

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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RA

November 25, 2020

Opposition No. 91253508 (parent case)

Provenance Wealth Advisors, LLC

v.

Figure Technologies, Inc.

Opposition No. 91254868

Figure Technologies, Inc.

v.

Provenance Wealth Advisors, LLC

**M. Catherine Faint,
Interlocutory Attorney:**

On September 11, 2020, the parties filed motions to consolidate these proceedings.¹ The Board notes initially that Applicant has filed its answer in each proceeding for which consolidation is sought, and Opposer has filed its answer to the counterclaim in the parent case.

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*

¹ The parties' consented motions to extend, filed September 11 and 30, 2020 are **moot**.

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. Soc'y for Human Resource Mgmt.*, 27 USPQ2d 1423, 1424 n.1 (TTAB 1993).

The parties to these proceedings are identical, and the issues are similar or related and the parties have consented to consolidation. Accordingly, the motion to consolidate is **granted**. Opposition Nos. 91253508 and 91254868 are hereby consolidated and may be presented on the same record and briefs. *See Hilson Research*, 27 USPQ2d at 1424 n.1; and *Helene Curtis Indus., Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Opposition No. 91253508 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 the caption should include 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.²

The parties have also filed on November 12, 2020 consented motions to suspend these proceedings for 30 days for settlement discussions. The motion to suspend is **granted**. Proceedings are suspended subject to the right of either party to request resumption at any time. Proceedings shall resume on December 12, 2020 without further notice from the Board. Trial dates are reset as set forth below, which includes counterclaim dates present in the parent case as follows:

Expert Disclosures Due	3/31/2021
Discovery Closes	4/30/2021
Pretrial Disclosures Due for Party in Position of Plaintiff in Original Claim	6/14/2021
30-day Trial Period Ends for Party in Position of Plaintiff in Original Claim	7/29/2021
Pretrial Disclosures Due for Party in Position of Defendant in Original Claim and in Position of Plaintiff in Counterclaim	8/13/2021
30-day Trial Period Ends for Party in Position of Defendant in Original Claim, and in Position of Plaintiff in Counterclaim	9/27/2021
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Original Claim and in Position of Defendant in Counterclaim	10/12/2021
30-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Original Claim, and in Position of Defendant in Counterclaim	11/26/2021
Pretrial Disclosures Due for Rebuttal of Party in Position of Plaintiff in Counterclaim	12/11/2021
15-day Trial Period Ends for Rebuttal of Party in Position of Plaintiff in Counterclaim	1/10/2022
Opening Brief for Party in Position of Plaintiff in Original Claim Due	3/11/2022
Combined Brief for Party in Position of Defendant in Original Claim and Opening Brief as Plaintiff in Counterclaim Due	4/10/2022

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.

Combined Rebuttal Brief for Party in Position of Plaintiff in Original Claim and Brief as Defendant in Counterclaim Due	5/10/2022
Rebuttal Brief for Party in Position of Plaintiff in Counterclaim Due	5/25/2022
Request for Oral Hearing (optional) Due	6/4/2022

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, 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).