above-captioned opposition be suspended for sixty (60) days from the date of the Board’s decision on this Motion so the parties can continue, and in all likelihood conclude, settlement negotiations.

Opposer and Applicant have conducted extensive settlement negotiations and Opposer believes that settlement can be reached in the near future. Opposer files this Motion at this time because Opposer’s testimony period is set to expire in a several days. Opposer did not file this Motion sooner because it appeared the parties were going to reach a settlement before Opposer’s testimony period was set to expire. The parties, however, are in need of more time to settle this opposition.

For the reasons set forth above and more fully described in the attached memorandum, Opposer respectfully requests that its Motion to Suspend Proceedings for Sixty (60) Days While the Parties Continue Settlement Negotiations be granted and that these proceedings be suspended for sixty (60) days starting from the date of the Board's decision on this Motion and that the trial dates be reset such that Opposer's thirty-day testimony period begin on the date that the proceedings resume. In the event this Motion is denied, Opposer respectfully requests the Board reset Opposer's testimony period to allow Opposer sufficient time to conduct testimony.

Dated: December 3, 2007

WARNER NORCROSS & JUDD LLP

/Michael B. O'Neal/

R. Scott Keller

Jeff A. Nelson

Michael B. O'Neal

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Attorneys for Opposer Alticor Inc.

1484670

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's General Objection to Applicant's First Set of Interrogatories is being sent by regular U.S. mail, first class, postage prepaid to Applicant's attorneys, Scott W. Kelley/Nancy Hoover; Kelly Lowry & Kelley, LLP; 6320 Canoga Ave., Ste 1650; Woodland Hills, CA 91367-7704, on November 26, 2007.

/Michael B. O'Neal/

Michael B. O'Neal

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Applicant.)	

**MEMORANDUM IN SUPPORT OF OPPOSER’S MOTION TO SUSPEND
PROCEEDINGS FOR SIXTY (60) DAYS WHILE THE PARTIES CONTINUE
SETTLEMENT NEGOTIATIONS**

I. INTRODUCTION

Opposer Alticor, Inc., (“Opposer”) requests the Trademark Trial and Appeal Board (“**Board**”) grant Opposer's Motion to Suspend Proceedings for Sixty (60) Days While the Parties Continue Settlement Negotiations (the “**Motion**”). As discussed more fully below, the Motion should be granted because the parties have conducted extensive settlement negotiations and need more time to conclude their settlement discussions. Opposer files this Motion at this time in case the parties cannot reach a settlement by December 6, 2007, the date Opposer’s testimony period is set to expire. Accordingly, Opposer respectfully requests these proceedings be suspended for sixty (60) days starting from the date of the Board’s decision on this Motion.

II. THE OPPOSITION

On January 12, 2006 and January 18, 2006, Applicant filed two applications for

!SPRING

registration of its ISPRING and _____, respectively, for water purifiers in Class 11. The applications were assigned Serial Nos. 78/787,498 and 78/789,820, and the marks were published for opposition in the Official Gazette of October 24, 2006. After receiving extensions for filing oppositions, Opposer timely filed its Notice of Opposition on February 19, 2007 (the “**Opposition**”) based upon U.S. Registration Nos. 2,707,414 and 2,705,022 for the



marks ESPRING and eSpring, respectively, for use with, among other things, “water treatment systems, namely, water filtering units for domestic and commercial use and replacement parts therefore” in Class 11.

III. GOOD CAUSE EXISTS FOR SUSPENDING PROCEEDINGS FOR SIXTY (60) DAYS

Rule 2.117(c) of the Trademark Rules of Practice provides that the Board may suspend proceedings for good cause upon a motion or a stipulation of the parties approved by the Board. Section 510.03(a) of the Trademark Trial and Appeal Board Manual of Procedure further provides that settlement negotiations is a basis for the Board to suspend proceedings.

Here, the parties have been engaged in extensive settlement negotiations. Draft settlement agreements have been exchanged multiple times as the parties work towards a settlement with each exchange bringing the parties closer to settlement. In fact, Opposer sent its most recent settlement agreement to Applicant on November 29, 2007. See correspondence

attached as **Exhibit A**. While Opposer believes the parties will agree on the terms of the settlement agreement in the near future, it files this Motion to protect against the expiration of its testimony period (currently set to expire on December 6, 2007) before settlement is fully explored by the parties.

Although each party served discovery requests on the other party several months ago, the parties have routinely agreed to extend each side's deadline to provide discovery responses while settlement negotiations were ongoing. It was not until after Opposer's testimony period opened that Applicant first indicated a desire to discontinue such extensions. In fact, Applicant proposed extending each side's deadline for providing discovery responses again as late as November 26, 2007. However, Applicant would not consent to a corresponding extension of the testimony periods. This contradiction would not have allowed Opposer to complete its testimony and file its Notice of Reliance by the end of its originally scheduled testimony period. It is clear that Applicant is still interested in settlement and willing to delay at least aspects of the proceedings to facilitate settlement.¹ Thus, just a few days prior to filing this Motion, Opposer sent Applicant its latest settlement proposal and again requested Applicant to consent to a 60-day suspension of the proceedings, but, as of the time of filing, Opposer has not received Applicant's response.

Opposer submits that good cause exists for suspending the proceedings for sixty (60) days because the Board encourages the parties the work together to settle and resolve opposition proceedings.² The parties have been doing just that but need more time to complete

¹ In fact, it was not clear to Opposer's counsel that Applicant understood that the contradicting positions it took with regard to extending discovery responses deadlines but not suspending the proceedings would prevent Opposer from making its case within the proscribed period.

² "The Board encourages settlement, and several aspects of Board practice and procedure, including its...willingness to suspend proceedings in pending cases while parties negotiate for settlement serve to facilitate the resolution of cases by agreement." TBMP § 605.01

negotiations. Further, this is the first time an extension or suspension has been sought and Opposer is asking for a short suspension in light of the parties being close to resolving this Opposition.

CONCLUSION

For the reasons and facts set forth above, Opposer respectfully requests that this Motion be granted and that these proceedings be suspended for sixty (60) days from the date of the Board's decision on this Motion. If the Board denies this Motion, Opposer respectfully requests the Board reset Opposer's testimony period to allow Opposer sufficient time to conduct testimony.

Dated: December 3, 2007

WARNER NORCROSS & JUDD LLP

/Michael B. O'Neal/

R. Scott Keller

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/Michael B. O'Neal/

Michael B. O'Neal

O'Neal, Michael

From: Nelson, Jeffrey
Sent: Thursday, November 29, 2007 6:39 PM
To: Michael DiNardo
Subject: Alticor - Burrows
Attachments: Alticor - ISRPING Agreement.pdf; GRLB01-#1474180-vdoc-Alticor_-_Burrows_-_ISRPING_proposed_settlement.DOC

Mike,

Attached are our revised version of the proposed agreement between the parties and a redline showing the changes we made to your last proposed version. As you will see, we maintained the MLM/Direct Selling restrictions in Section 3 that you and I discussed last week. We also made the scope of the agreement worldwide. We expect that this version of the agreement will be acceptable to both parties.

Given that Alticor's testimony period is currently schedule to end on December 6, we would appreciate receiving either (a) a signed original or copy of this agreement (via email or fax with originals to follow), or (b) your consent to a 30-day extension of the current trial schedule, by next Monday, December 3. If you would like to discuss, please contact me.

- Jeff

Jeffrey A. Nelson

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12/3/2007

