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

Mailed: October 9, 2009

Opposition No. 91173417

Hunt Control Systems, Inc.

v.

Koninklijke Philips Electronics N.V.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On October 6, 2009, the parties, Hunt Control Systems, Inc. (represented by Luke Santangelo) and Koninklijke Philips Electronics N.V. (represented by David Kelly and Mary Beth Walker), and Elizabeth Winter, the assigned Interlocutory Attorney, all participated in a telephone conference regarding applicant's motion to suspend,[1] filed in combination with its motion to strike opposer's testimony and evidence related to light bulbs, which was filed on September 25, 2009.[2] *See* Trademark Rules 2.120(i)(1) and 2.127(c); and TBMP § 502.06

[1] Inasmuch as applicant's testimony period commenced on September 28, 2009, the Board agreed to conduct the subject telephone conference on the motion to suspend, and opposer likewise agreed to participate in the conference, even though it has not yet filed its responsive briefs to the motions to strike. During the conference, the Board instructed opposer to file its responsive briefs to the motions to strike as required under Trademark Rule 2.127(a).

[2] The Board also discussed the motion to suspend in connection with applicant's motion (filed September 26, 2009) to strike opposer's survey and all related testimony and evidence.

(2d ed. rev. 2004). This order summarizes the conference and resets the trial schedule in this proceeding.

Motions to Strike and to Suspend Proceeding

As noted, applicant has filed two motions to strike opposer's trial testimony and evidence related to light bulbs.[3] By its motion to suspend, applicant essentially contends that the Board should consider the merits of its motions to strike prior to the close of applicant's testimony period; that is, applicant argues that the Board should not wait until final hearing to consider whether opposer's various evidence is admissible, and that the Board should suspend this proceeding pending its consideration of said motions to strike.

In support of its motion to suspend, applicant argues that the "unique facts" underlying its motions justify suspension of this proceeding pending the Board's review of the motions prior to final hearing. Specifically, applicant argues that opposer has constructed its entire case based on

[3] In its first motion to strike, applicant specifically requests that the Board strike the evidence detailed in Exhibit A thereto, namely, the testimonial declaration of A.J. Glaser related to light bulbs, exhibits related only to light bulbs, discovery testimony of Terry Fassburg, cross-examination deposition testimony of A.J. Glaser related to light bulbs (to be filed with the Board), testimony declaration and other evidence from Dan Hoffman, and cross-examination testimony deposition (to be filed with the Board) of Dan Hoffman. In its second motion to strike, applicant sets forth additional grounds for its request that the consumer survey and all related testimony and evidence should be stricken (see applicant's [second] motion to strike filed September 26, 2009, page 1, footnote 1).

the wrong issue, and that, without Board intervention, applicant will be forced to respond to the extensive and irrelevant testimony and evidence, the parties will be required to continue the discussion regarding such evidence in their respective trial briefs,[4] and the Board will unnecessarily waste its time and resources reviewing the voluminous evidence that distracts from and confuses the genuine issues involved in this case.

During the conference, opposer essentially argued against the need for suspension of the proceeding, contending that its submitted evidence is proper and relevant and should be reviewed by the Board at final hearing.

It is the policy of the Board not to examine trial evidence prior to final deliberations in the proceeding, unless the ground for objection is one that could be cured if raised promptly. *See* Trademark Rule 2.123(k), 37 C.F.R. §

[4] In support of its argument that it will be required to respond to opposer's assertedly irrelevant evidence during its own testimony period and discuss such evidence in its trial brief, applicant states that it would, "out of an abundance of caution, need to address the issue [of whether the light bulb evidence is admissible] during its testimony period and in its trial brief 'in the alternative,' as the Board specifically instructs parties to do in such situations" (first motion to strike, p. 8, footnote 7). As noted during the teleconference, while applicant is not required to repeat verbatim, in its trial brief, its objections that are fully briefed in its motions to strike, at a minimum, applicant should, maintain or reiterate in its trial brief the objections set forth in its motions to strike. *See, e.g., BRT Holdings, Inc. d.b.a. Homeway Furniture v. Homeway, Inc.*, 4 USPQ2d 1952, 1955 n.4 (TTAB 1987) (certain objections set forth in motion to strike, consideration of which was deferred until final hearing, deemed waived or withdrawn when not *argued* in trial brief [emphasis original]).

2.123(k); and Fed. R. Civ. P. 32(d)(3)(A). *See also M-Tek Inc. v. CVP Systems Inc.*, 17 USPQ2d 1070, 1073 (TTAB 1990) (the Board will not rule on objections pertaining to admissibility prior to final decision). *See also* TBMP § 502.01 (2d ed. rev. 2004). As discussed, applicant's objections are not procedural in nature, but are evidentiary objections that cannot be resolved simply based on the Board's review of the face of opposer's submissions at issue. In regard to opposer's consumer survey, the Board will review such evidence and accord the appropriate probative value thereto at final hearing. Thus, because applicant's motions to strike address whether opposer's evidence is proper and admissible, or to the extent they imply that any particular evidence should be accorded little weight, consideration of said motions is **deferred** until final hearing. *See Genesco Inc. and Genesco Brands Inc. v. Gregory Martz*, 66 USPQ2d 1260, 1263 (TTAB 2003) ("it has long been the policy of the Board not to read trial testimony and review evidence prior to submission of the case to a panel of judges for final decision, and motions to strike which involve substantive matters are deferred until final decision"); and *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1233 (TTAB 1992). *See also* TBMP § 707.03(c) (2d ed. rev. 2004). In view of the foregoing, good cause for suspension of this proceeding does not exist. *See* Trademark Rule 2.117(c), 37 C.F.R. § 2.117(c).

Accordingly, consideration of opposer's motion to strike is deferred and applicant's motion to suspend is **denied**.

Trial Dates Reset

Upon further consideration, the Board notes that applicant requested the Board's consideration of its motion to suspend by teleconference at the beginning of its testimony period and that, due to various circumstances, there was some delay in scheduling and conducting the subject teleconference. In view thereof, the Board resets the close of applicant's testimony period and opposer's rebuttal testimony period as shown in the following revised trial schedule:

DISCOVERY PERIOD TO CLOSE:	**CLOSED**
Thirty-day testimony period for party in position of plaintiff to close:	**CLOSED**
Thirty-day testimony period for party in position of defendant to close:	**November 4, 2009**
Fifteen-day rebuttal testimony period to close:	**December 19, 2009**

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. *See* Trademark Rule 2.l25, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.l28(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral

hearing will be set only upon request filed as provided by Trademark Rule 2.l29, 37 C.F.R. § 2.129.

☼☼☼