

ESTTA Tracking number: **ESTTA686855**

Filing date: **07/30/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222214
Party	Defendant Nicolon Corporation
Correspondence Address	STACY R. STEWART CANTOR COLBURN LLP 1180 PEACHTREE ST NE STE 2050 ATLANTA, GA 30309-7525  TM-CT@cantorcolburn.com
Submission	Motion to Consolidate
Filer's Name	Stacy R. Stewart
Filer's e-mail	TM-CT@cantorcolburn.com, sstewart@cantorcolburn.com, jarnold@cantorcolburn.com
Signature	/Stacy R. Stewart/
Date	07/30/2015
Attachments	Motion to Consolidate.pdf(27551 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Dandy Products, Inc.		:	
	Opposer,	:	
v.		:	Opposition No. 91222214
		:	
Nicolon Corporation,		:	
	Applicant.	:	
<hr/>			

Lumite, Inc.,		:	
	Opposer,	:	
v.		:	Opposition No. 91222215
		:	
Nicolon Corporation		:	
	Applicant.	:	
<hr/>			

Willacoochee Industrial Fabrics, Inc.		:	
	Opposer,	:	
v.		:	Opposition No. 91222223
		:	
Nicolon Corporation,		:	
	Applicant.	:	
<hr/>			

**APPLICANT’S MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS**

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir or Madam:

Nicolon Corporation (the “Applicant”), by its undersigned attorney, in the interest of judicial and pecuniary economy, submits the following Motion to Consolidate Proceedings with Opposition Nos. 91222214, 91222215, and 91222223 filed by Dandy Products, Inc., Lumite, Inc., and Willacoochee Industrial Fabrics, Inc., respectively (the “Opposers”).

Pursuant to Fed. R. Civ. P 42(a) and TBMP § 511, Applicant moves to consolidate the present Opposition 91222214 with Opposition Nos. 91222215 and 91222223. The grounds for the Motion are as follows:

1. Applicant has filed its Answers to the present Opposition, as well as to Opposition Nos. 91222215 and 91222223.
2. Applicant involved in the present Opposition proceeding is the same Applicant in the Trademark Trial and Appeal Board (TTAB) proceedings, Opposition Nos. 91222215 and 91222223, for the same trademark.
3. Opposition Nos. 91222214, Opposition Nos. 91222215, and 91222223, involve Applicant Nicolon Corporation, and the same trademark, namely, U.S. Trademark Application No. 86057945 for the ORANGE COLOR Mark. The Opposers have not cited or relied on any pending trademark applications or registrations in their Oppositions.
4. Applicant notes that the Opposers are distinct entities. In addition, Applicant notes that Lumite, Inc. in Paragraph 16 of its Opposition references its relationship with another Opposer to Applicant's Mark, Dandy Products, Inc. in support of its claims against Applicant.
5. The Board may consolidate for consistency and economy multiple oppositions brought by different opposers which are at the same stage of litigation and plead the same claims,. See New Orleans Louisiana Saints LLC v. Who Dat? Inc., 99 USPQ2d 1550, 1552 (TTAB 2011); see also TBMP § 511, Note 4.
6. Opposition Nos. 91222214, Opposition Nos. 91222215, and 91222223 are at the same stage in the proceedings, and, common issues of fact and law are pleaded.

7. Opposition Nos. 91222214, 91222215, and 91222223 plead lack of distinctiveness and functionality. Opposition Nos. 91222214 and 91222215 also includes claims of inequitable conduct which Applicant submits does not defeat its Motion to Consolidate Proceedings. Opposition No. 91222215 includes a claim of likelihood of confusion which Applicant has filed a Motion for Judgment on the Pleadings.
8. Notwithstanding the inequitable conduct claims, and the single claim of likelihood of confusion, consolidation is still proper since the claims made by the Opposers are virtually the same.
9. For the above reasons, and pursuant to TBMP § 511 and Fed. R. Civ. P. 42(a), in order to promote administrative efficiency and save time and expense for the parties, Applicant moves and requests that the TTAB consolidate Oppositions Nos. 91222214, 91222215, and 91222223.

WHEREFORE, Applicant respectfully requests that Opposition Nos. 91222214, 91222215, and 91222223, be consolidated pursuant to TBMP § 511 and Fed. R. Civ. P. 42(a).

Dated: July 30, 2015

Respectfully submitted,  
**Nicolon Corporation**

By: /Stacy R. Stewart/  
Stacy R. Stewart, Esq.  
Jeffery B. Arnold, Esq.  
**Cantor Colburn LLP**  
1180 Peachtree Street  
Suite 2050  
Atlanta, Georgia 30309  
Phone: 404-607-9991  
Fax: 404-607-9981  
[sstewart@cantorcolburn.com](mailto:sstewart@cantorcolburn.com)  
Attorneys for Nicolon Corporation

**CERTIFICATE OF SERVICE**

I, Stacy Raphael Stewart, counsel to Applicant Nicolon Corporation, in Opposition No. 91222214, certify that, on the 30th day of July, 2015, I served a copy of the **APPLICANT'S MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS**, via first class prepaid mail, upon:

Terry L. Clark and Martha B. Allard  
**Bass, Berry & Sims PLC**  
1201 Pennsylvania Avenue NW Suite 300  
Washington, DC 20004

/Stacy R. Stewart/  
Stacy R. Stewart, Esq.