

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: February 10, 2015

Opposition No. 91216399(Parent)
Opposition No. 91218484

International IP Holdings, LLC

v.

Tom Miles DBA Real Energy

Karl Kochersperger, Paralegal Specialist:

Consolidation

On December 28, 2014, applicant filed a motion,¹ to consolidate Opposition Nos. 91216399 and 91218484. Opposer has not filed a response to applicant's motion to consolidate. The Board notes initially that applicant has filed its answer in each proceeding for which consolidation is sought. *See* TBMP Section 511 (2d ed. rev. 2004). Applicant's amended answer filed December 28, 2014 in Opposition No. 91218484 and amended answer with counterclaim filed December 28, 2014 in Opposition No. 91216399 are noted and accepted as the operative responsive pleadings.² The appearance for applicant filed December 23, 2014 is noted and the proceeding files have been updated accordingly.

¹ The Board notes that applicant's motion to consolidate was filed in the 'child' proceeding, Opposition No. 91218484.

² Opposer has not filed a response to applicant's motion to amend its respective answer (filed December 28, 2014 in Opposition No. 91216399) or applicant's motion to reopen its time to refile an answer (filed December 28, 2014 in Opposition No. 91218484).

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 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, applicant's motion to consolidate is hereby granted. Opposition Nos. 91216399 and 91218484 are hereby consolidated and may be presented on the same record and briefs. The record will be maintained in Opposition No. 91216399 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 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 Section 2382 (1971).*

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

Counterclaim

As noted earlier in this order, on December 28, 2014, applicant filed an amended answer to the opposition and a counterclaim³ to cancel opposer's pleaded registration(s).⁴ Applicant submitted the required fee.

Opposer and counterclaim defendant, International IP Holdings, LLC, is allowed until thirty days from the mailing date of this order to file an answer to the counterclaim. *See Trademark Rule 2.106(b)(2)(iii).*

In accordance with the Trademark Rules of Practice, conferencing, disclosure, discovery and testimony periods are reset as indicated below. *See Trademark Rule 2.121(b)(2).* 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.*

³ The Board notes again that the counterclaim has been filed in Opposition No. 91216399(Parent).

⁴ Applicant wishes to cancel Registration No. 4315511 in Class 32 only.

Opposition Nos. 91216399(Parent) and 91218484

Answer to Counterclaim Due	3/12/2015
Deadline for Discovery Conference	4/11/2015
Discovery Opens	4/11/2015
Initial Disclosures Due	5/11/2015
Expert Disclosures Due	9/8/2015
Discovery Closes	10/8/2015
Plaintiff's Pretrial Disclosures	11/22/2015
30-day testimony period for plaintiff's testimony to close	1/6/2016
Defendant/Counterclaim Plaintiff's Pretrial Disclosures	1/21/2016
30-day testimony period for defendant and plaintiff in the counterclaim to close	3/6/2016
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	3/21/2016
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	5/5/2016
Counterclaim Plaintiff's Rebuttal Disclosures Due	5/20/2016
15-day rebuttal period for plaintiff in the counterclaim to close	6/19/2016
Brief for plaintiff due	8/18/2016
Brief for defendant and plaintiff in the counterclaim due	9/17/2016
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	10/17/2016
Reply brief, if any, for plaintiff in the counterclaim due	11/1/2016

If the parties file a motion to suspend or extend these dates, the motion should set forth the proposed dates in the format shown in this order. *See* Trademark Rule 2.121(d).

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.