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

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Mailed: March 13, 2013

Cancellation No. 92056028
(Parent)
Cancellation No. **92056052**

Baxano, Inc.

v.

Extremity Medical, LLC

Elizabeth A. Dunn, Attorney (571-272-4267):

On November 6, 2012, petitioner filed a motion, with respondent's consent, to consolidate Cancellation Nos. 92056028 and 92056052. The Board notes initially that respondent has filed its answer in each proceeding for which consolidation is sought. See TBMP Section 511 (2d ed. rev. 2004).

The Board may consolidate pending cases that involve common questions of law or fact. See Fed. R. Civ. P. 42(a); see also, *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991) and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). Inasmuch as the parties to the respective proceedings are the same and the proceedings involve common

questions of law or fact, the Board finds that consolidation of the above-referenced proceedings is appropriate. Consolidation will avoid duplication of effort concerning the factual issues and will thereby avoid unnecessary costs and delays.

In view thereof, petitioner's motion to consolidate is hereby granted. Cancellation Nos. 92056028 and 92056052 are hereby consolidated and may be presented on the same record and briefs. The record will be maintained in Cancellation No. 92056028 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding, but file only a single copy of each paper in the parent case. Each paper filed should bear the numbers of all consolidated proceedings in ascending order, and the parent case should be designated as the parent case by following it with: "(parent)," as in the case caption set forth above.

Consolidated cases do not lose their separate identity because of consolidation. 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 and a copy of the final decision shall be placed in each proceeding file. See Wright & Miller, Federal Practice and Procedure: Civil Section 2382 (1971).

The parties are instructed to promptly inform the Board of any other related cases within the meaning of the Fed. R. Civ. P. 42. Disclosure, discovery, trial and other dates in the now-consolidated cases shall be coextensive with the schedule in Cancellation No. 92056052.

The stipulated protective agreement filed on October 22, 2012, is noted and its use in this proceeding is approved. The parties are referred, as appropriate, to TBMP §§ 412.03 (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.