

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

nmt

Mailed: September 6, 2011

Opposition No. 91185184
(parent case)

Cancellation No. 92053696

Cancellation No. 92053909

Cancellation No. 92053912

DePuy, Inc.

v.

Zimmer, Inc.

M. Catherine Faint,
Interlocutory Attorney:

On June 30, 2011, opposer/petitioner filed motions, with an allegation that applicant/respondent will not oppose the motion, to consolidate Cancellation Nos. 92053909 and 92053912 with Opposition No. 91185184 and Cancellation No. 92053696. The Board notes initially that applicant/respondent has filed its answer in each proceeding for which consolidation is sought. See TBMP § 511 (3d ed. 2011).

The Board may consolidate pending cases that involve common questions of law or fact. See Fed. R. Civ. P. 42(a); see also, *Regatta Sport Ltd. v. Telux-Pioneed Inc.*, 20

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USPQ2d 1154 (TTAB 1991). Inasmuch as the parties to the respective proceedings are the same and the proceedings involve common questions of law or fact, the Board finds that consolidation of the above-referenced proceedings is appropriate. Consolidation will avoid duplication of effort concerning the factual issues and will thereby avoid unnecessary costs and delays.

In view thereof, opposer/petitioner's motion to consolidate is hereby granted. Cancellation Nos. 92053909 and 92053912 are hereby consolidated with Opposition No. 91185184 and Cancellation No. 92053696, and may be presented on the same record and briefs. The record will continue to be maintained in Opposition No. 91185184 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding, but file only a single copy of each paper in the parent case. Each paper should bear the numbers of all consolidated proceedings in ascending order, and the parent case should be designated as the parents case by following it with: "(parent)," as in the case caption set forth above.

Consolidated cases do not lose their separate identity because of consolidation. Each proceeding retains its separate character and requires entry of a separate judgment. The decision on the consolidated cases shall

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take into account any differences in the issues raised by
the respective pleadings and a copy of the final decision
shall be placed in each proceeding file. See Wright &
Miller, federal Practice and Procedure: Civil §2382 (1971).

In keeping with Board practice, dates for the most
recently instituted case are adopted for the consolidated
case. Accordingly, discovery and trial dates are reset as
indicated below.

Expert Disclosures Due	11/26/11
Discovery Closes	12/26/11
Plaintiff's Pretrial Disclosures	2/9/12
Plaintiff's 30-day Trial Period Ends	3/25/12
Defendant's Pretrial Disclosures	4/9/12
Defendant's 30-day Trial Period Ends	5/24/12
Plaintiff's Rebuttal Disclosures	6/8/12
Plaintiff's 15-day Rebuttal Period Ends	7/8/12

In each instance, a copy of the transcript of testimony
together with copies of documentary exhibits must be served on
the adverse party within thirty days after completion of the
taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules
2.128(a) and (b). An oral hearing will be set only upon
request filed as provided by Trademark Rule 2.129.
