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



Proceeding	91253508
Party	Defendant Figure Technologies, Inc.
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Submission	Motion to Consolidate
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Date	09/11/2020
Attachments	Consent Motion to Consolidate.pdf(231999 bytes )

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

Provenance Wealth Advisors, LLC	)	
	)	
v.                   Opposer/Registrant	)	Opposition No. 91253508
	)	
Figure Technologies, Inc.,	)	
	)	
Applicant/Counterclaimant.	)	
<hr/>		
Figure Technologies, Inc.,	)	
	)	Opposition No. 91254868
v.                   Opposer,	)	
	)	
Provenance Wealth Advisors, LLC,	)	
	)	
Applicant.	)	
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**CONSENTED MOTION TO CONSOLIDATE**

Figure Technologies, Inc. (“Figure”) and Provenance Wealth Advisors, LLC (“Provenance Wealth”) hereby jointly move, pursuant to Federal Rule of Civil Procedure 42(a) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 511, to consolidate Opposition Nos. 91253508 and 91254868 because the proceedings involve identical parties and common questions of fact and law. In particular, the proceedings involve similar challenges to Figure’s trademark application for the mark PROVENANCE (Serial No. 88132410; the “Figure Application”), on the one hand, and to

Provenance Wealth’s trademark application for the mark  (Serial No. 88219288; the “Provenance Wealth Application”) and trademark registration for the mark  (Reg. No. 2808868; the “Provenance Wealth Registration”), on the other.

As set forth below, consolidating the proceedings would prevent a wasteful duplication of effort and create judicial economy for the Board. It would also avoid inconsistent decisions by the Board.

The parties also request the Board to reset the dates for the discovery and trial periods in these proceedings to correspond to those in the later-filed of the two proceedings: No. 91254868.

## **I. PROCEDURAL BACKGROUND**

The proceedings between the parties are summarized as follows:

### **A. Provenance Wealth v. Figure (“Opposition No. 91253508”)**

Provenance Wealth filed its Notice of Opposition on January 15, 2020 against the Figure Application. Figure filed its Answer and Counterclaim on March 25, 2020, denying the substantive allegations in the Notice of Opposition and asserting a counterclaim. The parties have not begun discovery.

### **B. Figure v. Provenance Wealth (“Opposition No. 91254868”)**

Figure filed its Notice of Opposition on March 25, 2020 against the Provenance Wealth Application. Provenance Wealth filed its Answer on July 15, 2020, denying the substantive allegations in the Notice of Opposition. The parties have not begun discovery.

## **II. DISCUSSION**

The Board may consolidate multiple actions where the actions involve common questions of fact and law. Federal Rule of Civil Procedure 42(a); TBMP § 511. In determining whether to consolidate cases, the Board weighs the savings in time, effort and expense which may be gained from consolidation against any prejudice or inconvenience that consolidation could cause. TBMP § 511.

These proceedings involve identical parties: Figure and Provenance Wealth.

These proceedings also involve common questions of fact and law because they each involve questions related to likelihood of confusion and descriptiveness.

The evidence at trial will likely overlap in each separate proceeding given the identical parties and the overlapping arguments by Figure and Provenance Wealth.

If the proceedings are not consolidated, then the parties will have to take and enter repetitive testimony and evidence in separate cases, file repetitive sets of briefs, and prepare for separate trials on similar issues. Consequently, the Board would have to waste its efforts reviewing the same record, reading similar briefs and preparing for duplicative trials.

Furthermore, if the proceedings are not consolidated, then there is a risk of inconsistent decisions by the Board on each of the key questions cited above.

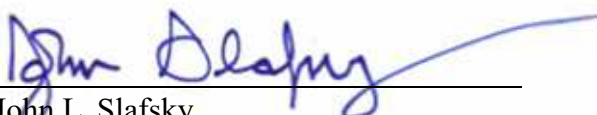
The parties will not be prejudiced by consolidation, given the very early stage of the oppositions.

### III. CONCLUSION

For the foregoing reasons, Figure and Provenance Wealth respectfully and jointly request the Board grant their motion to consolidate Opposition Nos. 91253508 and 91254868 and reset the dates for the discovery and trial periods in these proceedings.

Dated: September 11, 2020

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
\_\_\_\_\_  
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FIGURE TECHNOLOGIES, INC.

Dated: September 11, 2020

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**CERTIFICATE OF SERVICE BY EMAIL**

I, Elvira Minjarez, declare:

I am employed in Santa Clara County, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

On this date, I served **CONSENTED MOTION TO CONSOLIDATE** by forwarding the document(s) by electronic transmission on this date to the Internet email address listed below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed at Palo Alto, California on September 11, 2020.

  
\_\_\_\_\_  
Elvira Minjarez