

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

Mailed: May 10, 2016

Opposition No. 91225315
Cancellation No. 92061540

Delta Faucet Company

v.

AS IP Holdco, LLC

Ann Linnehan, Interlocutory Attorney

This case now comes up for consideration of Delta Faucet Company's ("Delta") combined motion (filed February 4, 2016) to consolidate Opposition No. 91225315 and Cancellation No. 92061540 and to suspend both proceedings "pending the Board's ruling on this Motion." The motion has been fully briefed.

The Board shall forego an exhaustive review of the parties' arguments and issues in their briefs and shall presume the parties' familiarity therewith.

When actions involving common questions of law and/or fact are pending before the Board, it may order those actions consolidated. See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *World Hockey Ass'n v. Tudor Metal Products Corp.*, 185 USPQ 246 (TTAB 1975).

After reviewing the records in the proceedings at issue, the Board finds that both proceeding involve similar marks, similar claims, and the same parties.

Accordingly, the Board finds that, in the interests of judicial economy and saving

time, effort, and expense for the parties and the Board, consolidation of the proceedings is appropriate.

In view thereof, Delta's motion to consolidate is hereby granted. Opposition No. 91225315 and Cancellation No. 92061540 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993). The Board file will be kept in Opposition No. 91225315 as the "parent" case. As a general rule, from this point on, only a single copy of any submission should be filed herein, but each submission should include all four proceeding numbers in its caption.¹

With regard to the issue of suspension of the proceeding, the Board finds it appropriate to suspend the now consolidated proceeding as of the filing date of the motion, i.e., February 4, 2016. The Board acknowledges the dispute regarding the due date of Delta's discovery responses. The Board's order of January 15, 2016 in Cancellation No. 92061540 essentially stayed proceedings and reset discovery and trial dates. In its motion in that case, AS IP Holdco, LLC ("AS IP") did request that "discovery responses to pending discovery requests served by both Petitioner and Respondent be stayed, pending the Board's decision on this motion" [AS IP's Brief,

¹ Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

pg. 5-6].² The confusion regarding when Delta's outstanding discovery responses were due (because of the Board's silence on the matter in its corrected order of January 25, 2016) is regretted. Nevertheless, to the extent the Board now considers the consolidated proceeding suspended as of February 4, 2016, the due date for *any* outstanding discovery is now **thirty days** from the date set forth in the caption of this order.

It is the general policy of the Board to reset dates for consolidated proceedings by adopting the dates as set in the most recently instituted of the cases being consolidated. TBMP Section 511. In this instance, Opposition No. 91225315 is the most recently instituted case. Hence, the Board resets all dates as follows:

Deadline for Discovery Conference	6/5/2016
Discovery Opens	6/5/2016
Initial Disclosures Due	7/5/2016
Expert Disclosures Due	11/2/2016
Discovery Closes	12/2/2016
Plaintiff's Pretrial Disclosures Due	1/16/2017
Plaintiff's 30-day Trial Period Ends	3/2/2017
Defendant's Pretrial Disclosures Due	3/17/2017
Defendant's 30-day Trial Period Ends	5/1/2017
Plaintiff's Rebuttal Disclosures Due	5/16/2017
Plaintiff's 15-day Rebuttal Period Ends	6/15/2017

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.

² Later in such brief on pg. 7, AS IP does, confusingly, request an extension of time to respond to discovery requests for itself only. Then, in its concluding paragraph, it again essentially asks for an extension for both parties when it requests that the Board "extend the deadline to respond or stay discovery until thirty (30) days after the Board issues its decision...."

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