

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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April 15, 2022

Opposition No. 91273570 (parent case)  
Opposition No. 91274301

*Electric Lady, LLC*

*v.*

*Joan Bryna Michelson*

**Michael Webster, Interlocutory Attorney:**

It has come to the Board's attention that the parties in Opposition No. 91273570 are also involved in Opposition No. 91274301 and that the proceedings involve similar marks and the same claims.

The Board notes initially that Applicant has filed its answer in each proceeding. However, the Board, on February 10, 2022, issued a notice of default in Opposition No. 91273570 in view of Applicant's failure to file an answer to the notice of opposition by the deadline set in the notice of institution. On March 14, 2022, Applicant filed a response to the notice of default along with her answer to the notice of opposition in which she denies the salient allegations of the claims in the opposition. The Board finds that Applicant has shown good cause why default judgment should not be entered against her in the opposition. Accordingly, the notice of default in Opposition No. 91273570 is hereby **set aside**.

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 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).

The parties to these proceedings are identical, and the issues are similar or related. Accordingly, Opposition Nos. 91273570 and 91274301 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. **91273570** 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.<sup>1</sup>

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<sup>1</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.

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. However, in view of the notice of default, Discovery and trial dates are reset as set forth below.

Deadline for Discovery Conference	5/6/2022
Discovery Opens	5/6/2022
Initial Disclosures Due	6/5/2022
Expert Disclosures Due	10/3/2022
Discovery Closes	11/2/2022
Plaintiff's Pretrial Disclosures Due	12/17/2022
Plaintiff's 30-day Trial Period Ends	1/31/2023
Defendant's Pretrial Disclosures Due	2/15/2023
Defendant's 30-day Trial Period Ends	4/1/2023
Plaintiff's Rebuttal Disclosures Due	4/16/2023
Plaintiff's 15-day Rebuttal Period Ends	5/16/2023
Plaintiff's Opening Brief Due	7/15/2023
Defendant's Brief Due	8/14/2023
Plaintiff's Reply Brief Due	8/29/2023
Request for Oral Hearing (optional) Due	9/8/2023

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

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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).