

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

Mailed: July 15, 2008

Opposition Nos. 91179933 (parent)
91179963

Universal American Financial
Corp.

v.

Lawton Printing, Inc.

**Robert H. Coggins,
Interlocutory Attorney:**

These cases now come up on opposer's motions to (1) consolidate Opposition Nos. 91179933 and 91179963, (2) amend the notice of opposition in Opposition No. 91179933, and (3) extend discovery and trial periods.¹

Motion to Consolidate

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, for example, Wright & Miller, Federal Practice and Procedure: Civil* §2383 (2004); *S. Industries Inc. v. Lamb-Weston Inc.*, 45 USPQ2d 1293, 1297 (TTAB 1997) (motion).

¹ Applicant's appearance of counsel (filed January 14, 2008) and opposer's change of correspondence address (filed January 28, 2008) are noted and entered.

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The Board has reviewed the records in both cases, and concludes that Opposition Nos. 91179933 and 91179963 involve the same parties and common questions of law and fact. It would therefore be appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a). Moreover, it does not appear that applicant filed a brief in opposition to the motion.

Accordingly, applicant's motion to consolidate is granted as conceded. Trademark Rule 2.127(a). The above-noted opposition proceedings are hereby consolidated and may be presented on the same record and briefs.

The Board file will be maintained in Opposition No. 91179933 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the parties and each paper should bear the case caption as set forth above.

Motion to Amend

Opposer's motion to amend the notice of opposition seeks to correct an error by which opposer mistakenly left out the correct second page of the notice and inserted therefor a page from the notice in Opposition No. 91179963 (which opposition is consolidated hereinabove). By its motion, opposer wishes to withdraw the incorrectly inserted page and replace it with the correct page. The page

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substitution would amend the notice to include the remainder of paragraph 1 (carried over from the first page of the notice), and fully provide paragraphs 2, 3, and 4. The remaining numbered paragraphs of the notice remain unchanged.

It does not appear that applicant filed a brief in opposition to opposer's motion to amend the notice of opposition. Accordingly, opposer's motion is granted as conceded. Trademark Rule 2.127(a). However, inasmuch as applicant's answer noted the deficiency in the original notice of opposition and appears to have anticipated a corrective amendment by denying the allegations of the paragraphs now sought to be amended, the Board need not reset the time to answer. Applicant's answer remains in effect and the denials of paragraphs 1-4 remain of record.

Motion to Extend

Opposer's motion (filed April 28, 2008, in Opposition No. 91179933) to extend the close of discovery and reset the testimony periods is granted as conceded.² Trademark Rule 2.127(a).

Discovery and Trial Dates

For these consolidated proceedings, the parties are to follow the schedule set forth in opposer's motions to

² An identical motion (filed April 28, 2008, in Opposition No. 91179963) was previously granted by the Board.

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extend. For the convenience of the parties, those dates are provided below.

Discovery period to close:	7/27/08
30-day testimony period for party in position of plaintiff to close:	10/26/08
30-day testimony period for party in position of defendant to close:	12/24/08
15-day rebuttal testimony period to close:	2/8/09

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.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 Fed. Reg. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on

or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>