

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

Mailed: March 24, 2011

**Opposition No. 91198027
(parent case)**

AmeriCareers LLC

v.

Internet Employment Linkage,
Inc.

Cancellation No. 92052698

Internet Employment Linkage,
Inc.

v.

AmeriCareers LLC

Jennifer Krisp, Interlocutory Attorney:

These proceedings are before the Board for consideration of the motion to consolidate, filed by AmeriCareers LLC ("Americareers")¹ on March 2, 2011, in both of the captioned proceedings. The motion is fully briefed.

The Board may resolve a motion filed in an inter partes proceeding by telephone conference. See Trademark Rule 2.120(i)(1); TBMP § 502.06(a) (2d ed. rev. 2004). On March 24, 2011, the Board convened a telephone conference to resolve the issue(s) presented in the motion. Participating were Dan Ouyang, pro se, for Americareers, Elizabeth R.

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Burkhard, Esq., counsel for Internet Employment Linkage, Inc., d/b/a HigherEdJobs ("IEL"), and the assigned Interlocutory Attorney.

In **Opposition No. 91198027**, instituted December 29, 2010, Americareers opposes registration of application Serial Nos. 77950843 and 77950871, filed by IEL.

In **Cancellation No. 92052698**, instituted July 6, 2010,

1) IEL petitions to cancel Americareers' Registration No. 3666461, pleading ownership of Registration Nos. 2688003 and 2781127, as well as application Serial Nos. 77950843 and 77950871; and

2) Americareers counterclaims for cancellation of IEL's pleaded Registration Nos. 2688003 and 2781127.

Consolidation

Americareers now moves for consolidation of the two proceedings, asserting that it would save time and expense, would avoid duplication of effort, and would not prejudice or inconvenience either party. It requests that upon consolidation, the Board reset dates based upon the schedule in the cancellation proceeding "so progress can continue to advance as currently scheduled" (Americareers' brief, p. 3). In response, IEL indicates that it does not oppose consolidation, but asserts that setting forth the schedule that is in place in the cancellation proceeding would prejudice it inasmuch as issues raised in the opposition

¹ The revocation and new appointment, and change of correspondence address, filed by Americareers in both

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require discovery beyond that which it seeks and/or needs in the cancellation, and that IEL would be prejudiced and adversely affected by the proposed shortening of the discovery period, with respect to the opposition.

When cases involving common questions of law or fact are pending before the Board, the Board may consolidate cases. See Fed. R. Civ. P. 42(a). Consolidation of proceedings is discretionary with the Board. See TBMP § 511 (2d ed. rev. 2004).

A review of the two above-captioned proceedings indicates that they involve the same parties, common properties and claims, and common questions of law and fact. Moreover, the board finds that consolidation would be advantageous to both parties in the avoidance of unnecessary duplication of effort, time, and expense that would be required to conduct these proceedings individually.

Accordingly, Americareers' motion to consolidate is hereby granted as modified. Fed. R. Civ. P. 42(a).

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 final decision will be placed in each proceeding file.

Opposition No. 91198027 is designated as the "parent case" (see the caption above). All future motions and

proceedings, are noted and have been entered.

papers should be filed only in the parent case, and all such filings must bear the caption as set forth above, that is, listing all consolidated proceedings, and identifying the parent case first.

Regarding the disputed issue of the discovery and trial schedule for the consolidated proceedings, the concerns relative to potential prejudice, which IEL has raised, have merit. Moreover, upon consolidating proceedings, it is generally the Board's practice to set forth dates as they exist in the most recently instituted proceeding. See TBMP § 511 (2d ed. rev. 2004). Accordingly, the Board adopts a modified discovery and trial schedule which varies minimally from that which is presently in the opposition proceeding, and which provides for a full six months of discovery. As noted during the conference, modification is necessary in order to accommodate the parties' reversed positions, and the filing of the counterclaim in Cancellation No. 92052698. The modified schedule is set forth below.

Also due to the parties' reversed positions, and the counterclaim, and to better manage these proceedings, the Board requests that the parties: 1) utilize the references indicated hereinabove, namely, "Americareers" and "IEL" to refer to the respective parties throughout these proceedings (rather than "opposer," "registrant," "counterclaim petitioner," and so forth); and 2) utilize the USPTO's presently-assigned serial number or registration number to refer to all involved applications and registrations.

Schedule

Discovery and trial dates are hereby reset as follows:²

Discovery Opens	April 8, 2011
Initial Disclosures Due	May 8, 2011
Expert Disclosures Due	September 5, 2011
Discovery Closes	October 5, 2011
Americareers/91198027, and IEL/92052698,	
Pretrial Disclosures Due	November 19, 2011
30-day testimony period for Americareers/91198027, and IEL/92052698,	
testimony to close	January 3, 2012
IEL/91198027, and Americareers/92052698, and Americareers/92052698/counterclaim,	
Pretrial Disclosures Due	January 18, 2012
30-day testimony period for IEL/91198027, and Americareers/92052698, and Americareers/92052698/counterclaim,	
to close	March 3, 2012

² Any motion filed herein to suspend or extend these dates must set forth a proposed reset schedule similar to that which is set forth herein.

The parties noted during the conference that they have held their required discovery and settlement conference with respect to the opposition. An additional conference is not required.

Notwithstanding that the motion to consolidate was filed and briefed prior to the deadline in Opposition No. 91198027 for serving initial disclosures, the parties indicated during the conference that they have begun exchanging initial disclosures. Accordingly, adherence to the initial disclosures deadline indicated herein is not required for a party that has already served initial disclosures in this proceeding. The parties are reminded, however, that they have a continuing duty to supplement their disclosures, as appropriate. See Fed. R. Civ. P. 26(e).

As the Board noted during the conference, absent a stipulation to extend such dates, the parties remain obligated to serve timely responses to any written discovery that has been propounded in the cancellation proceeding. See Trademark Rule 2.120(a)(3).

**IEL/92052698/counterclaim, and
Americareers/91198027, and
IEL/92052698**

Rebuttal Disclosures Due March 18, 2012
30-day testimony period for
**IEL/92052698/counterclaim, and 15-day
rebuttal testimony period for
Americareers/91198027, and
IEL/92052698,**
to close May 2, 2012

Americareers/92052698/counterclaim
Rebuttal Disclosures Due May 17, 2012
15-day rebuttal period for
Americareers/92052698/counterclaim
to close June 16, 2012

**BRIEFS SHALL BE DUE AS FOLLOWS (see
Trademark Rule 2.128):**

Brief for **Americareers/91198027, and
IEL/92052698**
due August 15, 2012
Brief for **IEL/91198027, and
Americareers/92052698, and
Americareers/92052698/counterclaim**
due September 14, 2012
Brief for **IEL/92052698/counterclaim,
and** reply brief, if any, for
**Americareers/91198027, and
IEL/92052698**
due October 14, 2012
Reply brief, if any, for
Americareers/92052698/counterclaim
due October 29, 2012

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.

Pro se information

Inasmuch as it appears that Americareers is not presently represented by counsel, the following information is provided:

While Patent and Trademark Rule 10.14 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 inter partes proceedings before the Board 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.

In addition, Trademark Rule 2.119(a) and (b) require that every paper or motion filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be clearly evident on the filed paper before the paper will be considered by the Board. The Board may decline consideration of any paper or motion which does not indicate proper proof of service thereof.

It is highly recommended that any pro se party be fully apprised of the Trademark Rules of Practice, and The Trademark Trial and Appeal Board Manual of Procedure (TBMP),

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both available at www.uspto.gov. Trademark Rules 2.126 and 2.127 govern the form of motions and papers filed with the Board. 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, 1212 n.2 (TTAB 2006). The Board's institution order (issued in Opposition No. 91198027 on December 29, 2010, and in Cancellation No. 92052698 on July 8, 2010) also includes important information with which pro se parties should be familiar.