

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

nmt

Mailed: April 12, 2011

**Opposition No. 91185184**  
Cancellation No. 92053696

DePuy, Inc.

v.

Zimmer, Inc.

**M. Catherine Faint,**  
**Interlocutory Attorney:**

On March 10, 2011, opposer/petitioner filed a motion to consolidate Opposition No. 91185184 and Cancellation No. 92053696 and to reset dates. The Board notes initially that applicant/respondent has filed its answer in each proceeding for which consolidation is sought.<sup>1</sup> See TBMP § 511 (2d ed. Rev. 2004).

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-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991). Inasmuch as the parties to the

---

<sup>1</sup> Opposer/petitioner's change of correspondence address filed March 28, 2011 is noted. The Board's records have been updated to reflect such change.

Opposition No. 91185184 &  
Cancellation No. 92053696

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. Opposition No. 91185184 and Cancellation No. 92053696 are hereby consolidated and may be presented on the same record and briefs. The record will 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 take into account any differences in the issues raised by the respective pleadings and a copy of the final decision

Opposition No. 91185184 &  
Cancellation No. 92053696

shall be placed in each proceeding file. In keeping with Board practice, the dates in the most recent case will be adopted for the consolidated proceedings.<sup>2</sup>

Accordingly, discovery and trial dates are reset as indicated below.

Deadline for Discovery Conference	5/9/2011
Discovery Opens	5/9/2011
Initial Disclosures Due	6/8/2011
Expert Disclosures Due	10/6/2011
Discovery Closes	11/5/2011
Plaintiff's Pretrial Disclosures	12/20/2011
Plaintiff's 30-day Trial Period Ends	2/3/2012
Defendant's Pretrial Disclosures	2/18/2012
Defendant's 30-day Trial Period Ends	4/3/2012
Plaintiff's Rebuttal Disclosures	4/18/2012
Plaintiff's 15-day Rebuttal Period Ends	5/18/2012

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.

\*\*\*

---

<sup>2</sup> The Board notes that the parties previously conducted a discovery conference in the opposition proceeding. The parties are reminded that discovery may not be propounded until a party has served its initial disclosures. Trademark Rule 2.120(a)(3).

Opposition No. 91185184 &  
Cancellation No. 92053696