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January 19, 2016

**VIA HAND DELIVERY**

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OFFICE OF THE GENERAL COUNSEL  
2016 JAN 19 PM 3:38  
US PATENT AND  
TRADEMARK OFFICE

**Subject: Request For extension of time for filing appeal or commencing civil action**

In accordance with 37 C.F.R. § 90.3(c)(1)(i), Nova Ortho-Med, Inc. ("Nova"), requests an extension of time of **30 days** for filing an appeal or civil action for judicial review of the judgment of the Patent Trial And Appeal Board ("Board") in Patent Interference No. 105,975. To facilitate prompt consideration, a copy of this request is being delivered by hand to the Office of the Solicitor pursuant to the procedure suggested by M.P.E.P. § 1216(VI).

Nova is the junior Party in Interference No. 105,975. The Board's judgment in the '975 Interference was entered **December 4, 2015**. Paper 267 [attached as Exhibit 1]. The date by which an appeal or civil action for judicial review of the judgment must be filed is "no later than sixty-three (63) days after the date of the final Board decision," § 90.3(a), currently **February 5, 2016**. This request is made before that date, and therefore may be granted "upon a showing of good cause." § 90.3(c)(1)(i).

Good cause is shown for this extension.

*Granted*  
*Notice of Appeal Due On or Before*  
*March 5<sup>th</sup>, 2016*  
*7*  
*Thomas W. Krause*  
*Acting Solicitor and Deputy General*  
*Counsel for IPLaw*

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On January 7, 2016 Nova engaged Lowenstein & Weatherwax LLP (“L&W”) as new counsel in this Interference. (A power of attorney, which is being filed in due course, making express the undersigned’s authority to act as counsel to Nova in this matter is attached as Exhibit 2.) As new counsel, we are working diligently to become familiar with the hundreds of papers and dozens of exhibits filed in the over two-year course of this Interference. Because final judgment was entered December 4, 2015, additional time is required for Nova’s new counsel to become familiar with the record and issues pertinent to the available options for judicial review.

Additional time is particularly needed in light of the complex and fluid situation created by the court of appeals’ recent binding decision, to which the Board’s judgment expressly directs the parties’ attention (Exhibit 1, at 2:13-14), in *Biogen MA, Inc. v. Japanese Foundation For Cancer Research*, 785 F.3d 648 (Fed. Cir. 2015). *Biogen* ruled that the AIA changed the availability of judicial review in interferences, and is also the subject of a pending petition for a writ of certiorari before the Supreme Court, which will in all probability be acted upon by early March 2016. The *Biogen* decision and petition for certiorari further complicate Nova’s decisionmaking with respect to seeking review of the decision in this Interference.

Finally, Nova and its new counsel seek additional time to analyze the facts and record and meet and confer with the senior party to the Interference, Kratos Enterprises, LLC (“Kratos”) to explore the possibility of a mutually agreeable resolution of this matter, which might obviate any need to seek judicial review in this case.

The requested extension will cause no undue prejudice to Kratos or to the public. The Interference has existed for several years. In these factual and legal circumstances, an additional 30 days of time to determine to seek judicial review will not unduly affect the parties’ rights or the public interest.

Nova is authorized by the senior party to the Interference, Kratos, to state that Kratos does not object to this extension in view of Nova’s assertions that the extension would be used to explore a possible mutually agreeable resolution that may obviate the need for an appeal.

For any questions, counsel for Nova may be contacted by telephone at 310-307-4503.

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For the above reasons, expedited consideration of this letter request, and a prompt favorable reply and grant of the requested 30 day extension, are respectfully requested.

Respectfully submitted,

/Kenneth J. Weatherwax/

Kenneth J. Weatherwax, Reg. No. 54,528

Lowenstein & Weatherwax LLP

Cc: Jon Hokanson, Esq., via email ([Jon.Hokanson@lewisbrisbois.com](mailto:Jon.Hokanson@lewisbrisbois.com))

Chris Maiorano, Esq., via email ([Chris@MaioranaPC.com](mailto:Chris@MaioranaPC.com))

Attachments: Exhibit 1 (PTAB Judgment, Interference No. 105,975, Dec. 4, 2015)  
Exhibit 2 (Power of Attorney)