

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500  
General Email: [TTABInfo@uspto.gov](mailto:TTABInfo@uspto.gov)

EJW/nmt

February 22, 2022

Opposition No. 91268880

*Fort Worth Brain & Spine Institute, L.L.P.*

*v.*

*Fort Worth Brain and Spine Institute, PA*

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

**I. Applicant's Proposed Amendment Deferred**

On February 8, 2022, Applicant filed a motion to amend its application Serial No. 88932841 without the consent of Opposer. 7 TTABVUE.

An application that is the subject of an opposition may not be amended in substance, except with the consent of the other party or parties and the approval of the Trademark Trial and Appeal Board, or upon motion granted by the Board. *See* Trademark Rule 2.133(a). Further, the Board generally defers determination of a pre-trial, unconsented motion to amend the involved application in substance until final decision or until the case is decided upon summary judgment. *See, e.g., Enbridge Inc. v. Excelerate Energy Ltd. P'ship*, 92 USPQ2d 1537, 1539 n.3 (TTAB 2009) (motion to amend identification of goods and dates of use deferred until final hearing); *Space Base Inc. v. Stadis Corp.*, 17 USPQ2d 1216 (TTAB 1990) (motion to amend

identification of goods deferred). *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 514.03 (2021). In view of the foregoing, consideration of the proposed amendment is **deferred**.

## **II. Proceedings Suspended**

The Board also notes that on February 9, 2022, Opposer filed a timely motion for summary judgment pursuant to Trademark Rule 2.127(e)(1). 8 TTABVUE.

When a party timely files a potentially dispositive motion, the proceeding is suspended with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion except as otherwise may be specified in a Board order. *See* Trademark Rule 2.127(d). Accordingly, as of the filing date of the motion for summary judgment, proceedings are **SUSPENDED** pending disposition of the motion. Any paper filed during the pendency of this motion which is not germane thereto will be given no consideration. *See* Trademark Rule 2.127(d).

In addition to tolling the time to respond to outstanding discovery requests, suspension of proceedings tolls the time for parties to make required disclosures. *See* TBMP § 528.03. The motion for summary judgment and Applicant's motion to amend will be considered in due course.

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