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

Proceeding	91183985
Party	Defendant Johnson & Johnson
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Submission	Opposition/Response to Motion
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Date	01/21/2009
Attachments	response to motion to suspend ttab proceeding.pdf (6 pages)(149626 bytes)

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

HEALIX INFUSION THERAPY, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91183985
	)	
JOHNSON & JOHNSON	)	
	)	
Applicant	)	
	)	

RESPONSE TO MOTION TO SUSPEND

Applicant hereby responds to Opposer's motion to suspend proceedings. Applicant hereby states its objection to the civil action filed by the Opposer herein in the U.S. District Court for the Southern District of Texas.

Opposer chose to file this proceeding before the Trademark Trial and Appeal Board and then, months later, initiated a civil action. The civil action apparently was filed for an improper purpose, namely, because Opposer does not "have a lot of faith in the USPTO"; and because the Board proceeding will not directly stop use of the mark. See, transcript of Scheduling Conference of January 12, 2009 at p. 42 (excerpt attached). Applicant has filed a Motion to Dismiss the civil action.[1]

No reasonable explanation is given as to why Opposer did not file the civil action until many months after the proceeding had been pending before the TTAB.

[1] There are presently pending before the court Opposer's Motion for a Preliminary Injunction and Applicant's Motion to Dismiss for Lack of Personal Jurisdiction.

Nevertheless, notwithstanding Applicant's objection stated above, and since the Complaint has not yet been dismissed, Applicant does not oppose the Request for Suspension of Proceedings pending disposition of the civil action with respect to Johnson & Johnson.

Respectfully submitted,

Johnson & Johnson

By: _____

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response was served on Scott Weiss, Healix Infusion Therapy, Inc., 14140 Southwest Freeway. Suite 400, Sugar Land, TX 77478, on the 21st day of January, 2009, by first class mail, postage prepaid.

_____
Joseph D. Lewis

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HEALIX, INC., ET AL., Plaintiffs, vs. JOHNSON & JOHNSON, ET AL., Defendants.	CASE NO: 4:08-CV-03706 CIVIL Houston, Texas Monday, January 12, 2009 (4:25 p.m. to 5:55 p.m.)

SCHEDULING CONFERENCE

BEFORE THE HONORABLE NANCY F. ATLAS,
UNITED STATES DISTRICT JUDGE

Appearances:	See next page
Court Recorder:	Paula Crawford
Case Manager:	Shelia Ashabranner
Transcriber:	Exceptional Reporting Services, Inc. 14493 S. Padre Island Drive Suite A-400 Corpus Christi, TX 78418 361-949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

APPEARANCES FOR:

Plaintiffs:	**SCOTT WEISS, ESQ.** **Attorney at Law** **12335 Kingsride Lane** **Suite 211** **Houston, TX 77024**
Defendants:	**JOSEPH D. LEWIS, ESQ.** **Barnes Thornburg LLP** **750 17th Street NW** **Suite 900** **Washington, DC 20006**
Also Present:	**JENNISE STUBBS, ESQ.**

MR. LEWIS: The prior application is dead, so it wouldn't have been considered.

THE COURT: Oh, okay.

MR. LEWIS: They look at only active records.

THE COURT: Okay.

MR. WEISS: And, your Honor, I'm sorry if I confused the issue. I was referring to their original application, which was filed 10 years ago.

THE COURT: Right.

MR. WEISS: They -- since then they filed their new application. It has not passed through to become registered because we filed an opposition because we spoke up and said hey, we have a problem with this.

THE COURT: Hence the proceeding in the patent office.

MR. WEISS: Right.

MR. LEWIS: Right.

THE COURT: Trademark office.

MR. WEISS: Right. We looked at the search -- how the search was run. It was run differently than the prior one. Personally, I don't have a lot of faith in the USPTO and -- I mean, they went from the standpoint of, if they say a registration can't be used, then it can't be used, but they can't stop use. They really -- their --

THE COURT: Well, yeah, but it's evidentiary that

they've said no or yes.

MR. WEISS: Well --

THE COURT: It's not binding is it, but it's certainly admissible in evidence, unlike some other administrative proceedings.

MR. WEISS: I think the majority of opinions that have been issued by at least district courts have said these are not -- these are certainly not binding on the district court.

THE COURT: That's what I said, right. But the fact that they exist is something the courts know about and either they do or don't think they're valid at the time, you know, depending on all the fact.

Okay. Well, the fact is you haven't done discovery. That's what preliminary injunctions are about, but it seems to me you need to address -- because I'm thinking two or three weeks here and the other side is asking for more time. You -- your issue is what's the difference if it's two or three months versus two or three weeks?

MR. WEISS: Well, we have -- we would like to do this as soon as possible.

THE COURT: Yes, but --

MR. WEISS: The facts are clear.

THE COURT: -- but what are the -- what are the -- what's the irreparable injury if I say no, three months?