

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

Mailed: July 20, 2011

Cancellation No. 92053581

Hospira, Inc.

v.

Jason Smith

**George C. Pologeorgis,  
Interlocutory Attorney:**

This case now comes before the Board for consideration of respondent's motion (filed July 15, 2011) to extend his time to respond to the Board's June 17, 2011 order. Petitioner filed a response to respondent's motion on July 19, 2011.

As background, pursuant to the Board's February 3, 2011 institution order, answer in this case was due on March 15, 2011. Inasmuch as respondent did not file his answer by the due date nor did respondent file a timely request to extend his time to answer, petitioner filed a motion for default judgment on March 21, 2011. Respondent filed his response to petitioner's motion on April 7, 2011.

By order dated June 17, 2011, the Board, *inter alia*, noted that respondent's response did not constitute a proper

answer to the petition to cancel since it was argumentative in nature nor did it explain why respondent did not file a timely answer. In view thereof, the Board provided respondent time in which to file and serve an answer which complies with Fed. R. Civ. P. 8 and to explain why he did not file a timely answer.

We now turn to respondent's motion to extend. In support thereof, respondent maintains that he needs additional time to file his answer because he is representing himself *pro se* in this matter and that it has taken him somewhat longer than expected to comply with the Board's June 17, 2011 order, despite his exhaustive efforts to do so. Respondent also notes that this is his first extension request and that he has no intention of further disrupting this proceeding.

In response, petitioner maintains that respondent has already missed three opportunities to file an answer, i.e., the original deadline for the answer, the time to respond to petitioner's motion for default judgment, and the time provided by the Board's June 17, 2011 order. Further, petitioner argues that the circumstances do not warrant respondent even more time to file his answer since respondent has been on notice of this proceeding for over five months. Finally, petitioner contends that further prolonging this matter would unfairly prejudice petitioner.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b) and TBMP Section 509 (3d ed. 2011). The Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

While the Board, as noted by petitioner, has provided respondent a number of opportunities in which to file and serve a proper answer, respondent has nonetheless explained his need for additional time to the satisfaction of the Board and, therefore, has shown good cause sufficient to justify an extension of time to answer. The Board does not find that respondent has been negligent or has acted in bad faith. Further, since this is respondent's first request for an extension, he has not abused the privilege of extensions.

Accordingly, respondent's motion to extend is granted to the extent that respondent has until **August 19, 2011** in which to (1) file with the Board and serve upon petitioner an answer which complies with Fed. R. Civ. P. 8 and (2) explain why he did not timely file an answer by the original due date set forth in the Board's February 3, 2011

institution order. Respondent is advised that the Board will be reluctant in granting any further extensions of time to answer. Respondent is further advised that, although he is presenting himself *pro se* in this matter, he is nonetheless required to comply with Board rules and procedure.

In view of the foregoing, petitioner's motion for default judgment remains in abeyance pending respondent's response to this order. If respondent fails to comply with this order within the allotted time, the Board may grant petitioner's motion for default judgment.

Proceedings are otherwise suspended.

As a final matter, respondent is once again reminded of the requirements of proof of service under Trademark Rule 2.119. While respondent included a certificate of service in his motion to extend, respondent merely identified the Certified Mail tracking number of his service copy but did not sign the certificate of service nor did he indicate on what day he served his motion upon petitioner's counsel. As noted in the Board's June 17, 2011 order, copies of all papers which respondent may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on

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the paper when filed, will be accepted as prima facie proof of service.