

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

Mailed: January 30, 2009

Opposition No. 91182420

Opposition No. 91187596

Northern Digital Inc.

v.

NDI Medical, Inc.

George C. Pologeorgis, Interlocutory Attorney:

On January 14, 2009, opposer filed a motion to consolidate Opposition No. 91182420 with Opposition No. 91187596 inasmuch as both proceedings involved the same parties, similar marks and common issues. On January 21, 2009, applicant filed a response to opposer's aforementioned motion stating that it would not contest opposer's motion to consolidate.

Accordingly, opposer's motion to consolidate is granted and 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. 91182420 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

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parties and each paper should bear the case captions as set forth above.<sup>1</sup>

In accordance with Board practice, discovery and trial dates are reset to conform to the dates latest set in the opposition proceedings that are being consolidated.

However, in light of the slight delay in consolidating these proceedings, conferencing and disclosure deadlines, as well as discovery and trial dates, for these now consolidated opposition proceedings are reset as follows:

Deadline for Discovery Conference	2/6/2009
Discovery Opens	2/6/2009
Initial Disclosures Due	3/8/2009
Expert Disclosures Due	7/6/2009
Discovery Closes	8/5/2009
Plaintiff's Pretrial Disclosures	9/19/2009
Plaintiff's 30-day Trial Period Ends	11/3/2009
Defendant's Pretrial Disclosures	11/18/2009
Defendant's 30-day Trial Period Ends	1/2/2010
Plaintiff's Rebuttal Disclosures	1/17/2010
Plaintiff's 15-day Rebuttal Period Ends	2/16/2010

The Board notes that the deadline for conducting the parties' discovery conference in Opposition No. 91182420 has long passed. If the parties believe that a second discovery

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<sup>1</sup>The parties should promptly inform the Board in writing of any other related *inter partes* proceedings. See Fed. R. Civ. P. 42(a).

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conference is unnecessary inasmuch as these now consolidated proceedings involved common issues of law and fact, the parties may forego conducting another discovery conference as set forth in the above revised trial schedule.

As a final matter, the stipulated protective agreement filed on January 14, 2009 in Opposition No. 91182420 is noted and its use in these now consolidated proceedings is approved. The parties are referred, as appropriate, to TBMP §§ 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

**NEWS FROM THE TTAB:**

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 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

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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](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>