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

Proceeding	91245529
Party	Defendant Hhealth Inc.
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Submission	Motion to Extend
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Date	05/18/2020
Attachments	DSM v. Hhealth - Motion for Extension of Time (60 Days) - 5-18-20 PDF.pdf(12719 bytes)

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

DSM IP Assets B.V.,)	
)	
Opposer,)	
)	
v.)	Proceeding No. 91245529
)	
Hhealth Inc.,)	
)	
Applicant.)	
)	

Application subject of Opposition:
Ser. No. 87891972 for:
H health and Design

**APPLICANT’S MOTION TO EXTEND TIME TO RESPOND TO CROSS-
MOTION FOR SUMMARY JUDGMENT FOR 60 DAYS**

Applicant, Hhealth Inc. ("Applicant") hereby requests a 60-day extension of time to respond to the “Opposer’s Cross-Motion For Summary Judgment Or Motion For Discovery Of Applicant Under Rule 56(d)” filed by DSM IP Assets B.V. ("Opposer") on Applicant on Monday, April 27, 2020. Applicant believes that it has good cause to request such an extension, as Applicant, a Chinese company, has been impacted by the Coronavirus phenomenon. Specifically, Applicant has been impacted in terms of its ability to have meetings, to discuss strategy, to travel, to work efficiently, and to understand the ramifications of the societal lockdown on its budget for intellectual property matters.

If the Board feels that 60 days is too long, Applicant, in the alternative, respectfully requests a 30-day extension.

If the Board grants the request for a 60-day extension, Applicant would calculate that its deadline to respond to “Opposer’s Cross-Motion For Summary Judgment Or Motion For Discovery Of Applicant Under Rule 56(d)” would be 60 days from May 27, 2020, which is the current due date, which would be July 26, 2020. To review, Applicant filed a “Motion for Partial Summary Judgment” on March 27, 2020. Thus, Opposer had

30 days to respond, making its deadline to respond April 26, 2020. However, April 26th was a Sunday, so the deadline moved forward one day to Monday, April 27, 2020. Interestingly, TTABVUE 13 and 14, which Applicant surmises were part of “Opposer’s Cross-Motion for Summary Judgment or Motion for Discovery of Applicant Under Rule 56(d),” were apparently filed with the Board on April 28, 2020. This raises some concerns about whether the “Opposer’s Cross-Motion for Summary Judgment or Motion for Discovery of Applicant Under Rule 56(d)” was timely filed. Applicant intends to address this issue when it responds in earnest to “Opposer’s Cross-Motion for Summary Judgment or Motion for Discovery of Applicant Under Rule 56(d).”

According to TBMP Section 502.02(b), an opposition to a motion other than a motion for summary judgment must be filed 20 days after service. After that, the original movant has 20 days to file a Reply Brief. Applicant contends that “Opposer’s Cross-Motion For Summary Judgment Or Motion For Discovery Of Applicant Under Rule 56(d)” does not serve as an “opposition” to Applicant’s “Motion for Partial Summary Judgment,” inasmuch as the title of the document does not indicate that it is an “opposition” to a motion. Of course, the Board may view the content of the motion as serving the purpose of opposing Applicant’s motion, but this is the Board’s decision to make, and not within the purview of Applicant to decide. Therefore, Applicant contends that it should not be obligated to respond to an “opposition to a motion” in a Reply Brief within 20 days. Rather, Applicant maintains that its deadline to respond to “Opposer’s Cross-Motion For Summary Judgment Or Motion For Discovery Of Applicant Under Rule 56(d)” is currently, assuming, *arguendo*, that Opposer’s motion was filed in a timely manner, May 27, 2020, 30 days from the date Applicant was served. Applicant has calculated 60 days from this date as July 26, 2020, and is requesting that its time to respond be extended to this date.

Finally, with regard to the motion for discovery in “Opposer’s Cross-Motion for Summary Judgment or Motion for Discovery of Applicant Under Rule 56(d),” Applicant contends that Opposer’s discovery requests were not timely served, such that Applicant had no obligation to respond. Applicant also intends to address this issue when it responds in earnest to “Opposer’s Cross-Motion for Summary Judgment or Motion for Discovery of Applicant Under Rule 56(d).”

In light of the foregoing, Applicant requests that this motion for a 60-day extension be granted, in light of the impact of the Covid-19 pandemic.

Respectfully submitted,

HHEALTH INC.

Date: May 18, 2020

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Certificate of Service

I hereby certify that a true and complete copy of the **Motion to Extend Time to Respond To Cross-Motion For Summary Judgment For 60 Days** has been served on Opposer, by forwarding a copy of the said document to Duane M. Byers, via e-mail, on May 18, 2020, to:

dmb@nixonvan.com
nixonptomail@nixonvan.com

/M. Scott Alprin/ _____
M. Scott Alprin