UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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June 18, 2018

Opposition No. 91239799 **(Parent)**
Opposition No. 91239800

Evernote Corporation

v.

Lotus and Lion, LLC

Tyrone Craven, Lead Paralegal Specialist:

On May 11, 2018, Applicant filed a consented motion to consolidate Opposition Nos. 91239799 and 91239800. The Board notes initially that Applicant has filed its answer in each proceeding for which consolidation is sought.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); and *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991). In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense which may be gained from consolidation, against any prejudice or inconvenience which may be caused thereby.

Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or

upon the Board's own initiative. *See, e.g.*, *Hilson Research Inc. v. Society for Human Resource Management*, 27 USPQ2d 1423 (TTAB 1993).

The parties to these proceedings are identical, and the issues are similar or related. Accordingly, the motion to consolidate is granted. **Opposition Nos. 91239799 and 91239800** are hereby consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Society for Human Resource Management*, *supra*; and *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in **Opposition No. 91239799** as the "parent case." From this point on, only a single copy of all motions and submissions should be filed, and each submission should be filed in the parent case only, but caption all consolidated proceeding numbers, listing and identifying the "parent case" first.[1]

Despite being consolidated, 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; a copy of the decision shall be placed in each proceeding file.

Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated.

[1] The parties should promptly inform the Board of any other Board proceedings or related cases within the meaning of Fed. R. Civ. P. 42, so that the Board can consider whether further consolidation is appropriate.

The Board notes that on June 6, 2018, Opposer filed a consented motion in both proceedings to suspend for thirty (30) days.[2] Opposer's motions are granted.

Because the parties are negotiating for a possible settlement of this case, the consolidated proceedings are suspended, subject to the right of either party to request resumption at any time. *See* Trademark Rules 2.117(c) and 2.127(a); and TBMP § 605.02.

If, during the suspension period, either of the parties or their attorneys have a change of address or email address, the Board should be so informed. *See* Trademark Rule 2.18(b)(1).

In the event that there is no word from either party concerning the progress of their negotiations, upon conclusion of the suspension period, proceedings shall resume without further notice or order from the Board, upon the schedule set forth in Opposer's motion, as follows:

[2] Trademark Rule 2.119(a) states that every submission filed in an *inter partes* proceeding must be served upon the other party or parties, and proof of such service must be made before the submission will be considered. *See* TBMP § 113.02. The Board may decline to read or consider any future submission filed by Opposer in this proceeding which does not include proof of service. The submission may be accessed via TTABVUE at: http://ttabvue.uspto.gov/ttabvue/.

Initial Disclosures Due	8/5/2018
Expert Disclosures Due	12/30/2018
Discovery Closes	1/29/2019
Plaintiff's Pretrial Disclosures Due	3/15/2019
Plaintiff's 30-day Trial Period Ends	4/29/2019
Defendant's Pretrial Disclosures Due	5/14/2019
Defendant's 30-day Trial Period Ends	6/28/2019
Plaintiff's Rebuttal Disclosures Due	7/13/2019
Plaintiff's 15-day Rebuttal Period Ends	8/12/2019
Plaintiff's Opening Brief Due	10/11/2019
Defendant's Brief Due	11/10/2019
Plaintiff's Reply Brief Due	11/25/2019
Request for Oral Hearing (optional) Due	12/5/2019

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters in evidence, the manner and timing of taking testimony, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).