

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

November 16, 2020

Opposition No. 91265458
Cancellation No. 92075507

Information Builders, Inc.

v.

Secret POS Systems, Inc.

Andrew P. Baxley, Interlocutory Attorney:

Plaintiff's motion (filed October 16, 2020) to consolidate the above-captioned proceedings, 4 TTABVUE, is granted as conceded and as well-taken. *See* Trademark Rule 2.127(a). Because the above-captioned proceedings involve the same parties and common questions of law or fact, the Board hereby orders their consolidation. *See* Fed. R. Civ. P. 42(a); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 USPQ2d 1382 (TTAB 1991); TBMP § 511 (2020). The consolidated cases may be presented on the same record and briefs. *See Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989); *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91265458 as the "parent" case. As a general rule, from this point onward, only a single copy of any submission should

be filed in the Board file for the parent case. That copy should include both consolidated proceeding numbers in the caption thereof. However, the parties should file a separate answer in the Board file for each of the consolidated proceedings.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

In keeping with Board practice, the Board adopts the discovery and trial schedule for Cancellation No. 92075507, the most recently instituted of the consolidated proceedings, for these proceedings.¹ See TBMP § 511. Under that schedule, proceedings are suspended through December 11, 2020, and dates are otherwise reset as follows.

Time to Answer	12/29/2020
Deadline for Discovery Conference	1/28/2021
Discovery Opens	1/28/2021
Initial Disclosures Due	2/27/2021
Expert Disclosures Due	6/27/2021
Discovery Closes	7/27/2021
Plaintiff's Pretrial Disclosures Due	9/10/2021
Plaintiff's 30-day Trial Period Ends	10/25/2021
Defendant's Pretrial Disclosures Due	11/9/2021
Defendant's 30-day Trial Period Ends	12/24/2021
Plaintiff's Rebuttal Disclosures Due	1/8/2022
Plaintiff's 15-day Rebuttal Period Ends	2/7/2022
Plaintiff's Opening Brief Due	4/8/2022
Defendant's Brief Due	5/8/2022

¹ Defendant's motion (filed November 11, 2020) to suspend for settlement negotiations is moot.

Plaintiff's Reply Brief Due 5/23/2022
Request for Oral Hearing (optional) Due 6/2/2022

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).