

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

Mailed: January 13, 2011

**Opposition No. 91196444
(parent case)**

Opposition No. 91196445

Penske Systems, Inc.

v.

Jonathan A. Naguit

Jennifer Krisp, Interlocutory Attorney:

Consolidation

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. See Fed. R. Civ. P. 42(a). Consolidation of proceedings is discretionary with the Board and may be ordered upon the Board's own initiative. See TBMP § 511 (2d ed. rev. 2004).

A review of the two above-captioned proceedings indicates that they involve the same parties, common claims, and common questions of law and fact. Moreover, consolidation would be advantageous to both parties in the avoidance of the duplication of effort, time, and expense that would be required to conduct the proceedings individually. It is therefore appropriate to consolidate these proceedings pursuant to Fed. R. Civ. P. 42(a).

Opposition No. **91196444** is designated the **"parent case"** (see caption above). Any future motions and papers should be filed **only in the parent case**, and all such filings must bear the caption as set forth above, **listing all consolidated proceedings, and identifying the parent case first.**

Despite being consolidated, each proceeding retains its separate character. The final decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings. A copy of the decision will be placed in each proceeding file.

Withdrawal of applicant's counsel

On January 3, 2011, applicant's attorney Rick Ruz, Esq. filed, in both proceedings, a request to withdraw as applicant's counsel of record in this case (said requests are captioned "unopposed motion to withdraw as counsel").¹

¹ The Board acknowledges the consented motion to extend filed by applicant in each proceeding (on January 9, 2011 and January 8, 2011, respectively) via the ESTTA electronic filing system form, wherein applicant states that he opposes the withdrawal of Mr. Ruz as his counsel. Applicant is advised that the Board does not resolve disputes related to representation or agreements between parties and their attorneys. If applicant believes his former counsel is in possession of documents or things that should be returned, applicant may pursue this, either through the subpoena process or another process, as appropriate. The Board has no jurisdiction to issue or enforce subpoenas.

The Board also acknowledges opposer's briefs, filed on January 13, 2011 in each proceeding, in opposition to applicant's motions to extend, wherein opposer's counsel states that applicant had not in fact sought opposer's consent, and that opposer did not in fact provide consent to the extension. Accordingly, applicant's representations of opposer's consent, on which he bases his motions to extend, are in issue. The Board strongly advises applicant that a party's signature constitutes his or her certification that all statements made in any motion or paper filed with the USPTO are true. See 37 C.F.R. § 11.18; Trademark Rule 2.193(f). Any representation of an adversary's consent must be grounded in fact.

The request to withdraw as counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, and is accordingly granted. The law firm of Amaury Cruz & Associates no longer represents applicant in this proceeding.

In view of the withdrawal of applicant's counsel, and in accordance with standard Board practice,² proceedings herein are suspended, and applicant is allowed until thirty days from the mailing date of this order to appoint new counsel, or to file a paper stating that applicant chooses to represent itself. If applicant files no response, the Board may issue an order to show cause why default judgment should not be entered against applicant based on applicant's apparent loss of interest in the case.

The parties will be notified by order of the Board when proceedings are resumed, and dates will be rescheduled at the appropriate time.³

A copy of this order has been sent to all persons listed below.

Applicant's motions to extend are hereby denied; consequently, the Board's automatically-generated orders granting said motions are hereby vacated.

² The Board emphasizes that, upon granting a motion to withdraw as counsel of record, it is the Board's **standard practice** to allow the previously represented party thirty days in which to secure new legal counsel.

³ The Board notes that the motions to extend, which applicant filed, erroneously set forth a new date by which applicant is to file an answer. Inasmuch as applicant previously filed his answer, upon resumption of proceedings in these now consolidated

cc:

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cases, the reset discovery and trial schedule will not include a
reset time to answer.