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

Mailed: January 21, 2010

Opposition No. **91192704**

HUMANA INC.

v.

AETNA INC.

Ann Linnehan, Interlocutory Attorney
571-272-3946

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference on January 20, 2009 at 10 AM EST. Opposer requested Board participation in such conference by telephone. Participating in the conference were applicant's counsel, Roberta Jacobs-Meadway, opposer's counsel, Cheryl Scotney, Wendy Laurento of Aetna Inc., and the Board attorney responsible for resolving interlocutory disputes in this proceeding.

The parties agreed to resolve the instant proceeding by Accelerated Case Resolution ("ACR") in lieu of trial and agreed to have the Board reach conclusions as to any issues of material fact in dispute.

Upon review of the parties' pleadings and in light of the stipulations made during the telephone conference, the

Board finds that this case is appropriate for decision by ACR.[1]

Pursuant to ACR, the parties have agreed to forego trial and have agreed that the evidence submitted in connection with the briefs in the schedule set forth below be treated as the final record and briefs for this case. *See, for example, Freeman v. National Association of Realtors*, 64 USPQ2d 1700 (TTAB 2002); and *Miller Brewing Company v. Coy International Corp.*, 230 USPQ 675 (TTAB 1986). The Board will expedite determination of this matter and render a final decision in accordance with the evidentiary burden at trial, that is, by preponderance of the evidence. *Cf., Gasser Chair Co. Inc. v. Infanti Chair Manufacturing Corp.*, 60 F.3d 770, 34 USPQ2d 1822, 1824 (Fed Cir. 1995) (in addition to proving elements of claim by preponderance of the evidence, a party moving for summary judgment must also establish no genuine issue of material fact as to those elements). The final decision will be rendered within fifty (50) days following completion of briefing, and is judicially reviewable as set forth in Trademark Rule 2.145.

During the course of the telephone conference the following agreements/stipulations were made:

[1] For general information regarding ACR, the parties are directed to consult the USPTO web site at www.uspto.gov/web/offices/com/sol/notices/agronoticerule.pdf.

- both parties agreed that the Board's standard protective agreement was sufficient for this proceeding;

- both parties stipulated that opposer has priority;

- both parties agreed not to take discovery relating to the issue of priority;

- both parties agreed that no expert discovery was necessary for this proceeding;

- both parties agreed to send produced documents to the offices of each other's counsel;

- both parties agreed to service of all documents (including those related to discovery) by e-mail;

- both parties agreed that during the discovery period each party was allowed to take one deposition under Fed. R. Civ. P. 30(b)(6) and one non-Fed. R. Civ. P. 30(b)(6) deposition; and

- both parties agreed to an abbreviated discovery schedule as set forth below.

The scheduling order for this case is revised as follows:

Written discovery requests must be served by:	2/26/10
Responses to written discovery are due:	3/26/10
Discovery closes:	5/14/10
Opposer's ACR main brief due:	6/30/10
Applicant's ACR main response brief due:	7/30/10
Opposer's reply ACR brief, if any, due:	8/31/10

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