

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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November 7, 2020

Opposition No. 91256426 (parent case)  
Opposition No. 91264471

*The a2 Milk Company Limited*

*v.*

*Mead Johnson & Company LLC<sup>1</sup>*

**Karl Kochersperger, Paralegal Specialist:**

On October 2, 2020, Applicant filed a consented motion to consolidate Opposition Nos. 91256426 and 91264471.<sup>2</sup> The Board notes initially that Applicant has not yet 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*

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<sup>1</sup> The change of correspondence address filed October 2, 2020 in child case Opposition No. 91264471 is noted and the proceeding file has been updated to reflect the change.

<sup>2</sup> Applicant's filing does not include proof of service. 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 Applicant in this proceeding which does not include proof of service. The Board informed the parties of the rules governing service and the service requirement in the notice of institution. Trademark Rule 2.119(b) sets forth the manner of service. *See also* TBMP § 113.04.

The submission may be accessed via TTABVUE at: <http://ttabvue.uspto.gov/ttabvue/>.

Opposition Nos. 91256426(Parent) and 91264471

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); and *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

The parties to these proceedings are identical, and the issues are similar or related. Accordingly, the motion to consolidate is granted. Opposition Nos. 91256426 and 91264471 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. **91256426** 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. However, inasmuch as these proceedings are being consolidated prior to joinder of the issues in each proceeding, Applicant should file a separate answer in each opposition before commencing the practice of filing a single copy of all submissions in

the parent case.<sup>3</sup> Each answer must be filed through ESTTA, the Board's Electronic System for Trademark Trials and Appeals. *See* Trademark Rules 2.106(b)(1) and 2.114(b)(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. Answer, discovery, conferencing, disclosure and trial dates are reset<sup>4</sup> as set forth below.

Time to Answer	11/24/2020
Deadline for Discovery Conference	12/24/2020
Discovery Opens	12/24/2020
Initial Disclosures Due	1/23/2021
Expert Disclosures Due	5/23/2021
Discovery Closes	6/22/2021
Plaintiff's Pretrial Disclosures Due	8/6/2021
Plaintiff's 30-day Trial Period Ends	9/20/2021
Defendant's Pretrial Disclosures Due	10/5/2021
Defendant's 30-day Trial Period Ends	11/19/2021
Plaintiff's Rebuttal Disclosures Due	12/4/2021
Plaintiff's 15-day Rebuttal Period Ends	1/3/2022
Plaintiff's Opening Brief Due	3/4/2022
Defendant's Brief Due	4/3/2022
Plaintiff's Reply Brief Due	4/18/2022
Request for Oral Hearing (optional) Due	4/28/2022

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<sup>3</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.

<sup>4</sup> Applicant's consented motion to extend filed October 26, 2020 is granted.

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).