

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

EJW/emy

Mailed: June 12, 2015

Opposition No. 91221006 (parent)  
Opposition No. 91221007

*Clasado Inc.*

*v.*

*EpitoGenesis, Inc.*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

Proceedings Consolidated

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); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby.

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, e.g., Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

The Board notes that the parties to these proceedings are identical, and that the facts and legal issues involved are the same or related. Accordingly, Opposition No. 91221006 and Opposition No. 91221007 are hereby **CONSOLIDATED** and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management, supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Opposition No. **91221006** as the “parent case.” From this point forward, only a single copy of all motions and papers should be filed, and each such motion or paper should be filed in the parent case only, but the caption should list all consolidated proceeding numbers with the “parent case” listed first.<sup>1</sup>

Although these cases are now consolidated, each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated. Accordingly, trial dates for both proceedings are as set forth below.

<b>Deadline for Discovery Conference</b>	<b>6/19/2015</b>
<b>Discovery Opens</b>	<b>6/19/2015</b>
<b>Initial Disclosures Due</b>	<b>7/19/2015</b>

---

<sup>1</sup> The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

<b>Expert Disclosures Due</b>	<b>11/16/2015</b>
<b>Discovery Closes</b>	<b>12/16/2015</b>
<b>Plaintiff's Pretrial Disclosures</b>	<b>1/30/2016</b>
<b>Plaintiff's 30-day Trial Period Ends</b>	<b>3/15/2016</b>
<b>Defendant's Pretrial Disclosures</b>	<b>3/30/2016</b>
<b>Defendant's 30-day Trial Period Ends</b>	<b>5/14/2016</b>
<b>Plaintiff's Rebuttal Disclosures</b>	<b>5/29/2016</b>
<b>Plaintiff's 15-day Rebuttal Period Ends</b>	<b>6/28/2016</b>

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.

#### Withdrawal of Applicant's Attorney

On May 5, 2015, Applicant's attorneys filed a request in each proceeding to withdraw as counsel of record. In Opposition No. 91221007, the request was denied without prejudice on May 18, 2015, and a renewed request was filed the same day. The renewed request to withdraw as counsel is in compliance with the requirements of Trademark Rules 2.19(b) and Patent and Trademark Rule 11.116. Insofar as the renewed, acceptable request in Opp. No. 91221007 applies to the same attorney referenced in the attorney withdrawal in Opp. No. 91221006, and the proceedings are now consolidated, the Board finds that counsel's renewed request for withdrawal is applicable to both matters. Accordingly, the requests to withdraw are **GRANTED**,

Opposition Nos. 91221006 and 91221007

and Arthur G. Schaier and the law firm Carmody Torrance Sandak & Hennessey, LLP no longer represent Applicant. The Board's records have been updated accordingly. *See* TBMP § 116.

It is also noted that on May 12, 2015 and on May 19, 2015, respectively, Applicant filed an answer to the notice of opposition in each case.<sup>2</sup> In view thereof, it is presumed that Applicant seeks to represent itself. Accordingly, Applicant's correspondence address has been updated to show Applicant's address as shown in its pleading.

A copy of this order has been sent to the addressees shown below.

cc:

**Shore Padrah  
Epito Genesis Inc  
ATL Building Room 101  
Storrs, CT 06268**

**Arthur G. Schaier  
Carmody Torrance Sandak & Hennessey LLP  
195 Church Street, PO Box 1950  
New Haven, CT 06509-1950**

**Martin W. Schiffmiller  
Kirschstein Israel Schiffmiller & Pieroni PC  
425 Fifth Avenue, 5th Floor  
New York, NY 10016-2223**

☼☼☼

The following information is provided to Applicant as a courtesy:

---

<sup>2</sup> The Board notes that Applicant's answer with respect to Application Serial No. 86298471 was filed in Opposition No. 91221006; however, the proceeding number related to the aforementioned application is Opposition No. 91221007. Applicant's answer has been placed in the correct opposition file.

An *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. **No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.**

While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

It is recommended that the parties be familiar with Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice, and which are available at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alterna-

tive Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

**Every motion, paper or communication filed with the Board must include proof of service of a copy on opposing counsel or party, in compliance with Trademark Rule 2.119(a) and (b).** The Board may decline to consider any motion, paper or communication filed herein which does not include proof of service, such as a Certificate of Service. The Board's Manual of Procedure (TBMP) sets forth the following suggested format for a Certificate of Service:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (set out name and address of opposing counsel or party). See TBMP § 113.03.

**Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.** See *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006). The Board's order instituting this proceeding also includes information with which applicant should be familiar.

#### General Information on Discovery Conferences

The parties are referred to the Board's institution order in this proceeding and to the following URL:

[http://www.uspto.gov/trademarks/process/appeal/RULES08\\_01\\_07.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf), see, e.g.,

pp. 42245, 42246, 42248 and 42252. During the conference, the following topics must

be discussed:

- (1) the nature of and basis for their respective claims and defenses;
- (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and;
- (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case.

Either party may request the participation of the Board in the discovery conference.

See Trademark Rule 2.120(a)(2), 37 C.F.R. § 2.120(a)(2).

#### Information on Initial Disclosures

The parties are referred to the following web addresses to obtain information regarding initial disclosures:

[http://www.uspto.gov/trademarks/process/appeal/RULES08\\_01\\_07.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES08_01_07.pdf) and to

<http://edocket.access.gpo.gov/2006/pdf/06-197.pdf> or to

[http://www.uspto.gov/trademarks/process/appeal/RULES01\\_17\\_06.pdf](http://www.uspto.gov/trademarks/process/appeal/RULES01_17_06.pdf). See Notice of Final Rulemaking (“Miscellaneous Changes to Trademark Trial and Appeal Board Rules”) in the Federal Register, 72 Fed. Reg. 147 (August 1, 2007) and 71 Fed. Reg. 10,2501 (January 17, 2006).

