

ESTTA Tracking number: **ESTTA1385103**Filing date: **09/20/2024**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91281389
Party	Defendant Shanghai Zhenglang Technology Co., Ltd.
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Date	09/20/2024
Attachments	Consented Motion to Suspend and Consolidate Opposition Proceedings.pdf(579029 bytes )

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

HANGZHOU MENGKU TECHNOLOGY  
CO., LTD.

Opposer,

v.

SHANGHAI ZHENGLANG  
TECHNOLOGY CO., LTD.,

Applicant.

Opposition No. 91281389



Mark:

U.S. Ser. No. 90/866,064

**CONSENTED MOTION TO SUSPEND AND CONSOLIDATE OPPOSITION  
PROCEEDINGS**

Applicant Shanghai Zhenglang Technology Co., Ltd. (“Applicant”), with the consent of Opposer Hangzhou Mengku Technology Co., Ltd. and Fuzhou Mengku Technology Co., Ltd. (collectively, “Opposer”), respectfully requests that the Board consolidate TTAB Opposition Nos. 91281389 and 91276251. For the good cause shown below, the parties further respectfully request that a) Opposition No. 91281389 be stayed pending the resolution of the motion to strike in Opposition No. 91276251; and b) both Opposition Nos. 91281389 and 91276251 be suspended pending a final determination in TTAB Opposition No. 91272143.

**I. Background**

**A. Opposition No. 91272143**

On October 6, 2021, Opposer initiated the Opposition No. 91272143 against Applicant, seeking to prevent registration of Applicant’s App. Ser. No. 90/371,133 for “*Computer game programmes downloadable via the Internet; Computer game software downloadable from a global computer network; Downloadable computer game software; Downloadable computer game*

*software for use on mobile and cellular phones; Downloadable computer programs for pre-recording sports games; Downloadable electronic game programs; Downloadable electronic game software for handheld electronic devices; Downloadable electronic game software for use on mobile and cellular phones, handheld computers; Downloadable game software; Downloadable mobile applications for booking taxis; Recorded computer application software for mobile phones, namely, software for use in electronic storage of data, for playing online games; Recorded computer game software; Recorded computer virtual reality game software; Downloadable computer game software for personal computers and home video game consoles”*  
in Class 9 for the following mark:





The parties have submitted their trial briefs and presented their final arguments to the Board on September 19, 2024. Opposer argued that the mark is descriptive of Applicant's goods, asserting that it immediately conveys to prospective game purchasers the ingredient, quality, characteristic, function, feature, purpose, and use of block puzzle games, which are a subcategory of Applicant's goods. Opposer also contended that the mark is merely a pictorial representation of a block puzzle game and lacks distinctiveness.

In response, Applicant argued that Opposer failed to meet its burden of proving that the mark is merely descriptive. Applicant contended that Opposer did not establish, nor could it establish, that consumers would view Applicant's mark as "merely an illustration" or an "accurate pictorial representation" of Applicant's goods. Furthermore, Applicant argued that Opposer has not


demonstrated that competitors are using or need to use the mark, or that third parties are using the mark descriptively. Additionally, Applicant highlighted that the USPTO has previously deemed similar design marks, including those owned by Applicant, registrable on the Principal Register without issuing objections for mere descriptiveness or requiring a claim of secondary meaning..


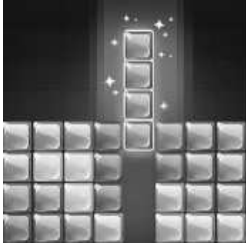
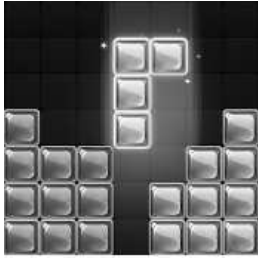
**B. Opposition Nos. 91281389 and 91276251**

On October 26, 2022, Opposer initiated Opposition No. 91281389 against Applicant seeking to prevent registration of Applicant’s App. Ser. No. 90/866,064, and on May 17, 2022 Opposer initiated Opposition No. 91276251 against Applicant seeking to prevent registration of Applicant’s App. Ser. No. 90/787,142, for the marks depicted below:

Opp. No. 91281389	Opp. No. 91276251
<p data-bbox="203 926 462 957"><b>Ser. No. 90/866,064</b></p> 	<p data-bbox="823 926 1083 957"><b>Ser. No. 90/787,142</b></p> 

Applicant filed its Answers in both of the opposition proceedings. On January 24, 2023, Opposition No. 91276251 was consolidated with the following proceedings:

Opposition Nos.	Serial Nos. and Marks at Issue
<p data-bbox="203 1415 544 1446"><b>Opposition No. 91276254</b></p>	<p data-bbox="829 1415 1089 1446"><b>Ser. No. 90/683,062</b></p> 

<p><b>Opposition No. 91276267</b></p>	<p><b>Ser. No. 90/649,611</b></p> 
<p><b>Opposition No. 91276391</b></p>	<p><b>Ser. No. 90/835,073</b></p> 
<p><b>Opposition No. 91276649</b></p>	<p><b>Ser. No. 90/835,094</b></p> 

## II. Argument

### A. Consolidation of Opposition Nos. 91281389 and 91276251

Consolidation of TTAB proceedings is appropriate where, as here: (1) the proceedings involve common questions of law or fact; and (2) the savings in time, effort, and expense outweigh any prejudice or inconvenience caused by consolidation. FED. R. CIV. P. 42(a); TBMP § 511; *M.C.I. Foods Inc. v. Bunte*, 86 U.S.P.Q.2d 1044, 1046 (TTAB 2008); *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 U.S.P.Q.2d 1889, 1893 (TTAB 2010).

Opposition Nos. 91281389 and 91276251 involve common questions of law and fact. The

parties are identical, and the two opposed applications are nearly identical. Both applications cover design marks incorporating an underwater scene showing marine plants, air bubbles, and a stylized cartoon fish design, accompanied by an arrangement of playing cards. Both applications seek registration in Class 9 for a variety of downloadable and recorded computer software and use the same description of goods. Further, Opposer has alleged identical grounds for opposition in both proceedings, namely, mere descriptiveness pursuant to 15 U.S.C. § 1052(e)(1), and priority and likelihood of confusion pursuant to 15 U.S.C. § 1052(d).

The unregistered, alleged design mark that Opposer cites towards its priority and



likelihood of confusion grounds is the same in both proceedings: Opposer's allegations in its Notices of Opposition are substantially similar in both proceedings, and Applicant has filed substantially similar Answers in both proceedings.

Due to the common issues of law and fact, consolidation of Opposition Nos. 91281389 and 91276251 will provide the parties with significant savings of time, effort, and expense, as the parties would avoid essentially duplicative briefing. Consolidation will not result in prejudice or inconvenience to any party, and indeed both parties consent to this request.

Additionally, the Board has already consolidated Opposition No. 91281389 with Opposition No. 91281390 upon the prior request of the parties and based on similar arguments, designating Opposition No. 91281389 as the Parent Proceeding on February 28, 2023.

For the foregoing reasons, Applicant, with Opposer's consent, respectfully requests that the Board consolidate Opposition Nos. 91281389 and 91276251.

**B. Suspension of Opposition No. 91281389 Pending Resolution of Motion to Strike in Opposition No. 91276251**

Opposition No. 91276251 is currently suspended pending the resolution of a motion to strike. Accordingly, the parties respectfully request that if the Board consolidates Opposition Nos. 91281389 and 91276251, it also suspends Opposition No. 91281389 pending the outcome of the motion to strike currently at issue in Opposition No. 91276251. This suspension will promote procedural efficiency and ensure consistency in the adjudication of both matters.

**C. Suspension of Opposition Nos. 91281389 and 91276251 Pending Outcome of Opposition No. 91272143**

Under TBMP § 510(a) and 37 C.F.R. § 2.117(a), the Board has the discretion to suspend a proceeding when the outcome of another Board proceeding may affect the issues at hand. In this instance, although Opposition No. 91272143 involves a different block puzzle mark, the Board in Opposition No. 91276251, which involves a mark consisting of an underwater world with creatures, bubbles, fish, and playing cards, was consolidated with and designated as the parent case for other various block puzzle marks (Opposition Nos. 91276254, 91276267, 91276391, and 91276649) as illustrated in the background section.

Thus, the decision in Opposition No. 91272143 on whether Applicant's mark is descriptive or inherently distinctive could directly impact the arguments presented by the parties and the Board's analysis in Opposition Nos. 91281389, 91276251 and the consolidated child proceedings. In Opposition No. 91272143, Opposer argued that the mark is descriptive of Applicant's goods, asserting that it immediately conveys to prospective game purchasers the ingredient, quality, characteristic, function, feature, purpose, and use of block puzzle games, which are a subcategory of Applicant's goods. Opposer also contended that the mark is merely a pictorial illustration of a block puzzle game and lacks distinctiveness. These same issues are being addressed in Opposition Nos. 91281389, 91276251 and the child proceedings 91276254, 91276267, 91276391, and 91276649), which involve both block puzzle marks and an

underwater world with creatures, bubbles, fish, and playing cards mark in the same class of goods and services. The parties believe a ruling in Opposition No. 91272143 may facilitate settlement discussions or otherwise streamline the resolution of the remaining cases. Given the substantial overlap in legal principles, it is practical and efficient to await the Board's decision in Opposition No. 91272143 before proceeding with Opposition Nos. 91281389 and 91276251.

Therefore, Applicant, with Opposer's consent, respectfully requests that the Board suspend Opposition Nos. 91281389 and 91276251 pending the final determination in Opposition No. 91272143 to ensure consistent and efficient resolution across all related cases, avoiding duplicative efforts and reducing costs for the parties.

### **III. Conclusion**

For the foregoing reasons, Applicant, with Opposer's consent, respectfully requests that the Board:

1. Consolidate TTAB Opposition Nos. 91281389 and 91276251, designating Opposition No. 91281389 as the Parent Proceeding;
2. Suspend Opposition No. 91281389 pending resolution of the motion to strike in the Opposition No. 91276251; and
3. Suspend both Opposition Nos. 91281389 and 91276251 pending the final determination in Opposition No. 91272143.

Dated: September 20, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on September 20, 2024, I served a true copy of the foregoing **CONSENTED MOTION TO SUSPEND AND CONSOLIDATE OPPOSITION PROCEEDINGS** to Opposer's counsel by electronic mail at: *jigang.jin@jfuslaw.com* and *qianan.li@bigcool.com*.

/s/ Daniel Gaitan

Daniel Gaitan

*Attorney for Applicant*