

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: July 22, 2003

Opposition No. **91-153,554**

Opposition No. 91-153,614

RARITAN COMPUTER, INC.

v.

AVOCENT CORPORATION

Peter Cataldo, Interlocutory Attorney

Proceedings Consolidated

Applicant's motion (filed on June 3, 2003) to consolidate the above proceedings is hereby **granted**.

When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. See Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby. See, for example, Wright & Miller, *Federal Practice and Procedure: Civil* §2383 (1971); and *Lever Brothers Co. v. Shaklee Corp.*, 214 USPQ 654 (TTAB 1982).

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, Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

Inasmuch as the parties to the instant proceedings are identical and the issues are substantially the same, Opposition Nos. 153,554 and 153,614 are hereby consolidated.

The consolidated cases may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management, supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Opposition No. 153,554 as the "parent" case. As a general rule, from this point on only a single copy of any paper or motion should be filed herein; but that copy should bear both proceeding numbers in its caption. Exceptions to the general rule involve stipulated extensions of the discovery and trial dates, and briefs on the case. *See Trademark Rules 2.121(d) and 2.128.*

Despite being consolidated, each proceeding retains its separate character and requires entry of a separate

judgment. See Wright & Miller, *Federal Practice and Procedure, supra*. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings; a copy of the decision shall be placed in each proceeding file.

Stipulated Protective Agreement

The stipulated protective agreement filed on June 11, 2003 is noted. The parties are referred, as appropriate, to TBMP §§416.05 (Signature of Protective Order), 416.06 (Filing Confidential Materials With Board), 416.07 (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.

Dates Reset

Applicant's motion (filed on June 9, 2003) to extend the close of the discovery and testimony periods is hereby

granted. Accordingly, dates are reset as requested therein.¹

¹ Applicant's motion (filed on December 31, 2002 in Opposition No. 153,614) to extend its time in which to answer the notice of opposition is granted. Accordingly, applicant's answer, filed on January 31, 2003 in Opposition No. 153,614 is timely.