

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

Mailed: October 4, 2007

Opposition No. 91177234

Opposition No. 91177365

Opposition No. 91177366

Opposition No. 91177367

Cancellation No. 92048172

CARDINAL HEALTH 303, INC.

v.

THE ALARIS GROUP, INC.

Cheryl Butler, Attorney, Trademark Trial and Appeal Board:

This case now comes up on plaintiff's motions, filed September 27, 2007 in each of the above-identified proceedings, to consolidate. Plaintiff indicates the parties are the same and that the issues involved are the same. Defendant filed its consent to consolidation on October 2, 2007. Answers have been filed in the opposition proceedings. Defendant's answer is due by November 4, 2007 in the cancellation proceeding.

When cases involving common questions of law or fact are pending before the Board, consolidation of such cases may be appropriate. Moreover, the Board, in its discretion, may order cases consolidated prior to joinder of issue (i.e., before an answer has been filed in each case). See Fed. R. Civ. P. 42(a);

Opposition Nos. 91177234; 91177365; 91177366; 91177367; Cancellation No. 92048172

and TBMP §511 (2d ed. rev. 2004). The Board finds it appropriate to consolidate the above-identified proceedings.

Accordingly, Opposition Nos. 91177234; 91177365; 91177366; and 91177367 and Cancellation No. 92048172 may be presented on the same records and briefs (except as noted below with respect to the answer in Cancellation No. 92048172). The record will be maintained in Opposition No. **91177234** as the "parent" case, but all papers filed in these cases should include both proceeding numbers in ascending order.

Defendant's answer, due by **November 4, 2007** in Cancellation No. 92048172, is to be filed in the cancellation proceeding, not in this consolidated proceeding.

While plaintiff did not mention a discovery schedule disagreement in its motion to consolidate, defendant argues that it already served discovery requests in the opposition proceedings and believes that responses thereto should be due in accordance with the Board's ordinary procedures. See Trademark Rule 2.120(a); and TBMP §403.03 (2d ed. rev. 2004). In an email to defendant, plaintiff indicated it would serve responses "within the parameters set by the Board" when considering the motion to consolidate.

Upon consolidation, the Board ordinarily resets trial dates for the consolidated proceeding by adopting the trial dates as set in the most recently instituted of the cases being consolidated. In this case, that is Cancellation No. 92048172.

(The schedule is copied later in this order.) However, neither the pendency of plaintiff's motion to consolidate nor the order consolidating proceedings operates to toll the due date for discovery responses. Thus, plaintiff's discovery responses remain due in accordance with the operative Trademark Rules. In the event plaintiff needs additional time to serve responses the parties are encouraged to work this out amicably and, if appropriate, the parties may file a consented motion.¹ Often the parties find it practical to work together on scheduling matters, particularly early in the proceeding, because the party agreeing to an extension may later seek consent to an extension for itself. Otherwise, any party seeking an unconsented enlargement of time prior to the expiration of the period set to act, must present circumstances showing good cause for any sought extension. See Fed. R. Civ. P. 6(b); and TBMP §509.01(a) (2d ed. rev. 2004).

Discovery, which is open, and trial dates for this consolidated proceeding are reset in accordance with those set in Cancellation No. 92048172. Such dates are copied as follows:

¹ Parties are not required to file motions to extend time to respond to discovery responses where the parties have agreed between themselves to an extension. In the rare instance that a dispute arises as to what was agreed upon, each party is usually able to submit copies of email exchanges that clarify for the Board what the parties agreed upon, or each believed they agreed upon.

Discovery period to close: 4/12/2008
30-day testimony period for party
in position of plaintiff to close: 7/11/2008
30-day testimony period for party
in position of defendant to close: 9/9/2008
15-day rebuttal testimony period
for plaintiff to close: 10/24/2008

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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