

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

Mailed: October 19, 2012

Opposition No. 91202450

David Escamilla and M2
Software, Inc.

v.

Modernizing Medicine, Inc.

**M. Catherine Faint,
Interlocutory Attorney:**

Before the Board are the following motions filed by
opposer on October 15, 2012:

- 1) Motion to join party plaintiff;
- 2) Motion for leave to amend the notice of opposition;¹
- 3) Motion for judgment as sanction;
- 4) Motion in the alternative for summary judgment; and
- 5) Motion to test the sufficiency of responses to
requests for admission.

Motion to Join

By its motion to join, opposers note that an assignment of Registration No. 1931182, which was pleaded in the notice of opposition, was recorded with the Assignment Division on October 2, 2012 at Reel/Frame Nos. 4870/0638.

¹ The Board refers to the motions enumerated as 2-5 hereinafter as the "combined motion in the alternative for summary judgment and all other motions." As the motion to join is decided herein, the Board does not expect any further briefing on this motion.

If a mark pleaded by a plaintiff is assigned, and a copy of the assignment is filed with the Board, the assignee will be joined, rather than substituted, to facilitate the taking of discovery and the introduction of evidence. See, e.g., *Western Worldwide Enterprises Group Inc. v. Qinqdao Brewery*, 17 USPQ2d 1137, 1138 n.4 (TTAB 1990) (assignee joined after filing copy of an assignment which occurred subsequent to commencement of proceeding).

Accordingly, David Escamilla is joined as opposer in this proceeding.

Suspension for Summary Judgment, All Other Motions and Briefing Schedule

The Board, in exercising its inherent authority to control the cases on its docket, schedules the remaining briefing in connection with the combined motion in the alternative for summary judgment and all other motions as follows:

Applicant is allowed until THIRTY (30) DAYS from the date of service of the combined motion in the alternative for summary judgment and all other motions to file its combined brief in response, limited to 25 pages in length (i.e., until November 14, 2012).² Opposers' reply brief in

² In other words, applicant may file only one combined brief in response to the multiple motions in opposers' combined motion in the alternative for summary judgment and all other motions. If applicant chooses to file a motion pursuant to Fed. R. Civ. P. 56(d) in response to the motion in the alternative for summary

support of its motion in the alternative for summary judgment and all other motions, if any, is due in accordance with Trademark Rules 2.119(b)(6) and 2.127(e)(1).

Proceedings herein are suspended pending disposition of the combined motion in the alternative for summary judgment and all other motions. Any paper filed during the pendency of these motions, which is not relevant thereto, will be given no consideration. See Trademark Rule 2.127(d).

judgment, applicant may do so, and then may file its combined brief in response at a later date to be set by the Board.