

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Lw/kb/mbm

October 2, 2020

Opposition No. 91241675 (parent case)
Opposition No. 91247771
Opposition No. 91249768

DSM IP Assets B.V.

v.

Neurohacker Collective, LLC

Mary Beth Myles, Interlocutory Attorney:

Opposer's consented motion (filed September 10, 2019)¹ to consolidate Opposition No. 91249768 with the previously consolidated opposition is granted.²

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

¹ The Board regrets its delay in ruling on this matter.

² 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.

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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. The Board has previously consolidated Opposition Nos. 91241675 and 91247771, with Opposition No. 91241675 as the parent case. Opp. No. 91241675, 23 TTABVUE. Accordingly, Opposition No. 91249768 is hereby consolidated with Opposition Nos. 91241675 and 91247771, and all three proceedings may be presented on the same record and briefs. Opposition No. 91241675 is 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.

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. Opposer’s counsel represented in a voicemail message to the Board that

the parties consent to commencing the consolidated proceedings from the deadline to hold the discovery conference.

Proceedings are not automatically suspended pending disposition of a motion to consolidate. *See* Trademark Rule § 2.127(d). Further, Opposer's motion to consolidate does not request suspension pending resolution of the motion, *see* Opp. No. 91249768, 5 TTABVUE, and the Board never issued a suspension order. In view of the Board's delay in ruling on Opposer's motion to consolidate however, the Board finds it appropriate to grant Opposer's consented request to reopen the deadline to hold the discovery conference and reset the remaining deadlines accordingly.

Accordingly, the dates are reset as set forth below:

Deadline for Discovery Conference	10/30/2020
Discovery Opens	10/30/2020
Initial Disclosures Due	11/29/2020
Expert Disclosures Due	3/29/2021
Discovery Closes	4/28/2021
Plaintiff's Pretrial Disclosures Due	6/12/2021
Plaintiff's 30-day Trial Period Ends	7/27/2021
Defendant's Pretrial Disclosures Due	8/11/2021
Defendant's 30-day Trial Period Ends	9/25/2021
Plaintiff's Rebuttal Disclosures Due	10/10/2021
Plaintiff's 15-day Rebuttal Period Ends	11/9/2021
Plaintiff's Opening Brief Due	1/8/2022
Defendant's Brief Due	2/7/2022
Plaintiff's Reply Brief Due	2/22/2022
Request for Oral Hearing (optional) Due	3/4/2022

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, the manner and timing of taking testimony, matters in evidence, 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).

TIPS FOR FILING EVIDENCE, TESTIMONY, OR LARGE DOCUMENTS

The Board requires each submission to meet the following criteria before it will be considered: 1) pages must be legible and easily read on a computer screen; 2) page orientation should be determined by its ease of viewing relevant text or evidence, for example, there should be no sideways or upside-down pages; 3) pages must appear in their proper order; 4) depositions and exhibits must be clearly labeled and numbered – use separator pages between exhibits and clearly label each exhibit using sequential letters or numbers; and 5) the entire submission should be text-searchable. Additionally, submissions must be compliant with Trademark Rules 2.119 and 2.126. Submissions failing to meet all of the criteria above may require re-filing. **Note:**

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Parties are strongly encouraged to check the entire document before filing.³ The Board will not extend or reset proceeding schedule dates or other deadlines to allow time to re-file documents. For more tips and helpful filing information, please visit the [ESTTA help](#) webpage.

³ To facilitate accuracy, ESTTA provides thumbnails to view each page before submitting.