

ESTTA Tracking number: **ESTTA120892**

Filing date: **01/22/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91174972
Party	Defendant Autodesk Autodesk 111 McInnis Parkway San Rafael, CA 94903
Correspondence Address	JOHN L. SLAFSKY WILSON SONSINI GOODRICH & ROSATI 650 PAGE MILL RD PALO ALTO, CA 94304-1050
Submission	Other Motions/Papers
Filer's Name	John L. Slafsky
Filer's e-mail	trademarks@wsgr.com, jslafsky@wsgr.com, clarsen@wsgr.com, lhovland@wsgr.com, BMendonca@wsgr.com
Signature	/John L. Slafsky/
Date	01/22/2007
Attachments	Motion for Suspension of the Proceedings, REALDWG & DWGX.pdf ( 7 pages )(260902 bytes ) DECLARATION OF BRIAN G. MENDONCA IN SUPPORT OF MOTION FOR SUSPENSION OF PROCEEDINGS.pdf ( 2 pages )(26007 bytes ) Exhibits A through I.pdf ( 40 pages )(947364 bytes )



prolonged uncertainty about the parties' rights and Applicant's DWG-related marketing and legal initiatives. Moreover, a Board determination in the prior-filed Consolidated Proceeding is likely to streamline the two new opposition proceedings as well as any future Board proceedings involving the seven other DWG-related applications filed by Applicant (which will, in all likelihood, be challenged by Opposer at different times in the year ahead).

## **BACKGROUND**

### **A. Procedural Posture**

Applicant has filed a series of applications with the USPTO to register marks based on the term DWG. Applicant has been using the designation DWG with its software products for decades.

Applicant filed its intent-to-use application to register DWGX as a trademark on April 3, 2006. The application was published by the USPTO on November 14, 2006. On January 5, 2007, Opposer Solidworks Corporation ("Opposer") filed a Notice of Opposition. On January 22, 2007, Applicant filed an Answer denying Opposer's substantive allegations and asserting various affirmative defenses.

Applicant filed an application to register REALDWG as a trademark on April 3, 2006. The application was published by the USPTO on January 9, 2007. On January 18, 2007, Opposer filed a Notice of Opposition. On January 22, 2007, Applicant filed an Answer denying Opposer's substantive allegations and asserting various affirmative defenses.

### **B. Applicant's Other DWG-Related Trademark Applications**

Applicant's applications to register DWG (Serial No. 78/852798), DWG AND DESIGN (Serial No. 78/852808), TRUSTEDDWG (Serial No. 77/009317), DWG TRUEVIEW (Serial No. 78/852813), DWG TRUECONVERT (Serial No. 78/852822) and DWG EXTREME (Serial No. 78/852843) are in the examination stage. Applicant expects that these applications will be published

for opposition in the year ahead, likely at different times. Opposer's recent challenges to Applicant's DWGX and REALDWG marks suggest that Opposer is likely to challenge Applicant's other DWG-related applications as well.

**C. The Consolidated Proceeding**

Long before Opposer commenced its two recent oppositions, Applicant commenced Board proceedings challenging Opposer's right to register the marks DWGATEWAY and DWGEDITOR. Applicant's trademark claims are based on prior common law rights to DWG dating back well before Opposer's actual and constructive first use dates; Opposer, in contrast, maintains that DWG is generic and that if DWG is not generic then Opposer, not Applicant, has superior rights.

The Consolidated Proceeding (initially a single opposition proceeding) was commenced on May 12, 2006. On September 28, 2006, the parties filed a Consent Motion to consolidate the proceedings for both marks (DWGGATEWAY and DWGEDITOR) and requested that the Board adjourn the pre-trial and trial deadlines. The Board granted this motion on November 4, 2006.

As a result of the adjournment, the parties have now had eight months in which to conduct discovery in the Consolidated Proceeding. In response to Opposer's discovery demands, Applicant has produced over 9,000 pages of documents. Applicant has also served Opposer with interrogatory responses. Likewise, Opposer has produced documents and served interrogatory responses on Applicant. The discovery cut-off deadline is now February 28, 2007. The parties are expected to submit their trial testimony to the Board beginning in May 2007.

Opposer has been unwilling to move forward promptly with the completion of discovery, despite requests by Applicant to complete the process pursuant to the Board's already-adjourned schedule. Mendonca Decl. Significantly, Opposer's counsel has cited "likely" consolidation of its recent opposition proceedings with the Consolidated Proceeding as a reason for not promptly

addressing outstanding discovery issues in the Consolidated Proceeding, even though the February 28 discovery cut-off is fast approaching. Mendonca Decl.

## **DISCUSSION**

According to TBMP § 510, the Board may suspend a proceeding where, as here, the “parties to a pending case are engaged in . . . another Board proceeding which may have a bearing on the case.” The Consolidated Proceeding will certainly have a bearing on these opposition cases. Furthermore, unless the Board suspends these opposition cases, the Consolidated Proceeding is likely to be delayed repeatedly as a result of successive oppositions by Opposer. Based on the timing of Applicant’s various DWG-related applications, and Opposer’s apparent desire to oppose and consolidate to them, the Consolidated Proceeding could go on for years.

### **A. Suspending This Proceeding Serves Important Purposes**

#### *1. Suspending The Proceeding Will Prevent Prejudice to Applicant*

Opposer’s likely strategy going forward seems clear: as each of Applicant’s DWG-related applications is published, Opposer will oppose the application, and then move to consolidate that proceeding with the Consolidated Proceeding, requesting a new trial schedule. In this manner, Opposer could put off a determination regarding its use of DWG-based marks for years.

Applicant is compelled to ask the Board instead to suspend the two new opposition proceedings. Applicant would be prejudiced by a further, eleventh-hour delay of the Consolidated Proceeding. In particular, Applicant would be denied a prompt determination in the Consolidated Proceeding concerning its trademark rights to DWG, resulting in further uncertainty concerning the parties’ rights to their respective marks and prolonged legal proceedings before the Board. The prospect of consumer confusion, mistake or deception (alleged by both parties in their Notices of

Opposition) would be extended for a considerable period, and efforts by Applicant to correct this confusion would be exacerbated by the passage of time.

Suspending these opposition proceedings will allow the Consolidated Proceeding to move forward as scheduled. There will be a more prompt Board determination in that proceeding, meaning clarity for the parties' marketing and legal initiatives and more certainty for third parties reviewing the Trademark Register.

Opposer will suffer no prejudice if these opposition proceedings are suspended.

2. *Opposer Should Not Be Permitted to Delay the Consolidated Proceeding Each Time One of Applicant's DWG-Related Applications is Published*

As set forth above, Applicant expects seven other of its DWG-related publications to be published – in all likelihood at different times – in the year ahead. In view of Opposer's apparent intent to oppose these applications, seek further consolidation (with the Consolidated Proceeding), and request repeated adjournments, Applicant needs Board intervention now to avoid further delays.

3. *Suspension Likely Would Result in Streamlined Proceedings*

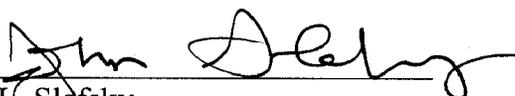
Allowing the Board to rule first in the Consolidated Proceeding will result in more streamlined proceedings in any future DWG-related proceedings, including the two recently commenced oppositions. The Board's determination in the Consolidated Proceeding regarding two points will be particularly important: (i) whether the term "DWG" is generic; and (ii) if not, whether Applicant or Opposer has trademark priority. Once the Board has ruled on those issues post-trial, the issues in dispute in these two opposition proceedings (challenging the marks DWGX and REALDWG) and in any other Board proceedings involving Applicant's DWG-related marks will be narrowed significantly.

**CONCLUSION**

For the foregoing reasons, the Board should suspend this opposition proceeding.

Dated: January 22, 2007

WILSON SONSINI GOODRICH & ROSATI

By: 

John L. Slafsky  
Brian Mendonca  
Attorneys for Applicant  
Autodesk, Inc.

Address all U.S.P.T.O. correspondence to:

John L. Slafsky  
Brian Mendonca  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road  
Palo Alto, California 94304-1050  
Telephone: (650) 493-9300  
Facsimile: (650) 493-6811  
trademarks@wsgr.com

CERTIFICATE OF SERVICE

I, Launa Hovland, declare:

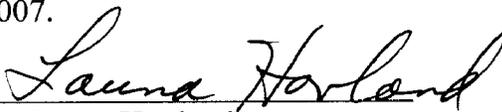
I am over the age of 18 years and not a party to the within entitled cause. I am a citizen of the United States and a resident of the State of California. I am employed in the City of Palo Alto, County of Santa Clara. My business address is 650 Page Mill Road, Palo Alto, California, 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited, postage fully prepaid, with the United States Postal Service on this day.

On January 22, 2007, I served the attached **MOTION FOR SUSPENSION OF PROCEEDINGS and DECLARATION OF BRIAN MENDONCA** on the party in said cause by placing a true copy of the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope containing the document named above for deposit in the United States Postal Service by placing it for collection and mailing this day, following the ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Michael Boudett  
Miriam Pogach  
Foley Hoag LLP  
Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, MA 02210-2600

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed in Palo Alto, California on January 22, 2007.

  
\_\_\_\_\_  
Launa Hovland



7. Attached hereto as Exhibit F is a letter I sent via e-mail to counsel for Opposer on December 12, 2006. In that letter, Applicant asked Opposer to respond regarding Applicant's proposed dates for the exchange of expert names and "expert reports, along with any discovery regarding experts." Opposer never responded regarding Applicant's proposal.

8. Attached hereto as Exhibit G is a true and correct copy of an e-mail received by counsel for Applicant on December 22, 2006. The e-mail from counsel for Opposer, states in relevant part: "At this point, we feel that an extension of the discovery period would be in the best interests of both. Please let us know if you would be amenable to filing a stipulated motion for extension of time."

9. Attached hereto as Exhibit H is a letter I sent via e-mail to counsel for Opposer on December 28, 2006. In that letter, Applicant asked counsel for Opposer to respond regarding Applicant's proposed dates for the exchange of "expert information and reports." Opposer never responded regarding Applicant's proposal. In that letter I also conveyed that Applicant did not agree with Opposer that an extension of the discovery period was necessary.

10. Attached hereto as Exhibit I is a true and correct copy of an e-mail received by counsel for Applicant on January 5, 2007. The e-mail from counsel for Opposer states in relevant part: "As you know, today we filed an opposition to Autodesk's application to register the mark DWGX. Since we expect this proceeding to be consolidated with Autodesk's oppositions to DWGGATEWAY and DWGEDITOR, the discovery period for these proceedings will likely be extended. Consequently, we do not feel as though there should be any problem completing discovery in a timely manner."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 22nd day of January, 2007, at San Francisco, California.

  
\_\_\_\_\_  
Brian G. Mendonca

# **Exhibit A**

ESTTA Tracking number: **ESTTA80399**

Filing date: **05/12/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Autodesk, Inc.
Granted to Date of previous extension	05/13/2006
Address	111 McInnis Parkway San Rafael, CA 94903 UNITED STATES

Attorney information	John L. Slafsky WILSON SONSINI GOODRICH & ROSATI 650 Page Mill Road Palo Alto, CA 94304 UNITED STATES trademarks@wsgr.com Phone:(650) 493-9300
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### Applicant Information

Application No	78651780	Publication date	03/14/2006
Opposition Filing Date	05/12/2006	Opposition Period Ends	05/13/2006
Applicant	SolidWorks Corporation 300 Baker Avenue Concord, MA 01742 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: Computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications
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Attachments	dwg.pdf ( 4 pages )(154123 bytes )
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Signature	/John L. Slafsky/
Name	John L. Slafsky
Date	05/12/2006



2. Opposer develops and distributes software to over six million users. Opposer's customers include 100 percent of *Fortune 100* companies and approximately 98 percent of *Fortune 500* companies.

3. Opposer is the well-known leader in the field of software for computer-aided design ("CAD"). CAD software is used in design applications by architects, engineers, manufacturers and others.

4. DWG is Opposer's name for the proprietary file format and technology underlying many of its key CAD software products.

5. Opposer has been using the DWG name with its CAD software products since at least as early as 1983.

6. Opposer has sold in interstate commerce billions of dollars of software products using the DWG name.

7. Opposer has included the DWG name in the user interface of its software products. Opposer has distributed promotional materials, instruction manuals, and other documents featuring the DWG name. Opposer has also promoted the DWG name on its <autodesk.com> website.

8. Opposer's DWG name has received considerable publicity. Upon information and belief, thousands of press reports have associated the DWG name with Opposer.

9. As a result of the significant sales and success of Opposer's products over 20 years, users of CAD software have come to associate the DWG name closely with Opposer.

10. Opposer's DWG name is symbolic of extensive goodwill and customer recognition built up by Opposer.

11. Opposer's DWG name is famous within the CAD software field. This fame pre-dates Applicant's first use of and applications to register trademarks based on DWG.

12. Opposer owns the following federal trademark applications: DWG (Serial No. 78/852,798; DWG AND DESIGN (Serial No. 78/852,808); REALDWG (Serial No.

78/852,836); DWG TRUEVIEW (Serial No. 78/852,813); DWG TRUECONVERT (Serial No. 78/852,822); DWGX (Serial No. 78/852,849); and DWG EXTREME (Serial No. 78/852,843).

13. Opposer's federal trademark applications for DWG-related marks include the following identification of goods: "computer software for data management and creation and manipulation of engineering and design data, particularly adapted for engineering, architecture, manufacturing, building, and construction applications, together with instruction manuals sold as a unit; computer-aided design software; computer software for animation, graphics and design modeling applications."

14. Opposer is informed and believes, and therefore alleges, that Applicant filed an intent-to-use application on June 16, 2005 to register DWGGATEWAY as a trademark.

15. Applicant's DWGGATEWAY mark is derived from Opposer's DWG name.

16. Applicant's application to register DWGGATEWAY as a trademark covers "computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications."

17. Applicant seeks to register the trademark DWGGATEWAY in connection with goods that are substantially similar to Opposer's goods.

18. In view of the substantially similar marks and goods and services of the parties, Applicant's DWGGATEWAY mark so resembles Opposer's DWG name as to be likely to cause confusion, to cause mistake, or to deceive.

19. Applicant's use of and application to register its DWGGATEWAY mark are well outside the bounds of fair use contemplated by the Lanham Act and recognized by U.S. courts.

20. The U.S. Patent and Trademark Office has objected to registration of Applicant's related mark DWGEDITOR (Serial No. 78/651,779), citing evidence that "DWG is the filename extension for [Opposer's] drawing files."

21. If Applicant is permitted to register DWGGATEWAY for the goods described in the application, confusion in the trade and in the public is likely to result. Confusion caused by Applicant will damage Opposer and injure its reputation in the trade and with the public. That

confusion will also injure the public, in that consumers, upon seeing Applicant's mark used in connection with Applicant's goods, are likely to believe that Applicant's goods are somehow associated with or approved by Opposer.

22. If Applicant is permitted to register DWGGATEWAY for the goods described in the application, the distinctiveness of Opposer's DWG name will be diluted.

WHEREFORE, Opposer prays that Application Serial No. 78/651,780 be rejected, that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer authorizes payment of the required filing fee of \$300.00 from its counsel's USPTO Deposit Account. Please charge the fee to Deposit Account No. 23-2415 ATTN: 5477.506.

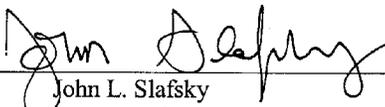
Please address all U.S.P.T.O. communications regarding this Notice of Opposition to:

John L. Slafsky  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, California 94304-1050  
Tel: (650) 493-9300  
Fax: (650) 493-6811  
trademarks@wsgr.com

Date: May 12, 2006

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
John L. Slafsky  
Attorneys for Opposer  
Autodesk, Inc.

## **Exhibit B**

ESTTA Tracking number: **ESTTA97562**

Filing date: **09/02/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

### Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

#### Petitioner Information

Name	Autodesk, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	111 McInnis Parkway San Rafael, CA 94903 UNITED STATES		

Correspondence information	John L. Slafsky Attorney for Petitioner Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304 UNITED STATES trademarks@wsgr.com Phone:650-493-9300
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#### Registration Subject to Cancellation

Registration No	3134536	Registration date	08/22/2006
Registrant	SolidWorks Corporation 300 Baker Avenue Concord, MA 01742 UNITED STATES		
Goods/Services Subject to Cancellation	Class 009. First Use: 2004/08/26 , First Use In Commerce: 2004/08/26 Goods/Services: COMPUTER SOFTWARE FOR USE IN COMPUTER-AIDED DESIGN AND COMPUTER-AIDED MANUFACTURING FOR DESIGN AND MODELING APPLICATIONS		

Related Proceedings	Opposition Number 91170857
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Attachments	Petition.pdf ( 4 pages )(151459 bytes )
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Signature	/John L. Slafsky/
Name	John L. Slafsky
Date	09/02/2006



2. Petitioner develops and distributes software to over six million users. Petitioner's customers include 100 percent of *Fortune 100* companies and approximately 98 percent of *Fortune 500* companies.

3. Petitioner is the well-known leader in the field of software for computer-aided design ("CAD"). CAD software is used in design applications by architects, engineers, manufacturers and others.

4. DWG is Petitioner's name for the proprietary file format and technology underlying many of its key CAD software products.

5. Petitioner has been using the DWG name with its CAD software products since at least as early as 1983.

6. Petitioner has sold in interstate commerce billions of dollars of software products using the DWG name.

7. Petitioner has included the DWG name in the user interface of its software products. Petitioner has distributed promotional materials, instruction manuals, and other documents featuring the DWG name. Petitioner has also promoted the DWG name on its <autodesk.com> website.

8. Petitioner's DWG name has received considerable publicity. Upon information and belief, thousands of press reports have associated the DWG name with Petitioner.

9. As a result of the significant sales and success of Petitioner's products over 20 years, users of CAD software have come to associate the DWG name closely with Petitioner.

10. Petitioner's DWG name is symbolic of extensive goodwill and customer recognition built up by Petitioner.

11. Petitioner's DWG name is famous within the CAD software field. This fame pre-dates Respondent's first use of and applications to register trademarks based on DWG.

12. Petitioner owns the following federal trademark applications: DWG (Serial No. 78/852,798; DWG AND DESIGN (Serial No. 78/852,808); REALDWG (Serial No.

78/852,836); DWG TRUEVIEW (Serial No. 78/852,813); DWG TRUECONVERT (Serial No. 78/852,822); DWGX (Serial No. 78/852,849); and DWG EXTREME (Serial No. 78/852,843).

13. Petitioner's federal trademark applications for DWG-related marks include the following identification of goods: "computer software for data management and creation and manipulation of engineering and design data, particularly adapted for engineering, architecture, manufacturing, building, and construction applications, together with instruction manuals sold as a unit; computer-aided design software; computer software for animation, graphics and design modeling applications."

14. Petitioner is informed and believes, and therefore alleges, that Respondent filed an intent-to-use application on June 16, 2005 to register DWGEDITOR as a trademark.

15. Respondent's DWGEDITOR mark is derived from Petitioner's DWG name.

16. Respondent's trademark registration for DWGEDITOR covers "computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications."

17. Respondent has registered the trademark DWGEDITOR in connection with goods that are substantially similar to Petitioner's goods.

18. In view of the substantially similar marks and goods and services of the parties, Respondent's DWGEDITOR mark so resembles Petitioner's DWG name as to be likely to cause confusion, to cause mistake, or to deceive.

19. Respondent's use and registration of its DWGEDITOR mark are well outside the bounds of fair use contemplated by the Lanham Act and recognized by U.S. courts.

20. The U.S. Patent and Trademark Office objected to registration of Respondent's mark DWGEDITOR on the Principal Register, citing evidence that "DWG is the filename extension for [Petitioner's] drawing files."

21. As a result of the registration of DWGEDITOR, confusion in the trade and in the public is likely to result. Confusion caused by Respondent will damage Petitioner and injure its reputation in the trade and with the public. That confusion will also injure the public, in that

consumers, upon seeing Respondent's mark used in connection with Respondent's goods, are likely to believe that Respondent's goods are somehow associated with or approved by Petitioner.

22. As a result of the registration of DWGEDITOR, the distinctiveness of Petitioner's DWG name will be diluted.

WHEREFORE, Petitioner prays that Registration No. 3134536 be cancelled and that this petition be sustained in favor of Petitioner.

Petitioner authorizes payment of the required filing fee of \$300.00 from its counsel's USPTO Deposit Account. Please charge the fee to Deposit Account No. 23-2415 ATTN: 5477.506.

Please address all U.S.P.T.O. communications regarding this Petition for Cancellation to:

John L. Slafsky  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, California 94304-1050  
Tel: (650) 493-9300  
Fax: (650) 493-6811  
trademarks@wsgr.com

Date: August 31, 2006

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By:   
John L. Slafsky  
Attorneys for Petitioner  
Autodesk, Inc.

# **Exhibit C**

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

al

Mailed: November 4, 2006

Opposition No. **91170857**  
Cancellation No. **92046253**

Autodesk, Inc.

v.

SolidWorks Corporation

**Ann Linnehan, Interlocutory Attorney**

Applicant's consented motion (filed September 28, 2006) to consolidate the above-captioned proceedings is hereby granted.

Opposition No. 91170857 and Cancellation No. 92046253 are hereby consolidated. The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v. Society for Human Resource Management*, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Opposition No. 91170857 as the "parent" case. As a general rule, from this point on, only a single copy of any submission should be filed herein, but each submission should include both proceeding numbers in the caption thereof.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; a copy of the decision shall be placed in each proceeding file.

Discovery and trial dates are reset in accordance with the schedule set forth in opposer's September 28, 2006 motion.

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

# **Exhibit D**

ESTTA Tracking number: **ESTTA118119**

Filing date: **01/05/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	SolidWorks Corporation
Granted to Date of previous extension	01/13/2007
Address	300 Baker Avenue Concord, MA 01742 UNITED STATES

Attorney information	Charles E. Weinstein, Esq. Foley Hoag LLP 155 Seaport Boulevard Boston, MA 02210-2600 UNITED STATES cew@foleyhoag.com, mboudett@foleyhoag.com, mpogach@foleyhoag.com, gmaclellan@foleyhoag.com Phone:617-832-1238
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### Applicant Information

Application No	78852849	Publication date	11/14/2006
Opposition Filing Date	01/05/2007	Opposition Period Ends	01/13/2007
Applicant	Autodesk 111 McInnis Parkway San Rafael, CA 94903 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. All goods and services in the class are opposed, namely: computer software for data management and creation and manipulation of engineering and design data, particularly adapted for engineering, architecture, manufacturing, building, and construction applications, together with instruction manuals sold as a unit; computer-aided design software; computer software for animation, graphics and design modeling applications
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Related Proceedings	Opposition No. 91170857 (DWGGATEWAY); Cancellation No. 92046253 (DWGEDITOR)
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Attachments	DWGX opposition.pdf ( 4 pages )(149743 bytes )
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Signature	/miriamlpogach/
Name	Miriam L. Pogach, Esq.
Date	01/05/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOLIDWORKS CORPORATION,

Opposer,

v.

AUTODESK, INC.,

Applicant.

Opposition No.

Application S.N.  
78/852849

NOTICE OF OPPOSITION

SolidWorks Corporation (hereinafter "Opposer"), a Delaware Corporation with offices at 300 Baker Avenue, Concord, Massachusetts 01742, believes it will be damaged by registration of the mark DWGX, which is the subject of Application Serial No. 78/852849, owned by Autodesk Inc. (hereinafter "Applicant"), a Delaware Corporation with offices at 111 McInnis Parkway, San Rafael, California 94903. The application was published in the *Official Gazette* of November 14, 2006. Opposer filed, and was granted, an extension of time to oppose until January 13, 2007.

The grounds for this Opposition are as follows:

1. The Application opposed herein seeks to register the mark DWGX for "computer software for data management and creation and manipulation of engineering and design data, particularly adapted for engineering, architecture, manufacturing, building, and construction applications, together with instruction manuals sold as a unit; computer software for

animation, graphics and design modeling applications" in International Class 9. The Application was filed on April 3, 2006 based upon an alleged *bona fide* intent to use the mark in commerce.

2. Opposer has been using the mark DWGgateway in connection with computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications since January 2005. Opposer is the owner of Application Serial No. 78/651780 for registration of the mark DWGGATEWAY for "computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications" in International Class 9, which was filed on June 16, 2005 and published in the *Official Gazette* of March 14, 2006.

3. Opposer has been using the mark DWGeditor in connection with computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications since August 26, 2004. Opposer is owner of Registration No. 3,134,536 of the mark DWGEDITOR on the Supplemental Register for "computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications" in International Class 9, which issued on August 22, 2006 based on Application Serial No. 78/651779, which was filed on June 16, 2005.

4. Applicant has filed pending Opposition No. 91170857 against Opposer's published Application for registration of DWGGATEWAY, and has filed pending Cancellation No. 92046253 against Opposer's issued Registration of DWGEDITOR. In these proceedings, Applicant alleges some form of prior rights in the term DWG and claims that Opposer's marks are confusingly similar to that term.

5. Opposer's use of the marks DWGgateway and DWGeditor began well before Applicant's use (if any) of the mark DWGX. Moreover, Opposer's applications to register DWGGATEWAY and DWGEDITOR predate Applicant's intent-to-use application to register DWGX. To the extent that either party has rights in marks consisting of or containing the term DWG, Opposer's rights are prior to those of Applicant.

6. The goods set forth in the Application opposed herein for registration of the mark DWGX, Serial No. 78/852849, are identical, similar or closely related to the goods which Opposer identifies under the marks DWGgateway and DWGeditor, and which are set forth in Opposer's prior pending Application for registration of DWGGATEWAY, Serial No. 78/651780, and its prior issued Registration of DWGEDITOR, Reg. No. 3,134,536.

7. To the extent that DWG is capable of functioning as a trademark, Applicant's use of the mark DWGX for the goods identified in the Application opposed herein is likely to cause

confusion, mistake and deception with Opposer's marks DWGGATEWAY and DWGEDITOR, all to Opposer's damage.

8. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to use of its mark, which would be a further source of damage to Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of said mark and prays that this Opposition be sustained, that Application Serial No. 78/852849 be rejected, and that the mark applied for therein be refused registration. The filing fee required in connection with this opposition should be charged to deposit account number 06-1446.

Respectfully submitted,

SOLIDWORKS CORPORATION



Charles E. Weinstein  
Michael P. Boudett  
Miriam L. Pogach  
Foley Hoag LLP  
155 Seaport Blvd.  
Boston, MA 02210  
(617) 832-1000

Dated: January 5, 2007

# **Exhibit E**

ESTTA Tracking number: **ESTTA120254**

Filing date: **01/18/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Solidworks Corporation		
Entity	Corporation	Citizenship	Delaware
Address	300 Baker Avenue Concord, MA 01742 UNITED STATES		

Attorney information	Michael P. Boudett, Esq. Foley Hoag LLP 155 Seaport Boulevard Boston, MA 02210-2600 UNITED STATES mboudett@foleyhoag.com, mpogach@foleyhoag.com, cweinstein@foleyhoag.com, gmaclellan@foleyhoag.com Phone:617-832-1000
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### Applicant Information

Application No	78852836	Publication date	01/09/2007
Opposition Filing Date	01/18/2007	Opposition Period Ends	02/08/2007
Applicant	Autodesk, Inc. 111 McInnis Parkway San Rafael, CA 94903 UNITED STATES		

### Goods/Services Affected by Opposition

Class 009. First Use: 2006/03/23 First Use In Commerce: 2006/03/23 All goods and services in the class are opposed, namely: computer software for data management and creation and manipulation of engineering and design data, particularly adapted for engineering, architecture, manufacturing, building, and construction applications, together with instruction manuals sold as a unit; computer-aided design software; computer software for animation, graphics and design modeling applications
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Related Proceedings	92-046253 (DWGEDITOR); 91-170857 (DWGGATEWAY); and 91-174972 (DWGX)
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Attachments	Notice of Opposition 78-852836.pdf ( 4 pages )(147911 bytes )
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Signature	/michaelpboudett/
Name	Michael P. Boudett, Esq.
Date	01/18/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SOLIDWORKS CORPORATION,

Opposer,

v.

AUTODESK, INC.,

Applicant.

Opposition No.

Application S.N.  
78/852836

NOTICE OF OPPOSITION

SolidWorks Corporation (hereinafter "Opposer"), a Delaware Corporation with offices at 300 Baker Avenue, Concord, Massachusetts 01742, believes it will be damaged by registration of the mark REALDWG, which is the subject of Application Serial No. 78/852836, owned by Autodesk Inc. (hereinafter "Applicant"), a Delaware Corporation with offices at 111 McInnis Parkway, San Rafael, California 94903. The application was published in the *Official Gazette* of January 9, 2007.

The grounds for this Opposition are as follows:

1. The Application opposed herein seeks to register the mark REALDWG for "computer software for data management and creation and manipulation of engineering and design data, particularly adapted for engineering, architecture, manufacturing, building, and construction applications, together with instruction manuals sold as a unit; computer-aided design software; computer software for animation, graphics and design

modeling applications" in International Class 9. The Application was filed on April 3, 2006 based upon an alleged date of first use in commerce of March 23, 2006.

2. Opposer has been using the mark DWGgateway in connection with computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications since January 2005. Opposer is the owner of Application Serial No. 78/651780 for registration of the mark DWGGATEWAY for "computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications" in International Class 9, which was filed on June 16, 2005 and published in the *Official Gazette* of March 14, 2006.

3. Opposer has been using the mark DWGeditor in connection with computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications since August 26, 2004. Opposer is owner of Registration No. 3,134,536 of the mark DWGEDITOR on the Supplemental Register for "computer software for use in computer-aided design and computer-aided manufacturing for design and modeling applications" in International Class 9, which issued on August 22, 2006 based on Application Serial No. 78/651779, which was filed on June 16, 2005.

4. Applicant has filed pending Opposition No. 91170857

against Opposer's published Application for registration of DWGGATEWAY, and has filed pending Cancellation No. 92046253 against Opposer's issued Registration of DWGEDITOR. In these proceedings, Applicant alleges some form of prior rights in the term DWG and claims that Opposer's marks are confusingly similar to that term.

5. Opposer's use of the marks DWGgateway and DWGeditor began well before Applicant's use of the mark REALDWG. Moreover, Opposer's applications to register DWGGATEWAY and DWGEDITOR predate Applicant's alleged first use in commerce of REALDWG. To the extent that either party has rights in marks consisting of or containing the term DWG, Opposer's rights are prior to those of Applicant.

6. The goods set forth in the Application opposed herein for registration of the mark REALDWG, Serial No. 78/852836, are identical, similar or closely related to the goods which Opposer identifies under the marks DWGgateway and DWGeditor, and which are set forth in Opposer's prior pending Application for registration of DWGGATEWAY, Serial No. 78/651780, and its prior issued Registration of DWGEDITOR, Reg. No. 3,134,536.

7. To the extent that DWG is capable of functioning as a trademark, Applicant's use of the mark REALDWG for the goods identified in the Application opposed herein is likely to cause confusion, mistake and deception with Opposer's marks DWGGATEWAY

and DWGEDITOR, all to Opposer's damage.

8. If Applicant is granted the registration herein opposed, it would thereby obtain a *prima facie* exclusive right to use of its mark, which would be a further source of damage to Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of said mark and prays that this Opposition be sustained, that Application Serial No. 78/852836 be rejected, and that the mark applied for therein be refused registration. The filing fee required in connection with this opposition should be charged to deposit account number 06-1446.

Respectfully submitted,

SOLIDWORKS CORPORATION



Charles E. Weinstein  
Michael P. Boudett  
Miriam L. Pogach  
Foley Hoag LLP  
155 Seaport Blvd.  
Boston, MA 02210  
(617) 832-1000

Dated: January 18, 2007

# **Exhibit F**

December 12, 2006

**Via E-Mail**

Michael P. Boudett  
Miriam L. Pogach  
Foley Hoag, LLP  
Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

***Re: Autodesk v. SolidWorks (TTAB No. 91170857)***

Dear Michael and Miriam:

This letter is further to our phone discussion on Friday.

As an initial matter, you informed us that you have signed the Protective Order and sent it to us. We will arrange for it to be signed and provide you with a copy as soon as possible.

The parties also agreed that each party will produce documents in response to the other's discovery requests no later than Tuesday, December 19. We assume that both parties will send their documents by overnight delivery that day. We trust that you will produce documents responsive both to document requests and to any interrogatories which you have elected to answer through the production of documents.

As to expert discovery, we propose that the parties exchange the names of their experts by January 5, 2007 and their expert reports, along with any discovery regarding experts, by January 12, 2007. As you know, the discovery cut-off in this proceeding is now February 28, 2007.

This letter summarizes our concerns regarding SolidWorks' responses to the discovery propounded by Autodesk. We would like to arrange a time to discuss these concerns further with you in an effort to reach a compromise.

**REQUESTS FOR PRODUCTION**

In response to Requests for Production Nos. 1, 5, 9-10, 12, 15, 19, 20, 22-29 and 31-49 you responded: "To the extent such documents exist and are relevant to the subject matter of this proceeding, and subject to the Objections stated above, they will be produced." As we discussed during our call, SolidWorks' duty is to produce documents responsive to the requests, not to find responsive documents, determine whether or not those documents are "relevant to the subject

Michael P. Boudett  
Miriam L. Pogach  
December 12, 2006  
Page 2

matter of this proceeding,” and then produce those documents you deem relevant. Please confirm that, as you indicated during our call, you are not withholding any documents from production on the basis of this objection.

In response to Requests for Production Nos. 3, 7, 8, 21, 30, you responded:

Applicant objects to this request, except to the extent that it is directed to the mark DWGGATEWAY, on the grounds that it seeks documents that are not relevant to the subject matter of this proceeding, and that the request is not reasonably calculated to lead to the discovery of admissible evidence. Further responding, as to DWGGATEWAY, to the extent such documents exist and are relevant to the subject matter of this proceeding, and subject to the Objections stated above, they will be produced.

In fact, DWG-related marks adopted and used by SolidWorks – other than DWGGATEWAY – are relevant to this action. SolidWorks markets its products marked “DWG” together, referring to the offerings as its “DWGseries.” The interrelation of those products is clear. Documents related to these marks could very well shed light on *DuPont* factors with respect to likelihood of confusion. For example, documents relating to these marks might address the nature and extent of confusion (and potential confusion) in the marketplace. Likewise, business planning documents relating to these marks might reflect SolidWorks’ intent in adopting the marks or discuss the conditions under which sales are made.

In response to Requests for Production Nos. 11, 14, 16, 17, you responded: “As presently advised, there are none.” Please confirm that this remains true.

In response to Requests for Production Nos. 4, 6 and 18, you responded:

Applicant objects to this request on the grounds that it seeks documents that are not relevant to the subject matter of this proceeding, and that the request is not reasonably calculated to lead to the discovery of admissible evidence.

Because SolidWorks uses its DWG-related marks consistently with the mark AUTOCAD, Autodesk’s flagship trademark, the narrowly-tailored request in No. 4 is appropriate. For the reasons stated above, Request No. 6 for DWGSERIES documents is proper. The domain name-related documents requested in Request No. 18 are also relevant; they are directly related to a key channel of trade for both parties, the Internet.

Michael P. Boudett  
Miriam L. Pogach  
December 12, 2006  
Page 3

Although you claim Autodesk already has all the documents responsive to Request for Production No. 2 (“All documents relating to communications between Autodesk and SolidWorks with respect to trademark or trade dress infringement”), internal SolidWorks correspondence regarding its communications with Autodesk on this issue may exist. Such documents are responsive to this request and should be produced.

You objected to Request for Production No. 13 on the ground that “all non-privileged documents are publicly available.” We assume you will therefore withdraw any requests for similar documents from Autodesk.

## **INTERROGATORIES**

Interrogatory No. 4 requests the names of the SolidWorks personnel most knowledgeable about DWGGATEWAY. We do not understand what is indefinite about this interrogatory. Please provide a full response.

Please provide responses to Interrogatories Nos. 6, 7 and 12 immediately.

We drafted Interrogatory No. 15 with “major competitor” language to make it less burdensome on SolidWorks. In light of your concern that “major” is indefinite, please respond to Interrogatory No. 15 by providing a list of all of SolidWorks’ competitors and all of their competing products and services.

Please identify what studies, tests, ratings or surveys (if any) were excluded from your response to Interrogatory No. 16 based on your interpretation of the phrase “quality of the products.”

In response to Interrogatory No. 18, you responded:

Applicant objects to this interrogatory, except to the extent that it is directed to the mark DWGGATEWAY, on the grounds that it seeks information that is not relevant to the subject matter of this proceeding, and that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Further responding, as to DWGGATEWAY, none.

Actual confusion is of course a *DuPont* factor, and evidence of any confusion between SolidWorks’ products and Autodesk’s products is directly relevant to a claim of likelihood of confusion.

Michael P. Boudett  
Miriam L. Pogach  
December 12, 2006  
Page 4

Please supplement your response to Interrogatory No. 19 based on your updated response to Interrogatory No. 18.

In response to Interrogatory No. 20, you responded:

Applicant objects to this interrogatory, except to the extent that it is directed to the mark DWGGATEWAY, on the grounds that it seeks information that is not relevant to the subject matter of this proceeding, and that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Further responding, as to DWGGATEWAY and/or DWG, trademark searches have been conducted by Applicant and by its outside counsel. Pertinent documents will be produced.

Again, any SolidWorks mark containing the term "DWG" is relevant to a likelihood of confusion analysis. The results of SolidWorks' searches related to such marks are relevant to this matter.

Your objection to Interrogatory No. 26 on relevance grounds ignores the fact that such information may be related to the parties' channels of trade, SolidWorks' intent, and the presence or absence of actual confusion. This information is relevant and should be produced.

## **DWGEDITOR**

In view of the Board's November 4, 2006 order consolidating the two proceedings between the parties, we will need discovery related to the DWGEDITOR mark. SolidWorks can expect to be served with discovery requests relating to DWGEDITOR this week. If you have any suggestions regarding how we can make the process of exchanging discovery regarding DWGEDITOR more efficient, please share them at your earliest convenience.

We look forward to hearing from you.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

  
Brian G. Mendonca

# **Exhibit G**

---

**From:** Pogach, Miriam [MPogach@foleyhoag.com]  
**Sent:** Friday, December 22, 2006 8:28 AM  
**To:** Slafsky, John; Mendonca, Brian  
**Cc:** Boudett, Michael  
**Subject:** Autodesk v. SolidWorks Discovery

John and Brian,

In connection with our ongoing investigation of the Autodesk v. SolidWorks TTAB proceedings, we have learned that our client has additional documents relevant to the mark DWGeditor that we have not yet produced because the first round of discovery requests were directed to the mark DWGgateway. In order to simplify matters, we would propose to treat Autodesk's pending requests for production of documents and things and interrogatories as applicable to the mark DWGeditor. On a related note, we are still in the process of follow up on our discovery responses with respect to our previous phone call and your letter of December 12.

At this point, we feel that an extension of the discovery period would be in the best interests of both. Please let us know if you would be amenable to filing a stipulated motion for extension of time.

Thanks,  
Miriam

Miriam Pogach  
Foley Hoag LLP  
155 Seaport Blvd.  
Boston MA 02210  
(617) 832-3025  
(617) 832-7000 (fax)

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For more information about Foley Hoag LLP, please visit us at [www.foleyhoag.com](http://www.foleyhoag.com).

# **Exhibit H**

December 28, 2006

**Via E-Mail**

Michael P. Boudett  
Miriam L. Pogach  
Foley Hoag, LLP  
Seaport World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2600

***Re: Autodesk v. SolidWorks (TTAB No. 91170857)***

Dear Michael and Miriam:

Thank you for your December 20, 2006 letter and December 22, 2006 e-mail. We respond below to your various questions, comments and proposals concerning discovery in this matter.

The references to (former) Section 419 of the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) in Autodesk’s responses to the discovery requests propounded by SolidWorks were incorrect. The correct citation is to Section 414.

Autodesk hereby withdraws General Objection No. 8 in its response to SolidWorks’ Requests for Production.

Autodesk conducted a reasonable search for documents responsive to SolidWorks’ Requests for Production Nos. 8 and 9 and has produced non-privileged documents responsive to those requests. Autodesk conducted a reasonable search for documents responsive to SolidWorks’ Requests for Production Nos. 11 and 14 and did not withhold from its production any documents that could not be “readily garnered by SolidWorks.”

Autodesk conducted a reasonable search for documents responsive to SolidWorks’ Requests for Production Nos. 19 and 20 and has produced non-privileged documents in response to those requests.

Autodesk does not possess any documents responsive to SolidWorks’ Requests for Production Nos. 36 and 37.

Michael P. Boudett  
Miriam L. Pogach  
December 28, 2006  
Page 2

Autodesk has not withheld, and does not intend to withhold, any documents from its production on the basis of its objections on the grounds of the vagueness and/or ambiguity of terms contained in SolidWorks' Requests for Production Nos. 3, 7, 31, 32 and 33 and Interrogatories Nos. 32 and 33.

Autodesk will supplement its responses to SolidWorks' Interrogatories pursuant to Fed. R. Civ. P. 26(e) and TBMP § 408.03 to the extent any such supplementation is necessary.

You maintained that Autodesk's response to Interrogatory No. 15 is deficient. We will conduct further research into this issue and supplement that response as appropriate.

Autodesk has produced documents responsive to SolidWorks' Request for Production No. 39 and will supplement its production as necessary.

Autodesk will produce documents responsive to SolidWorks' Requests for Production Nos. 31, 32, 38, 40 and 41 and information responsive to SolidWorks' Interrogatories Nos. 32, 33 and 37 pursuant to a schedule agreed upon by the parties. This issue is addressed further below.

In our letter to you dated December 12, we solicited your feedback regarding the conduct of DWGEDITOR discovery. Your December 20 response did not address that issue. We served discovery requests regarding DWGEDITOR (and other issues) on December 21 and ask that you provide your responses to those requests at the appropriate time.

You requested in your December 22 e-mail that the parties agree to extend the discovery period. Autodesk does not agree that such an extension is necessary. The parties have had considerable time to engage in discovery, and have in fact done so; moreover, nothing extraordinary has occurred that would justify a deviation from the Board's standard schedule for such matters.

During our December 12 phone conference, the parties agreed to set dates for disclosure of expert information and reports. We further agreed to propose such dates promptly. By letter dated December 12, we proposed a schedule for expert discovery. Your letter of December 20 described those dates as "unrealistic" without explanation. In view of the passage of time, and in light of the holidays, we now propose that the parties exchange the names of their experts on January 12, 2007, and exchange their expert

Michael P. Boudett  
Miriam L. Pogach  
December 28, 2006  
Page 3

reports and expert-related discovery responses on January 19, 2007. Please let us know that you will accept these dates, or propose alternative dates, by January 5, 2007 so the parties can ensure that they complete discovery, including expert discovery, by the deadline set by the Board's November 4, 2006 Order (and as agreed upon by the parties in the September 28, 2006 consent motion).

We look forward to hearing from you.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

  
Brian G. Mendonca

cc: Autodesk, Inc.  
John L. Slafsky

# **Exhibit I**

---

**From:** Pogach, Miriam [MPogach@foleyhoag.com]  
**Sent:** Friday, January 05, 2007 2:23 PM  
**To:** Slafsky, John; Mendonca, Brian  
**Cc:** Boudett, Michael  
**Subject:** Autodesk v. SolidWorks Expert Discovery

John and Brian,

This email is in response to Brian's December 28th letter. We cannot agree to your proposal to exchange names of experts on January 12th, nor can we agree to exchange expert-related discovery responses on January 19th. We are still discussing the time frame with are client and are not in the position to recommend dates for exchange of expert-related information at this time.

As you know, today we filed an opposition to Autodesk's application to register the mark DWGX. Since we expect this proceeding to be consolidated with Autodesk's oppositions to DWGGATEWAY and DWGEDITOR, the discovery period for these proceedings will likely be extended. Consequently, we do not feel as though there should be any problem completing discovery in a timely manner.

Regards,  
Miriam

Miriam Pogach  
Foley Hoag LLP  
155 Seaport Blvd.  
Boston MA 02210  
(617) 832-3025  
(617) 832-7000 (fax)

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1/22/2007