

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

Mailed: August 25, 2010

Opposition No. 91195308  
Cancellation No. 92052575

Donald Mlynek

v.

Combat Medical Systems, LLC

**George C. Pologeorgis, Interlocutory Attorney:**

It has come to the attention of the Board that Opposition No. 91195308 and Cancellation No. 92052575 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).

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); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) (Board's initiative).

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Accordingly, the above-noted opposition and cancellation proceedings are hereby consolidated and may be presented on the same record and briefs.

The Board file will be maintained in Opposition No. 91195308 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding with the exception that an answer to the main complaint or to a counterclaim needs to be filed in the appropriate corresponding proceeding. Only a single copy of each paper should be filed by the parties and each paper should bear the case captions as set forth above.<sup>1</sup>

The Board notes that plaintiff in these consolidated proceedings, namely, Mr. Donald Mlynek, filed a consented motion to amend its notice of opposition in Opposition No. 91195308 on August 20, 2010. Plaintiff's consented motion to amend its notice of opposition is granted and the amended notice of opposition filed on August 20, 2010 is now the operative pleading in Opposition No. 91195308. See Fed. R. Civ. P. 15(a) and Trademark Rule 2.127(a). Defendant Combat Medical Systems, LLC is allowed the time set forth below in which to answer or otherwise respond to the amended notice of opposition.

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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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The Board further notes that defendant Combat Medical Systems, LLC asserted a counterclaim in its answer to plaintiff's originally-filed notice of opposition. To the extent that defendant wishes to re-assert its counterclaim in its answer to plaintiff's amended notice of opposition, it may do so and will not be required to submit any additional fees for the potential counterclaim.

In accordance with Board practice, disclosure, discovery and trial dates are reset to conform to the dates latest set in the proceedings that are being consolidated. In this instance, however, the Board notes that defendant must still file an answer to plaintiff's amended notice of opposition, as plaintiff's petition to cancel.

Accordingly, trial dates, beginning with the deadline to file answers in each of these now consolidated proceedings, are reset as follows:

Time to Answer Amended Notice of Opposition in Opposition No. 91195308 and Petition to Cancel in Cancellation No. 92052575	<b>9/24/2010</b>
Deadline for Discovery Conference	<b>10/24/2010</b>
Discovery Opens	<b>10/24/2010</b>
Initial Disclosures Due	<b>11/23/2010</b>
Expert Disclosures Due	<b>3/23/2011</b>
Discovery Closes	<b>4/22/2011</b>
Plaintiff's Pretrial Disclosures	<b>6/6/2011</b>
Plaintiff's 30-day Trial Period Ends	<b>7/21/2011</b>
Defendant's Pretrial Disclosures	<b>8/5/2011</b>
Defendant's 30-day Trial Period	<b>9/19/2011</b>

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Ends	
Plaintiff's Rebuttal	
Disclosures	<b>10/4/2011</b>
Plaintiff's 15-day Rebuttal	
Period Ends	<b>11/3/2011</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.