

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

Brown

Mailed: September 5, 2008

Opposition No. 91176107

Opposition No. 91182911

Apple Computer, Inc.,
Apple Inc.

v.

ISYS AUTOMATION, INC.

(as consolidated)

Brian D. Brown, Interlocutory Attorney:

On May 19, 2008, the parties filed a consented motion to extend which was followed on June 23, 2008 by a consented motion to consolidate proceedings. As discussed below, the consented motions are hereby granted.

When cases involving common questions of law or facts are pending before the Board, the Board may, upon its own initiative or upon motion, order the consolidation of the cases. See Fed. R. Civ. P. 42(a) and Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 511 and authorities cited therein (2d ed. rev. 2004).

A review of the pleadings in the above-identified proceedings indicates that the parties are the same and that the respective claims involve common questions of law and fact. As such, the issues and the pleadings in the two

proceedings appear to be substantially similar.

Therefore, the proceedings may be presented on the same record and briefs without appreciable inconvenience or confusion. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993). Moreover, it is clear that the consolidation would be equally advantageous to both parties in the avoidance of duplication of effort, loss of time, and the extra expense associated with conducting the proceedings individually.

Therefore, Opposition No. 91176107 and Opposition No. 91182911 are hereby consolidated. Consequently, the parties' future submissions should be captioned in the above manner. The Board file will be maintained in Opposition No. 91176107 as the "parent" case, and as a general rule, only a single copy of any paper or motion should be filed in the parent case file.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleadings. The parties are further advised that they are to inform the Board of any other proceedings which involve the same parties and the same or related issues.

As noted in the beginning of the order, the parties' consented motion to extend is also granted. Nevertheless, upon consolidation, the Board will usually reset trial dates for the consolidated proceeding, by adopting the trial dates as set in the most recently instituted of the cases being consolidated, which in this instance is Opposition No. 91182911. As Opposition No. 91182911 was filed on March 11, 2008, and is therefore subject to the Board's new rules governing proceedings filed on or after November 1, 2007, dates for the consolidated proceedings are hereby reset as follows:

Deadline for Discovery Conference	10/10/2008
Discovery Opens	10/10/2008
Initial Disclosures Due	11/9/2008
Expert Disclosures Due	3/9/2009
Discovery Closes	4/8/2009
Plaintiff's Pretrial Disclosures	5/23/2009
Plaintiff's 30-day Trial Period Ends	7/7/2009
Defendant's Pretrial Disclosures	7/22/2009
Defendant's 30-day Trial Period Ends	9/5/2009
Plaintiff's Rebuttal Disclosures	9/20/2009
Plaintiff's 15-day Rebuttal Period Ends	10/20/2009

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. See 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.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>