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

Baxley

Mailed: March 23, 2010

Cancellation No. 92045172

Herbaceuticals, Inc.

v.

Xel Herbaceuticals, Inc.

Andrew P. Baxley, Interlocutory Attorney:

On March 18, 2010, petitioner filed a motion to suspend this proceeding in view of the dissolution of the law firm of petitioner's attorneys and requested therein that such motion be resolved by telephone conference. In a March 18, 2010 e-mail from respondent's attorney to petitioner's attorney that was included as an exhibit to that the motion, respondent's attorney stated that respondent "vigorously" opposes the suspension sought.

The Board finds that the present circumstances warrant an expedited decision on petitioner's motion. Inasmuch as full briefing of this motion could delay a decision on this motion by nearly six weeks, the Board agreed with petitioner that resolution of the motion by telephone conference is appropriate. See Trademark Rule 2.120(i)(1); TBMP Section 502.06(a) (2d ed. rev. 2004). On March 19, 2010, such conference was held between petitioner's attorneys Paul

Fields and Atul R. Singh, respondent's attorneys Peter M. deJonge and Gordon K. Hill, and Board attorney Andrew P. Baxley.

In support of the motion, petitioner contends that, on March 11, 2010, the law firm that has represented it throughout this case announced that it was dissolving; that, while transfer of the file for this case to new counsel has been requested, the file has not yet been so transferred; and that the two attorneys who have handled this case for petitioner departed from the firm in April 2008 and December 2009. In view of the dissolution of the law firm and uncertainty regarding the transfer of the file for this case to new counsel, petitioner asks that the Board suspend this case for six months.

In response, respondent contends that petitioner's motion is not supported by a declaration; that petitioner has not explained when transfer of the file for this case was requested and why such transfer has not occurred; and that the suspension sought is unreasonable because this proceeding has been pending for more than four years and, in the aftermath of the Board's February 25, 2010 order, is essentially starting over.

In reply, petitioner contends that the law firm that has represented it throughout this case closed suddenly with "no exit plan" and is currently being run by a bank; that

transfer of the file of the case file was requested on March 16, 2010, but the bank has yet to make such transfer.

The Board finds that the circumstances herein constitute good cause for a suspension of this case.[1] See Trademark Rule 2.117(c). A suspension will allow time for the orderly transfer of the case to new counsel. However, the Board agrees with respondent that the requested six-month suspension is unwarranted at this time.

In view thereof, petitioner's motion to suspend is granted to the extent that proceedings herein are suspended until May 18, 2010. Proceedings will resume on May 19, 2010 to the extent that petitioner will be allowed until June 18, 2010 to file an amended petition to cancel in compliance with the Board's February 25, 2010 order.

cc: Herbaceuticals, Inc.
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[1] Although petitioner's motion is not supported by a declaration, all statements therein are pursuant to Patent and Trademark Rule 10.18.

The Board notes that, although the two attorneys who had worked on this case for petitioner have left the law firm in question, neither attorney filed a change of correspondence address, and that, following their departure, no new attorney from that firm entered an appearance on petitioner's behalf until the filing of the motion decided herein. See TBMP Section 114.03 (2d ed. rev. 2004).