

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

dmd

Mailed: December 20, 2013

Cancellation No. 92057934
(parent)

Cancellation No. 92057938

Cancellation No. 92057942

Sensa, Inc.

v.

Sensa Products LLC

**Denise M. DelGizzi,
Technical Program Manager:**

On October 1, 2013, petitioner filed a motion to consolidate Cancellation Nos. 92057934, 92057938, and 92057942.¹ The Board notes initially that respondent has filed an answer in each proceeding for which consolidation is sought. See TBMP § 511.

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

¹ Petitioner's motion to consolidate does not indicate proof of service on respondent as required by Trademark Rule 2.119. In order to expedite matters, respondent is directed to the following URL to view a copy of the motion to consolidate.

<http://ttabvueint.uspto.gov/ttabvue/v?pno=92057934&pty=CAN&eno=5>

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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. 92057934, 92057938, and 92057942 are hereby consolidated and may be presented on the same record and briefs. The record will be maintained in Cancellation No. 92057934 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

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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 §2382 (1971).

The parties are instructed to promptly inform the Board of any other related cases within the meaning of Fed. R. Civ. P. 42.

SUSPENSION

Proceedings herein are suspended pending the disposition of all outstanding motions and matters filed in each of the consolidated proceedings. This suspension order supersedes the suspension order issued in proceeding no. 92057942.

PRO SE INFORMATION

The following information is provided to petitioner as a courtesy:

Nature of a Cancellation Proceeding

Petitioner is advised that 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.**

Requirement for Service on Adverse Party of All Papers Filed

Trademark Rules 2.119(a) and (b) require that every paper 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 made before the paper will be considered by the Board. Consequently, copies of all papers which petitioner may subsequently file in this proceeding must be accompanied by "proof of service" of a copy on respondent's counsel. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service. This written statement should take the form of a "certificate of service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

_____ (Date)

_____ (signature)

The certificate of service must be signed and dated.

Legal Representation Is Strongly Encouraged

It should also be noted that while Patent and Trademark Rule 10.14 permits any person to represent him or herself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation 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 petitioner obtain a copy of the latest edition of Title 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. These rules may be viewed 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 the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to The Trademark Trial and Appeal Board Manual of Procedure (the TBMP).

Information on Initial Disclosures

Petitioner is referred to the following web addresses to obtain information regarding initial disclosures:

<http://www.uspto.gov/trademarks/process/appeal/index.jsp>

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).

All Parties Must Comply with Board Deadlines

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). 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.

