

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

Mailed: April 16, 2014

Opposition No. **91208645** (parent)

Experience Based Learning, Inc.

v.

Zip Idaho, LLC

-----and-----

Opposition Nos. **91210185**  
**91210195**

Zip Idaho, LLC

v.

Experience Based Learning, Inc.

**Robert H. Coggins,**  
**Interlocutory Attorney:**

Issue of Privity

Now before the Board is Zip Idaho, LLC's (hereinafter "ZIL") response, filed January 13, 2014, in Opposition No. 91210195, to the Board's December 23, 2013 show cause order which allowed ZIL time to provide detailed information as to

Eric J. Faull's (hereinafter "Faull") ownership interest in ZIL.<sup>1</sup>

By way of the response, ZIL states that ZIL and Faull are in privity because Faull is the majority owner and sole managing member of ZIL. This is sufficient to establish ZIL's privity with Faull.<sup>2</sup> See e.g., *Mitchell Investment Co. v. Federal Sav. and Loan Ins. Corp.*, 741 F.2d 107 (6th Cir. 1984) (recognizing that a majority shareholder often is the alter-ego of the corporation and privity may be presumed); *Drier v. Tarpon Oil Co.*, 522 F.2d 199 (5th Cir. 1975) (the president and majority stockholder is in privity with the corporation he controls); *Walter Heller & Co. v. Cox*, 343 F.Supp. 519, 524 (S.D.N.Y., 1972) (privity may be established by majority shareholder of corporation) *aff'd* 486 F.2d 1398 (2d Cir. 1973), *cert. denied* 414 U.S. 827 (1973). Because ZIL is in privity with Faull, and a party in privity with a potential opposer may step into the potential opposer's shoes and file a notice of opposition, ZIL's filing of the notice of opposition in Opposition No. 91210195 is accepted. See *SDT Inc. v. Patterson Dental Co.*,

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<sup>1</sup> Faull filed and was granted an extension of time to oppose application Serial No. 85666695 which is the subject of Opposition No. 91210195. Thereafter, Mr. Faull filed a timely notice of opposition naming ZIL -not himself- as the opposer.

<sup>2</sup> The determination of privity is based solely on Faull's ownership interest in ZIL and relates solely to ZIL's ability to continue this proceeding based on the filing of a notice of opposition during the extended opposition period granted to Faull.

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30 USPQ2d 1707, 1709 (TTAB 1994); *see also* Trademark Rule 2.102(b).

Further Consolidation

As indicated at footnote 2 of the Board's October 4, 2013 order which, *inter alia*, consolidated Opposition Nos. 91208645 and 91210185, the Board now, having determined the procedural issue of privity in Opposition No. 91210195, addresses the issue of further consolidation.

The Board further consolidates Opposition No. 91210195 into previously consolidated parent Opposition No. 91208645. Fed. R. Civ. P. 42(a). Accordingly, Opposition No. 91210195 is consolidated into previously consolidated Opposition No. 91208645 (as the parent) and may be presented on the same record and brief. The Board file will be maintained in Opposition No. 91208645 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the parties and each paper should bear the case caption as set forth above.

Schedule

Consolidated proceedings are resumed. The parties are allowed until thirty days from the date of this order in which to serve responses to discovery requests, if any, that

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were outstanding at the time these consolidated cases were suspended. Dates are reset on the following schedule.<sup>3</sup>

Expert Disclosures Due	August 3, 2014
Discovery Closes	September 2, 2014
EBLI as plaintiff in 91208645 pretrial disclosures due	October 17, 2014
30-day testimony period for EBLI as plaintiff in 91208645 to close	December 1, 2014
ZIL as defendant in 91208645 and plaintiff in 91210185 & 91210195 pretrial disclosures due	December 16, 2014
30-day testimony period for ZIL as defendant in 91208645 and plaintiff in 91210185 & 91210195 to close	January 30, 2015
EBLI's disclosures as defendant in 91210185 & 91210195 and rebuttal disclosures as plaintiff in 91208645 due	February 14, 2015
30-day testimony period for EBLI as defendant in 91210185 & 91210195 and rebuttal testimony as plaintiff in 91208645 to close	March 31, 2015
ZIL as plaintiff in 91210185 & 91210195 rebuttal disclosures due	April 15, 2015
15-day rebuttal period for ZIL as plaintiff in 91210185 & 91210195 to close	May 15, 2015
Brief for EBLI as plaintiff in 91208645 due	July 14, 2015
Brief for ZIL as defendant in 91208645 and plaintiff in 91210185 & 91210195 due	August 13, 2015

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<sup>3</sup> If the parties move for an extension, suspension, or reopening of time that affects the trial schedule, they must submit the request in the form of a trial schedule contemplating all periods, as shown.

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Brief for EBLI as defendant in 91210185  
& 91210195 and reply brief, if any, as  
plaintiff in 91208645 due

September 12, 2015

Reply brief, if any, for ZIL as  
plaintiff in 91210185 & 91210195 due

September 27, 2015

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. 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.