

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

KWM

Mailed: February 9, 2017

Opposition No. 91230833

*U.S. Department of Health and Human  
Services*

*v.*

*Nant Holdings IP, LLC*

**Robert H. Coggins,  
Administrative Trademark Judge:**

On December 28, 2016, proceedings were suspended by an automatically generated order as a result of Applicant's filing via ESTTA a consent motion to suspend this Board proceeding pending final determination of Civil Action No. 4:16-cv-03155. *See* 5 and 6 TTABVUE. Later that same day, Opposer filed a cross-motion for sanctions indicating that while it does not now object to suspension of this proceeding, it had not provided consent for the motion to suspend. *See* 7 TTABVUE. Two days later, Opposer withdrew its motion for sanctions. *See* 10 TTABVUE.

Suspension for Civil Action

In view of Opposer's consent to suspension, proceedings remain **suspended** pending final disposition of the civil action. *See* Trademark Rule 2.117(a).

Within thirty days after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for appropriate

action.<sup>1</sup> Such notification to the Board should include a copy of any final order or final judgment which issued in the civil action.

During the suspension period, the parties must notify the Board of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period.

#### Motion for Sanctions

In view of Opposer's withdrawal of its motion for sanctions, that motion is **moot**.

#### Possible Future Consolidation

It has come to the Board's attention that this proceeding involves questions of law and fact in common with Opposition Nos. 91230834, 91230837, and 91230839,<sup>2</sup> and that the parties are related.<sup>3</sup> When cases involving common questions of law or fact are pending before the Board, the Board may order the consolidation of the cases. *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). Accordingly, upon resumption of this proceeding, the Board may consider whether to

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<sup>1</sup> A proceeding is considered to have been finally determined when an order or ruling that ends litigation has been rendered, and no appeal has been filed or all appeals filed have been decided and the time for any further review has expired. *See* TBMP § 510.02(b) (Jan. 2017).

<sup>2</sup> The related proceedings are also suspended in light of Civil Action No. 4:16-cv-03155.

<sup>3</sup> Opposer in this proceeding is alleged to be the licensee of Opposer in Opposition Nos. 91230834, 91230837, and 91230839. Applicant is the same across all four proceedings.

consolidate the proceedings. If consolidated, the opposers will be required to appoint lead counsel.<sup>4</sup>

### Recent Rules Change

#### CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD RULES OF PRACTICE BECAME EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7, 2016, at 81 Fed. Reg. 69950. It sets forth several amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and *ex parte* appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board's home page on the uspto.gov website:  
<http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule:  
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule:  
<http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes:  
<http://www.uspto.gov/sites/default/files/documents/Chart%20Summarizing%20Rule%20Changes%2012-9-16.pdf>

For all proceedings, including those already in progress on January 14, 2017, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190, and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.
- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.

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<sup>4</sup> Where proceedings by multiple opposers against a single applicant are consolidated, the Board generally orders the opposers to appoint lead counsel, to whom the Board may send correspondence intended for the opposers, and who is responsible for making and distributing copies of such Board correspondence to each opposer or its attorney or other authorized representative. See TBMP §117.02.

- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123, and 2.125.
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.

This is only a summary of the significant content of the Final Rule. All parties involved in a Board proceeding should read the entire Final Rule.