UNITED STATES PATENT AND TRADEMARK OFFICE
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JK

September 23, 2024

Cancellation No. 92085785 (parent case)
Cancellation No. 92085789

Innovation First, Inc.

v.

Virtual X, Inc.

J. Krisp, Interlocutory Attorney:

Consolidation, and Discovery and Settlement Conference

Cancellation No. 92085785 involves Innovation First, Inc.'s (Petitioner) claim of likelihood of confusion against Virtual X, Inc.'s (Respondent) Registration No. 7204419 for the mark VX VIRTUAL REALITY ARCADE and design for "video arcade services" in International Class 41. Cancellation No. 92085789 involves Petitioner's claim of likelihood of confusion against Respondent's Registration No. 6856893 for the mark VX for "video arcade services" in International Class 41.

In each proceeding Respondent filed a similar answer, affirmative defenses and counterclaim. Respondent's representative has made a timely request for the assigned Board attorney to participate in the parties' required discovery and settlement conference pursuant to Trademark Rule 2.120(a)(2)(i).[1] *See also* Fed. R.

[1] Both proceedings will be discussed in one conference.

Civ. P. 26(f)(2). The parties are directed to confer, determine a mutually convenient date and time for the conference, and notify the interlocutory attorney. Additional general information regarding discovery conferences is set forth in TBMP § 401.01 and in the order instituting each of these proceedings.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. 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 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 the same, the involved marks are the same or similar, and the issues and anticipated discovery are related. Accordingly, consolidation is appropriate. Cancellation Nos. 92085785 and 92085789 are consolidated and may be presented on the same record and briefs. *Hilson Research Inc. v. Society for Human Resource Management*, *supra*; and *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989).

The Board file will be maintained in Cancellation No. 92085785 as the "parent case."[2] In the order summarizing the discovery conference, the Board will provide further instructions regarding future filings in these consolidated proceedings.

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.

Suspension

Proceedings are suspended pending the completion of the discovery conference.

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 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).

[2] 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.

Information for Pro Se Party

The Board notes that Respondent currently represents itself in this proceeding. While Patent and Trademark Rule 11.14 permits any person to represent itself, it is strongly advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. TBMP § 114.02.

If Respondent hires legal counsel prior to the conference, a notice of appearance should be filed to enable the Board to update the record.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *1 (TTAB 2020) (quoting TBMP Section 114.01, and noting that compliance with the Trademark Rules of Practice, and where applicable, the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties even those who assume the responsibility and risk of representing themselves); *McDermott v. San Francisco Women's Motorcycle Contingent,* 81 USPQ2d 1212, n.2 (TTAB 2006), *aff'd unpub'd*, 240 Fed. Appx.865 (Fed. Cir. 2007), *cert. denied*, 552 U.S. 1109 (2008).

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at https://www.uspto.gov/ttab, the

TTABVUE system for viewing the record for all Board proceedings, available at https://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0.