

UNITED STATES PATENT AND TRADEMARK OFFICE  
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LTS

February 4, 2020

Opposition No. 91251536 (Parent)  
Opposition No. 91251537  
Opposition No. 91251538  
Opposition No. 91251539

*Alexandria Real Estate Equities, Inc.*

*v.*

*Bugsby Property LLC*

**By the Trademark Trial and Appeal Board:**

This case now comes up for consideration of (1) Applicant's motion to dismiss, filed November 18, 2019 in Opposition No. 91251536 (the "536 Opposition"); (2) Applicant's motion to dismiss, filed November 18, 2019 in Opposition No. 91251537 (the "537 Opposition"); (3) Applicant's motion to dismiss, filed November 18, 2019 in Opposition No. 91251538 (the "538 Opposition"); and (4) Applicant's motion to dismiss, filed November 18, 2019 in Opposition No. 91251539 (the "539 Opposition"). The motions are each fully-briefed.

The Board has carefully considered all of the parties' arguments, presumes the parties' familiarity with the bases for their filings, and does not recount the facts or arguments here except as necessary to explain this decision. *See Guess? IP Holder LP v. Knowluxe LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

## **Background**

On October 9, 2019, Opposer filed a notice of opposition in the '536 Opposition against Applicant's application Serial No. 88284746 for the mark INCLUSIVE INNOVATION, in standard characters, for "business incubator, co-working, and shared office and laboratory services, namely, business networking, business management, and business development in the nature of providing start-up support for businesses of others in the fields of technology, science, medicine, pharmaceuticals, and healthcare; business communications services, namely, public relations, advertising, marketing and publicity consultation services for businesses in the fields of technology, science, medicine, pharmaceuticals, and healthcare; rental and leasing of office machinery and equipment; providing on-line employment-related information in the fields of employment, recruitment, careers, personal issues related to careers and work life, job resources, job listings and resumes; providing on-line interactive employment counseling and recruitment services; providing on-line employment placement services, namely, resume matching services via a global computer network; business development consulting services in the field of development of office, laboratory and multipurpose workspace; social networking services in the field of business, namely, on-line business networking services provided via a website; online social networking services in the field of business, namely, business networking services accessible by means of downloadable mobile

applications” in International Class 35.<sup>1</sup> As grounds for opposition, Opposer alleges that Applicant’s mark is generic, or in the alternative, merely descriptive.

The same day, Opposer filed substantially similar notices of opposition in the ’537, ’538, and ’539 Oppositions. In the ’537 Opposition, Opposer filed a notice of opposition against Applicant’s application Serial No. 88284752 for the mark INCLUSIVE INNOVATION, in standard characters, for “leasing of office space; leasing of real estate in the nature of laboratory space to start-up and early stage businesses; leasing of real estate; rental of office space; real estate management services; financial services, namely, financial research and financial consulting services for start-up and early stage businesses; business incubator services, namely, providing financing to freelancers, start-up and early stage businesses; leasing of real estate in the nature of laboratory space for chemical sciences and engineering research” in International Class 36.<sup>2</sup>

In the ’538 Opposition, Opposer filed a notice of opposition against Applicant’s application Serial No. 88284755 for the mark INCLUSIVE INNOVATION, in standard characters, for “rental and leasing of information technology (IT) computer hardware systems, of computer software, and of laboratory apparatus and instruments; computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form

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<sup>1</sup> Application Serial No. 88284746 was filed on January 31, 2019, based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

<sup>2</sup> Application Serial No. 88284752 was filed on January 31, 2019, based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

virtual communities, and engage in business and social networking; providing a web hosting platform for customers to participate in business and social networking, engage in virtual communities, manage membership in a co-working and private office facilities service, request and manage office and laboratory assignments, reserve conference rooms and equipment, control employees' user access, order printing services, and sign up and pay for vendor services; computer services, namely, hosting on-line web facilities for others for organizing and conducting online introductions, meetings, gatherings and interactive discussions; computer services, namely, cloud hosting provider services; computer services, namely, on-site and remote management of IT systems of others; installation, updating and maintenance of computer software; rental of web servers; server hosting, namely, developing and hosting a server on a global computer network for the purpose of facilitating e-commerce via such a server; technical support services, namely, troubleshooting of computer software problems; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems” in International Class 42.<sup>3</sup>

In the '539 Opposition, Opposer filed a notice of opposition against Applicant's application Serial No. 88284758 for the mark INCLUSIVE INNOVATION, in

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<sup>3</sup> Application Serial No. 88284755 was filed on January 31, 2019, based upon Applicant's allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

standard characters, for “online social networking services” in International Class 45.<sup>4</sup>

As grounds for opposition in the ’537, ’538, and ’539 Oppositions, Opposer pleads the same claims as those alleged in the ’536 Opposition.

### **Consolidation**

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) and TBMP § 511 (2019). *See Wis. Cheese Grp., LLC v. Comercializadora de Lacteos y Derivados, S.A. de C.V.*, 118 USPQ2d 1262, 1264 (TTAB 2016); *Venture Out Props. LLC v. Wynn Resorts Holding LLC*, 81 USPQ2d 1887, 1889 (TTAB 2007). 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. *See World Hockey Ass’n v. Tudor Metal Prods. Corp.*, 185 USPQ 246, 248 (TTAB 1975); TBMP § 511.

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., Wis. Cheese Grp., LLC*, 118 USPQ2d at 1264.

The parties to the ’536, ’537, ’538, and ’539 Oppositions are the same, and the involved marks, allegations, and claims are similar or identical. For these reasons,

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<sup>4</sup> Application Serial No. 88284758 was filed on January 31, 2019, based upon Applicant’s allegation of a bona fide intention to use the mark in commerce under Section 1(b) of the Trademark Act.

Opposition Nos. 91251536, 91251537, 91251538, and 91251539

the Board finds that consolidation is appropriate. *Venture Out Props. LLC*, 81 USPQ2d at 1889 (consolidation ordered on the Board's own initiative). Accordingly, the '536, '537, '538, and '539 Oppositions are consolidated and may be presented on the same record and briefs. *See Hilson Research Inc. v. Soc'y for Human Res. Mgmt.*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1619 n.1 (TTAB 1989).

The Board file will be maintained in the '536 Opposition as the "parent case." As a general rule, from this point on 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. Because the involved proceedings, however, are consolidated prior to joinder of the issues in the proceedings, the parties should file a separate pleading (such as an amended notice of opposition and answer) for each opposition before commencing the practice of filing a single copy of any paper in the parent case.<sup>5</sup>

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. *See Dating DNA LLC v. Imagini Holdings Ltd.*, 94 USPQ2d 1889, 1893 (TTAB 2010).

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<sup>5</sup> 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.

## **Applicant's Motion to Dismiss**

### **1. Legal Standard**

A motion to dismiss under Rule 12(b)(6) is a test of the sufficiency of the complaint. *Advanced Cardiovascular Sys. Inc. v. SciMed Life Sys. Inc.*, 988 F.2d 1157, 26 USPQ2d 1038, 1041 (Fed. Cir. 1993); *Covidien LP v. Masimo Corp.*, 109 USPQ2d 1696, 1697 (TTAB 2014). To survive a motion to dismiss, a plaintiff need only allege sufficient factual content that, if proved, would allow the Board to conclude, or to draw a reasonable inference, that (1) the plaintiff has standing to maintain the proceeding, and (2) a valid ground exists for denying the registration sought or for cancelling the involved registration. *See Doyle v. Al Johnson's Swedish Rest. & Butik Inc.*, 101 USPQ2d 1780, 1782 (TTAB 2012) (citing *Young v. AGB Corp.*, 152 F.3d 1377, 47 USPQ2d 1752, 1754 (Fed. Cir. 1998)); *see also Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 187 (CCPA 1982). In other words, the Board determines whether Opposer's belief "is not wholly without merit." *See Lipton*, 213 USPQ at 189.

Further, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In particular, the plaintiff must allege well-pleaded factual matter and more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," to state a claim plausible on its face. *Id.* (citing *Twombly*, 550 U.S. at 555). A claim has facial plausibility when the plaintiff pleads factual content

that allows the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *See Twombly*, 550 U.S. at 556-57. However, the plausibility standard does not require that a plaintiff set forth detailed factual allegations. *Id.* Rather, a plaintiff need only allege “enough factual matter ... to suggest that [a claim is plausible]” and “raise a right to relief above the speculative level.” *Totes-Isotoner Corp. v. U.S.*, 594 F.3d 1346, 1354 (Fed. Cir. 2010).

For purposes of determining a motion to dismiss, all of the plaintiff’s well-pleaded allegations must be accepted as true, and the complaint must be construed in the light most favorable to the plaintiff. *See Advanced Cardiovascular Sys. Inc.*, 26 USPQ2d at 1041; *Petróleos Mexicanos v. Intermix SA*, 97 USPQ2d 1403, 1405 (TTAB 2010). Furthermore, “[u]nder the simplified notice pleading of the Federal Rules of Civil Procedure, the allegations of a complaint should be construed liberally so as to do substantial justice.” *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007). Moreover, the purpose of a motion to dismiss is not to address the merits of the case. *See Libertyville Saddle Shop Inc. v. E. Jeffries & Sons Ltd.*, 22 USPQ2d 1594, 1597 (TTAB 1992) (“[A] motion to dismiss is a test solely of the legal sufficiency of the plaintiff’s pleadings. No matters outside the pleadings are considered. A motion to dismiss does not involve a determination of the merits of the case[.]”).

## **2. The Parties’ Arguments**

Applicant argues that Opposer has failed to plead a plausible claim of genericness because Opposer does not allege that the phrase INCLUSIVE INNOVATION is



widely used generically to identify the genus of services identified in the opposed applications or that consumers primarily understand the wording to be the generic name or identifier of, or adjective for, the genus of services. '536 Opposition, 4 TTABVUE 4-7; '537 Opposition, 4 TTABVUE 4-6; '538 Opposition, 4 TTABVUE 5-7; '539 Opposition, 4 TTABVUE 4-6. Applicant argues that Opposer has failed to plead a plausible claim for descriptiveness because Opposer does not allege that Applicant's INCLUSIVE INNOVATION mark merely describes the specific services identified in the involved applications. '536 Opposition, 4 TTABVUE 7-8; '537 Opposition, 4 TTABVUE 7-8; '538 Opposition, 4 TTABVUE 7-8; '539 Opposition, 4 TTABVUE 6-7.

In response, Opposer argues that it "brings this opposition proceeding to prevent Applicant's attempt to monopolize [a] generic and descriptive term" and that "commercial real estate companies like the parties here often market particular properties by referring to the ability to engage in 'inclusive innovation' in a particular location, because of a proximity to other employees or businesses that can facilitate collaboration, innovation, research and development between business entities." '536 Opposition, 6 TTABVUE 2; '537 Opposition, 6 TTABVUE 2-3; '538 Opposition, 6 TTABVUE 2-3; *see also* '539 Opposition, 6 TTABVUE 2-3. Opposer further argues that: (1) it has sufficiently alleged standing ('536 Opposition, 6 TTABVUE 6-7; '537 Opposition, 6 TTABVUE 6-7; '538 Opposition, 6 TTABVUE 6-7; '539 Opposition, 6 TTABVUE 6-7); (2) it has sufficiently alleged that INCLUSIVE INNOVATION is generic for Applicant's services ('536 Opposition, 6 TTABVUE 7-10; '537 Opposition, 6 TTABVUE 7-10; '538 Opposition, 6 TTABVUE 7-10; '539 Opposition, 6 TTABVUE

Opposition Nos. 91251536, 91251537, 91251538, and 91251539

7-10); and (3) it has sufficiently alleged that INCLUSIVE INNOVATION is descriptive of Applicant's services ('536 Opposition, 6 TTABVUE 10-13; '537 Opposition, 6 TTABVUE 10-13; '538 Opposition, 6 TTABVUE 11-13; '539 Opposition, 6 TTABVUE 10-13).

In reply, Applicant argues that Opposer's allegations supporting standing are irrelevant to whether it has sufficiently alleged genericness, and Opposer's allegations of genericness fail because Opposer does not identify the genus of Applicant's services in its notices of opposition, or allege that the public understands Applicant's mark as referring to that genus of services. '536 Opposition, 7 TTABVUE 3-7; '537 Opposition, 7 TTABVUE 3-6; '538 Opposition, 7 TTABVUE 3-7; '539 Opposition, 7 TTABVUE 3-6.

### **3. Analysis**

Because the notice of opposition in the '536, '537, '538, and '539 Oppositions are substantially similar, the Board's analysis of Applicant's motion to dismiss in the '536 Opposition applies equally to Applicant's motion to dismiss in the '537, '538, and '539 Oppositions.

#### **a. Standing**

To sufficiently allege standing within the meaning of Section 14 of the Trademark Act, a plaintiff must plead facts sufficient to show that it has a direct and personal stake in the outcome of the opposition and a reasonable basis for its belief that it will be damaged. *See Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999). To sufficiently allege standing to oppose the registration of an allegedly

generic or descriptive term, a plaintiff may allege that it has the right to use the term in a descriptive or generic manner. *See Nobell.com LLC v. Qwest Commc'ns Int'l, Inc.*, 66 USPQ2d 1300, 1304 (TTAB 2003); *Binney & Smith Inc. v. Magic Marker Indus., Inc.*, 222 USPQ 1003, 1010 (TTAB 1984). *See also* 3 McCarthy on Trademarks and Unfair Competition § 20:50 (5th ed. Nov. 2019 Update). A plaintiff need not allege that it is actually using the same proposed mark in connection with the same or similar goods or services to establish standing. *Target Brands, Inc. v. Hughes*, 85 USPQ2d 1676, 1679 (TTAB 2007) (standing presumed where mark sought to be registered is allegedly descriptive and plaintiff is engaged in manufacture or sale of same or related goods); *see also Int'l Nutrition Co. v. Horphag Research Ltd.*, 55 USPQ2d 1492, 1496 (Fed. Cir. 2000) (plaintiff need not assert proprietary rights in a term in order to have standing).

Applicant does not assert that Opposer has not sufficiently alleged standing. Nonetheless, the Board notes Opposer's allegations in paragraphs 21-39 in the notice of opposition in the '536 Opposition, alleging, inter alia, that Opposer "has an interest in using the words 'inclusive' and 'innovation' (both individually and in combination) descriptively to promote services related to inclusivity and innovation, including, but not limited to, services that overlap with Applicant's services" ('536 Opposition, 1 TTABVUE 7-8, ¶¶ 21) and "offers services that are highly related or overlap with Applicant's Services" (*id.* at 9, ¶ 28). *See also* '537 Opposition, 1 TTABVUE 7-9, ¶¶ 21-29; '538 Opposition, 1 TTABVUE 7-9, ¶¶ 22-30; '539 Opposition, 1 TTABVUE 8-9, ¶¶ 22-30.

In view thereof, Opposer has sufficiently alleged standing in its pleadings. *See also Nobell.com*, 66 USPQ2d at 1304. Furthermore, where a plaintiff has alleged standing as to at least one properly pleaded ground, its allegation of standing satisfies the standing requirement for any other legally sufficient ground. *See, e.g., Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1728 (Fed. Cir. 2012) (“[O]nce an opposer meets the requirements for standing, it can rely on any of the statutory grounds for opposition set forth in 15 U.S.C. § 1052.”); *Petróleos Mexicanos*, 97 USPQ2d at 1405. The Board, therefore, turns to address each ground for opposition.

**b. Genericness**

To sufficiently plead a claim that a mark is generic for the identified goods or services, the plaintiff must plead sufficient facts to allege that (1) the wording at issue is widely used generically to identify or describe the genus of goods or services identified in the opposed application or registration sought to be cancelled, and that (2) consumers primarily understand the wording to be the generic name or identifier of the genus of goods or services. *See, e.g., In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001); *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). In cases where the proposed mark is comprised of multiple terms, as is the case here, a party is required to plead that the mark as a whole is generic. *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830-31 (Fed. Cir. 2015).

In the notice of opposition, Opposer alleges, inter alia:

4. Applicant's Mark, however, is simply the generic term "inclusive innovation" in standard type font and conveys no commercial impression apart from the plain meaning of the phrase "inclusive innovation."

5. The words that comprise the mark are generic terms. "Inclusive" is generally understood to mean something that includes a wide array of persons, items or services, and "innovation" is generally understood to mean the development of new ideas, methods or products. Applicant's Mark, "INCLUSIVE INNOVATION," thus has a plain meaning, namely, the development of new ideas, methods or products which are designed to include a wide array of persons, items or services.

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16. These examples show that the phrase "inclusive innovation" is a descriptor used to refer to innovation that includes a group of persons, entities or things.

17. As a result, the phrase "inclusive innovation" does not function as a trademark as defined by 15 U.S.C. § 1127 because it is simply a generic or, at best descriptive, phrase that refers to including persons or entities in the development of new methods, ideas or products, and thus cannot identify and distinguish any services of one entity from those offered by others.

'536 Opposition, 1 TTABVUE 4-5, ¶¶ 4-5, and 7, ¶¶ 16-17; *see also* '537 Opposition, 1 TTABVUE 4, ¶¶ 4-5, and 6-7, ¶¶ 16-17; '538 Opposition, 1 TTABVUE 4-5, ¶¶ 4-5, and 7, ¶¶ 17-18; '539 Opposition, 1 TTABVUE 4, ¶¶ 4-5, and 6-7, ¶¶ 17-18.

The notice of opposition fails to set forth the required elements of a claim that Applicant's mark INCLUSIVE INNOVATION is generic for Applicant's identified services in each involved application. Opposer merely alleges that the words "inclusive" and "innovation" are each individually generic words in their own right, and collectively have "a plain meaning, namely, the development of new ideas, methods or products which are designed to include a wide array of persons, items or services." Opposer does not, however, allege that the composite mark INCLUSIVE

INNOVATION is generic for the genus, or a subcategory of the genus, of the identified services in each involved application. Indeed, Opposer does not identify what the genus, or subcategory of the genus, of Applicant's identified services is in each notice of opposition. As such, Opposer has failed to state a claim for genericness, and Opposer's genericness claim is therefore **dismissed without prejudice**.

**c. Descriptiveness**

To plead a claim that a mark is merely descriptive pursuant to Trademark Act Section 2(e)(1), a plaintiff must allege that the mark merely describes an ingredient, quality, characteristic, feature, function, purpose or use of the goods and services identified in the application. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *see also In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987).

In the notice of opposition, Opposer alleges, inter alia:

18. In the alternative, if Applicant's Mark "INCLUSIVE INNOVATION" is not found to be generic, registration should be refused because "INCLUSIVE INNOVATION" is merely descriptive of Applicant's Services. As such, Applicant's Mark is not registrable under 15 U.S.C. § 1052(e).

19. The phrase "inclusive innovation" simply describes the development of new ideas, methods or products which are designed to include a wide array of persons, items or services.

20. Upon information and belief and assuming arguendo that acquired distinctiveness could be established in Applicant's Mark, Applicant has not acquired distinctiveness in the mark "INCLUSIVE INNOVATION."

'536 Opposition, 1 TTABVUE 7, ¶¶ 18-20; *see also* '537 Opposition, 1 TTABVUE 7, ¶¶ 18-20; '538 Opposition, 1 TTABVUE 7-8, ¶¶ 19-21; '539 Opposition, 1 TTABVUE 7, ¶¶ 19-21.

The notice of opposition states a plausible descriptiveness claim. In each notice of opposition, Opposer expressly alleges that “INCLUSIVE INNOVATION’ is merely descriptive of Applicant’s Services[,]” which are defined in each notice of opposition to be the recited services in the involved application in that opposition. ’536 Opposition, 1 TTABVUE 3-4, ¶ 2, and 7, ¶ 18; ’537 Opposition, 1 TTABVUE 3-4, ¶ 2 and 7, ¶ 18; ’538 Opposition, 1 TTABVUE 3-4, ¶ 2, and 7, ¶ 19; ’539 Opposition, 1 TTABVUE 3-4, ¶ 2, and 7, ¶ 19. Opposer further alleges various uses by third parties of the word “inclusive innovation” to describe a broad array of services related to the development of ideas, methods, and products. ’536 Opposition, 1 TTABVUE 5-7, ¶¶ 6-16; ’537 Opposition, 1 TTABVUE 4-6, ¶¶ 6-16; ’538 Opposition, 1 TTABVUE 5-7, ¶¶ 6-17; ’539 Opposition, 1 TTABVUE 4-6, ¶¶ 6-17.

In view of the foregoing, and construing Opposer’s allegations so as to do justice and in the light most favorable to Opposer, the Board finds that Opposer has set forth a mere descriptiveness claim for which relief can be granted. Accordingly, Applicant’s motion to dismiss is **denied** with respect to this claim.

### **Summary**

The ’536, ’537, ’538, and ’539 Oppositions are consolidated and may be presented on the same record and briefs. The Board file will be maintained in the ’536 Opposition as the “parent case.”

Applicant’s motion to dismiss under Fed. R. Civ. P. 12(b)(6) is **granted in part**, with respect to Opposer’s genericness claim, and **denied in part**, with respect to

Opposer's descriptiveness claim. Opposer's genericness claim is **dismissed without prejudice**.

It is the Board's policy to allow amendment of pleadings found to be insufficient upon challenge under Fed. R. Civ. P. 12(b)(6), particularly where the challenged pleading is the initial pleading. *See Intellimedia Sports Inc. v. Intellimedia Corp.*, 43 USPQ2d 1203, 1208 (TTAB 1997).

In view of the foregoing, Opposer is allowed until **February 19, 2020** to submit an amended notice of opposition repleading its claim of genericness, provided Opposer has a good faith basis for so alleging. *See* Trademark Rule 11.18(b); TBMP § 503.03.

Applicant is allowed until **March 20, 2020** to file an answer to any amended notice of opposition filed pursuant to this order, or to the currently operative notice of opposition if Opposer does not file an amended pleading.<sup>6</sup>

### **Proceeding Resumed; Trial Dates Reset**

Proceedings are **resumed**. Trial dates are reset as follows:

Time to Answer	3/20/2020
Deadline for Discovery Conference	4/19/2020
Discovery Opens	4/19/2020
Initial Disclosures Due	5/19/2020
Expert Disclosures Due	9/16/2020
Discovery Closes	10/16/2020
Plaintiff's Pretrial Disclosures Due	11/30/2020
Plaintiff's 30-day Trial Period Ends	1/14/2021

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<sup>6</sup> As explained above on pp. 5-6, although consolidated, the operative pleadings should be filed in their respective proceeding. Opposer should file its amended notice of opposition, if any, in each proceeding, and Applicant must likewise file its answer to the notice of opposition in each separate proceeding.



Defendant's Pretrial Disclosures Due	1/29/2021
Defendant's 30-day Trial Period Ends	3/15/2021
Plaintiff's Rebuttal Disclosures Due	3/30/2021
Plaintiff's 15-day Rebuttal Period Ends	4/29/2021
Plaintiff's Opening Brief Due	6/28/2021
Defendant's Brief Due	7/28/2021
Plaintiff's Reply Brief Due	8/12/2021
Request for Oral Hearing (optional) Due	8/22/2021

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).