

BOEHRINGER INGELHEIM PHARMA GMBH & CO. KG, Opposer,	}	IPC No. 14-2015-00583
	}	Opposition to:
	}	Application No. 4-2015-00010205
-versus-	}	Date Filed: 04 September 2015
	}	
AMBICA INTERNATIONAL CORPORATION, Respondent-Applicant.	}	Trademark: TELMIGNAN
	}	Order No. 2016 - <u>86</u> (D)
x-----x		

ORDER

The records show that on 01 February 2016, the Opposer timely filed its Notice of Opposition to Trademark Application No. 4-2015-00010205. The Opposition is accompanied by a Verification/Certification of Non-Forum Shopping, Affidavit of Service, and Power of Attorney, among other documents.

The Notice of Opposition determined to be non-compliant with the requirements of the amended Rules and Regulations on Inter Partes Proceedings, this Bureau issued Order No. 2016-238 dated 05 February 2016, directing the Opposer to submit within ten (10) days from receipt thereof the original legalized and authenticated Power of Attorney as well as the proof of authority of M. Kammler and C. Dumke to issue or execute the Power of Attorney on behalf of the Opposer. The said Order was received by the Opposer on 12 February 2016.

Prior to the expiration of the 10-day period or on 22 February 2016, the Opposer filed a Motion for Extension requesting for a period of ten (10) days within which to submit the required documents. This Bureau, in an Order No. 2016-368 dated 26 February 2016, granted the Opposer's motion giving the latter an extension of only five (5) days from 22 February 2016 or until 27 February 2016 within which to submit its compliance. On 03 March 2016, the Opposer filed a second Motion for Extension of fifteen (15) days from 03 March 2016 or until 18 March 2016 within which to submit the original authenticated Power of Attorney and the proof of authority of Mr. Kammler and Ms. Dumke to execute the same. Subsequently, the Opposer filed on 14 March 2016 a Manifestation and Submission submitting the original notarized and authenticated Power of Attorney with further request to submit the original authenticated proof of authority on or before 18 March 2016.

The period within which to complete or cure the defects in the filing of the opposition is explicitly provided in the rules¹, to wit:

"x x x The 10-day period to complete or cure the defects in the filing may be extended for another 5 days upon motion by the opposer or petitioner based on meritorious grounds which shall be explicitly stated in

¹ Section 2, Office Order No. 14-068, Series of 2014.

the motion, and upon payment of the applicable fees. A second 5-day extension may be granted based on the aforementioned conditions. No third extension shall be allowed.

Failure to complete or cure the defect shall cause the dismissal of the case."

In the instant case, the Opposer filed the original authenticated Power of Attorney only on 14 March 2016. It is underscored the fact that the Opposer was granted two (2) extensions to complete the requirements or cure the defect. The second extension granted was up to 27 February 2016. When the Opposer filed its second motion to extend further the period to file the compliance, it was already 03 March 2016, long after the deadline on 27 February 2016.

Also, this Bureau noticed that the Power of Attorney was executed and authenticated only on 03 February 2016 and 26 February 2016, respectively, or after the filing of the opposition on 01 February 2016, contrary to the provision of Rule 2, Section 7 (b) of the amended Rules and Regulations on Inter Partes Proceedings (*promulgated through Office Order No. 99, s. 2011, as further amended by Office Order No. 14-068, s. 2014*), which provides that:


Section 7. *Filing Requirements for Opposition and Petition.* - x x x (b) x x
x The verification and certification of nonforum shopping as well as the documents showing the authority of the signatory or signatories thereto, affidavits and other supporting documents, if executed and notarized abroad, must have been authenticated by the appropriate Philippine diplomatic or consular office. The execution and authentication of these documents must have been done before the filing of the opposition or petition. [Emphasis supplied]

Therefore, the Opposer's failure to complete or cure the defect in the filing of the opposition renders the same dismissible.

WHEREFORE, premises considered, the Opposer's Motion for Extension filed on 03 March 2016 is hereby **DENIED**. Accordingly, the instant opposition case is hereby **DISMISSED**. Let the filewrapper of Trademark Application Serial No. 4-2015-00010205 be returned, together with a copy of this Order, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 03 MAY 2016 ..


Atty. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

Copy furnished:

CASTILLO LAMAN TAN PANTALEON & SAN JOSE

Counsel for Opposer

2nd, 3rd, 4th, 5th & 9th Floors The Valero Tower

122 Valero Street, Salcedo Village

1227 Makati City

AMBICA INTERNATIONAL CORPORATION

Respondent-Applicant

#9 Amsterdam Extension

Merville Park Subdivision

Paranaque City, Metro Manila