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Filing date: **06/04/2009**

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

Proceeding	91181621
Party	Defendant Les Pierres Stonedged Inc.
Correspondence Address	James R. Menker Holley & Menker, P.A. P.O. Box 331937 Atlantic Beach, FL 32202 UNITED STATES jmenker@holleymenker.com, lgreer@holleymenker.com, eastdocket@holleymenker.com
Submission	Opposition/Response to Motion
Filer's Name	James R. Menker
Filer's e-mail	eastdocket@holleymenker.com
Signature	/jmenker/
Date	06/04/2009
Attachments	1051_0001.pdf ( 6 pages )(489323 bytes ) ttabvue-91169978-OPP-17.pdf ( 5 pages )(167987 bytes ) ttabvue-91170709-OPP-5.pdf ( 13 pages )(475814 bytes ) ttabvue-91173583-OPP-12.pdf ( 11 pages )(367184 bytes ) ttabvue-91173583-OPP-14.pdf ( 10 pages )(310225 bytes ) ttabvue-91173583-OPP-20.pdf ( 8 pages )(270153 bytes ) ttabvue-91177161-OPP-5.pdf ( 11 pages )(327472 bytes ) ttabvue-91177161-OPP-14.pdf ( 16 pages )(491665 bytes ) ttabvue-91182060-OPP-8.pdf ( 6 pages )(147359 bytes ) ttabvue-91182060-OPP-9.pdf ( 8 pages )(199336 bytes )

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

StonCor Group, Inc.,	)	
	)	
Opposer,	)	
	)	Opposition No. 91181621
v.	)	
	)	Ser. No. 76650832
Les Pierres Stonedge Inc.,	)	
	)	
Applicant.	)	

**APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR RECONSIDERATION**

Applicant, Les Pierres Stonedge Inc. (“Applicant”), hereby opposes Opposer, StonCor Group Inc.’s Motion For Reconsideration of the Board’s denial of Opposer’s Motion to Reopen its testimony period for the above-captioned opposition.

In its Motion for Reconsideration, Opposer asks for reconsideration on two grounds: (i) for failing to appreciate that Applicant had refused Opposer’s request for rescheduling of Opposer’s testimony prior to their start; and, then (ii) assuming that Opposer could have filed a consented extension request using ESTTA, when a written motion, brief and supporting declaration were necessary to seek any extension of Opposer’s testimony period, based on Opposer’s counsel’s illness. Applicant avers that neither grounds warrant reversal of the Board’s April 15, 2009 Order.

With respect to the first of the Board’s alleged errors, Opposer argues that the Board erred

by not taking into account Applicant's refusal to provide its consent for a request to reschedule the discovery and testimony periods in the opposition. In response, Applicant avers that it is not required to consent to an extension of the deadlines imposed by the Board. Therefore, it is irrelevant whether or not Applicant would or would not consent to such a motion. Moreover, Opposer misstates the facts regarding its request for Applicant's consent to reschedule the opposition trial dates. Opposer was requesting both a retroactive extension of the discovery period and a rescheduling of the testimony periods. This request was made two weeks before the opening of the Opposer's testimony period and Opposer's stated reason for making this request was because it had failed to timely respond to Applicant's discovery requests. *See* Applicant's Opposition to Opposer's Motion to Reopen (D.E. 16), Exhibit A. Had Opposer then promptly responded to Applicant's discovery and produced the few documents it ultimately did produce, it would not have needed an extension of its testimony period. Obviously, Opposer felt the same way since it did not at that time file a request for an extension of its testimony periods. In any event, Opposer failed to subsequently request Applicant's consent to an extension of Opposer's testimony period. Thus, the claim of hardship based on Applicant not consenting to a motion to extend the testimony period rings false because as noted, Opposer did not ask Applicant to entertain a motion to extend the testimony period in December. Therefore, Opposer's belief that any further request for Applicant's consent to an extension "would be pointless" was its own decision that it must live with.

With respect to the second of the Board's alleged errors, Opposer alleges that the Board

failed to take into account the difficulty of having to file a memorandum and declaration in support of a contested motion for an extension of Opposer's testimony period. However, Opposer's counsel has filed many such motions with the Board requesting extensions of time for a variety of reasons including the following:

1. Opposition No. 91169978: Opposer's Motion for Two Week Extension of Time to Respond to Applicant's Motion to Compel and Suspend due to absence of paralegals and unable to reach Plaintiff's counsel, filed October 2, 2007.
2. Opposition No. 91170709: Opposer's Motion to Reset All Dates due to paralegals and counsel overlooking docket dates and unable to reach Plaintiff's counsel, filed March 15, 2007.
3. Opposition No. 91173583: Opposer's Motion to Reset All Dates due to son-in-law's car accident and unable to reach Plaintiff's counsel, filed January 31, 2008; Opposer's Second Motion to Reset Dates due to heart condition and flu, filed March 28, 2008; Opposer's Request for Reconsideration and Relief from Order due to "buried" email from Interlocutory Attorney and short notice, filed July 2, 2008.
4. Opposition No. 91177161: Opposer's Motion to Reset Dates due to busy schedule and unable to contact Plaintiff's counsel, filed February 2, 2008; Opposer's Motion for an Extension of Time to file Principal Brief due to busy schedule and unable to contact Plaintiff's counsel, filed September 11, 2008.
5. Opposition No. 91182060: Opposer's Motion for Extension of Time to Respond to

Discovery plus Protective Order Extending Time due to personnel issues and vacations, mergers and unable to contact Plaintiff's counsel, filed September 10, 2008.

True and correct copies of which are attached hereto as Exhibit 1.

Clearly, Opposer's counsel has plenty of motions, memorandums and declarations which he or his paralegals, or one of the many other attorneys in his firm, undoubtedly could have easily adapted for filing in the instant opposition. In any event, the filing of a motion for an extension of time whether or not contested should therefore not be such a great burden for Opposer's counsel.

In sum, Opposer StonCor failed to show excusable neglect and the Board's decision to deny Opposer's Motion to Reopen did not constitute clear error and is supported by substantial evidence.

Respectfully submitted,

LES PIERRES STONEDGE INC.

Date: June 4, 2009

By:



James R. Menker

Applicant's Attorneys

Holley & Menker, PA

PO Box 331937

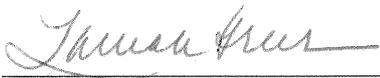
Atlantic Beach, Florida 32202

T: 904-247-2620

E-Mail: eastdocket@holleymenker.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing “APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR RECONSIDERATION” was served on Opposer’s attorney, Charles N Quinn of Fox Rothschild LLP with an address at 2000 Market Street, 10<sup>th</sup> Floor, Philadelphia, PA 19103-3291, via first class mail, postage prepaid, today June 4, 2009.

By:   
\_\_\_\_\_  
Laura K. Greer

**EXHIBIT 1**

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

StonCor Group, Inc.,	)	Opposition No. 91169978
	)	
Opposer,	)	Mark: STONE-CLICK
	)	
v.	)	Serial No. 78/515385
	)	
Parador Holzwerke GmbH & Co. K.G.,	)	Filing Date: November 11, 2004
	)	
Applicant.	)	Published: November 8, 2005

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S MOTION FOR TWO WEEK EXTENSION OF TIME  
TO RESPOND TO APPLICANT'S MOTION TO COMPEL AND SUSPEND**

Opposer, StonCor Group, Inc., hereby moves this Board for an Order extending the time for opposer to respond to applicant's Motion to Compel and Suspend, dated 12 September 2007, for two additional weeks.

The reason for this requested Motion is that opposer cannot complete the response to applicant's Motion to Compel and Suspend within the required time period and needs additional time to gather the required materials and prepare the responses to applicant's Motion to Compel and Suspend.

As set forth in greater detail in the attached declaration of opposer's counsel, opposer's counsel endeavored to contact counsel for the applicant to see if applicant would agree to this Motion for a two week extension. However, opposer's counsel was unable to reach applicant's counsel during the day on 2 October 2007.

Opposer respectfully requests a two week extension of time in which to respond to applicant's outstanding Motion to Compel and Suspend, dated 12 September 2007.



**10-02-2007**

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Dated: October 2, 2007

  
Charles N. Quinn  
Attorney for StonCor Group, Inc.

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

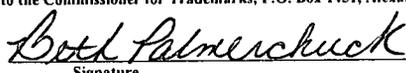
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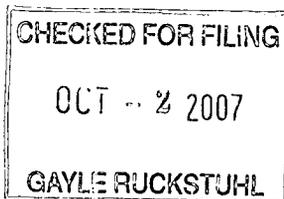
EXPRESS MAIL NO.

I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

October 2, 2007 \_\_\_\_\_  
Date of Deposit

  
Signature

Beth Palmerchuck  
Type or print name of person



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Opposer's Motion for Two Week Extension of Time to Response to Applicant's Motion to Compel and Suspend were served upon the following attorney of record by First Class Mail, postage pre-paid, this 2nd day of October, 2007:

Andrew S. Ehard  
MERCHANT & GOULD, P.C.  
80 South Eight Street  
Suite 3200  
Minneapolis, Minnesota 55402-2215



Charles N. Quinn  
Fox Rothschild LLP  
2000 Market Street  
10th Floor  
Philadelphia, PA 19103-3291

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

StonCor Group, Inc.,	)	Opposition No. 91169978
	)	
Opposer,	)	Mark: STONE-CLICK
	)	
v.	)	Serial No. 78/515385
	)	
Parador Holzwerke GmbH & Co. K.G.,	)	Filing Date: November 11, 2004
	)	
Applicant.	)	Published: November 8, 2005

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF CHARLES N. QUINN**

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United states, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 2000 Market Street, Tenth Floor, Philadelphia, PA 19103-3291, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding registration umber 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. Due to a combination of circumstances, including absence from the office of both of my paralegal assistants over the last two weeks, I have been unable to prepare and to complete an adequate response and opposition to applicant's pending Motion to Compel and Suspend proceedings. As a result, I need additional time, two weeks specifically, at a minimum, to prepare appropriate responses to the Motion to Compel and Suspend.

3. I endeavored to contact counsel for the applicant during the day on Tuesday 2 October 2007 to request applicant's consent to this Motion but I was unable to reach counsel for the applicant. Accordingly, I cannot represent to the Trademark Trial and Appeal Board that this Motion is consented.

4. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

5. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

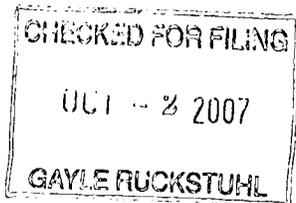
Respectfully submitted,



Charles N. Quinn  
Attorney for StonCor Group, Inc.

Dated: October 2, 2007

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)



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EXPRESS MAIL NO.:	<u>EV592207529US</u>
<small>I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.</small>	
October 2, 2007 Date of Deposit	<u>Beth Palmerchuck</u> Signature
	<u>Beth Palmerchuck</u> Type or print name of person

# TTAB

ATTORNEY DOCKET: 76110.40801  
TRADEMARK

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

StonCor Group, Inc.

Opposer,

v.

Ayiz Bozkurt

Applicant.

Opposition No. 91170709

Application Ser. No. 76/634,457

Mark: STONEWRAP

### MOTION TO RESET ALL DATES

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Sir:

StonCor Group, Inc. (StonCor), the opposer in this trademark opposition proceeding, manufactures and sells, on a worldwide basis, epoxy-resin based flooring and coating products for commercial, institutional and industrial applications. StonCor uses trademarks commencing with the letters "s t o n" for those products. StonCor owns 17 trademark properties in the United States that commence with the letters "s t o n" and sells its epoxy-resin based line of products under those marks. Those marks include the marks Stoncrest, Stoncrete, Stonfil, Stonhard, Stonkote, Stonliner, Stonlok, Stonlux, Stonproof,

Stonseal, Stonshield and Stontec. On a worldwide basis StonCor owns 347 trademark properties commencing with the letters “s t o n” for use on and in connection with StonCor’s line of epoxy-resin based flooring and coating products. The products are sold primarily to the construction industry and are used almost entirely in commercial, industrial and institutional applications.

The instant trademark opposition proceeding was filed as part of StonCor Group’s trademark enforcement program. That trademark enforcement program currently has six trademark opposition proceedings pending in the United States Patent and Trademark Office before this Board and ten other opposition proceedings pending in territories as diverse as Australia, Ecuador, the European Community Trademark Office, Canada, Korea, Spain, Portugal, India and the United Arab Emirates.

As set forth in more detail in the attached declaration of StonCor’s counsel, Charles N. Quinn, upon the filing of the notice of opposition, the Trademark Trial and Appeal Board issued its customary order for the conduct of the opposition, setting forth the relevant dates for discovery and testimony periods. Those dates were entered into the docketing system of opposer’s counsel’s firm.

As further set forth in Mr. Quinn’s attached declaration, it is customary for Mr. Quinn and the two paralegals that work with him, together with his legal assistant, to meet weekly, usually on Monday, to review the docket items for that week and into the future, for both patent matters and trademark matters.

Inexplicably, the docketed dates for this trademark opposition proceeding were either overlooked or not present in the weekly data docket date print-outs reviewed by Mr. Quinn and the paralegals. It is believed, as set forth in Mr. Quinn's declaration, that the dates for this proceeding were confused with the dates for two other proceedings, both of which had been terminated as a result of defaults by the applicants. Those proceedings both have docket numbers quite close to that for the instant proceeding in the opposer's counsel's office and involved notices of oppositions filed a few weeks prior to the notice of opposition in this case.

The following table summarizes the marks, applicants and docket numbers for the three opposition proceedings:

Opposer	Applicant	Opposed Mark	Opposer's Docket Number	TTAB Opposition Number
StonCor Group, Inc.	Stongard, Inc.	STONGARD	76110.40501	91169256
StonCor Group, Inc.	B.D. Classic Enterprises, Inc.	STONEAPPEAL	76110.40701	91169060
StonCor Group, Inc.	Ayiz Bozkurt	STONEWRAP	76110.40801	91170709

The '256 opposition was filed 11 January 2006; the '060 opposition was filed 25 January 2006 and the instant opposition was filed 19 April 2006.

Mr. Quinn states in his declaration that he believes that he and the paralegals and the legal assistant inexplicably confused this trademark opposition proceeding that is pending with at least one and probably two other proceedings, as identified above, that had been filed on behalf of the same

client, StonCor Group, Inc. The docket numbers, which are the numbers by which StonCor's counsel's office identifies opposition proceedings and other matters, were very, very close, differing only by one digit in the "hundredths" position.

As further set forth in Mr. Quinn's declaration, in the course of reviewing the docket for trademark matters for the current week and the ensuing weeks he noticed that the applicant's 30 day testimony period opens on 19 March 2007. When he saw this he promptly checked the file for the proceeding and noted to his distress that the testimony for the plaintiff, namely StonCor Group, Inc., had closed on 17 February 2007.

As further set forth in Mr. Quinn's declaration, no discovery had been served by the applicant on the opposer and, as of the writing and filing of this motion, no notification of the applicant taking any testimony has been received.

As further set forth in the attached declaration, Mr. Quinn called counsel for the applicant, explained that due to the apparent oversight in the docket system this case had inexplicably escaped attention until now and requested that counsel's agreement to reset all of the dates in the proceeding to allow a limited amount of discovery prior to testimony period for the opposer whereupon there would be a testimony period for the applicant and a rebuttal testimony period for the opposer. Applicant's counsel promised to take this matter up with his client and return the telephone call but to date opposer's counsel has not heard anything from applicant's counsel.

As further set forth, the inadvertent oversight as respecting the dates on the docket and the failure to take action as respecting those dates was entirely unintentional. The unintentional nature is clear from the nature of the opposer's trademark opposition and enforcement program as set forth above. This is not an isolated, once in a lifetime case filed by the opposer. The opposer regularly opposes marks that the opposer believes are likely to cause confusion with any of opposer's marks when used on and in connection with goods that are related to the goods sold by opposer.

There will be no prejudice to the applicant by the grant of this motion, the applicant has taken no discovery to date. Moreover, the applicant has not provided any notification of the taking of any testimony and, as a result, the applicant is not going to be in any position to present the applicant's case and is apparently relying on opposer's actions to date as respecting applicant's case and proof of the same by the applicant.

In order for there to be an adjudication on the merits of this opposition proceeding, the dates for the proceeding need to be reset in order to provide opposer with the opportunity to take discovery and, more importantly, to take testimony in support of opposer's position. With the lack of activity to date by the applicant, the applicant can hardly be said to be prejudiced with the grant of the instant motion. Moreover, the opposer has brought this situation to the attention of the Board and has sought relief promptly upon becoming aware of the problem. Additionally, opposer's counsel has taken steps to correct the

docket system to preclude the type of confusion as between two closely numbered cases that apparently led to the problem in this instance.

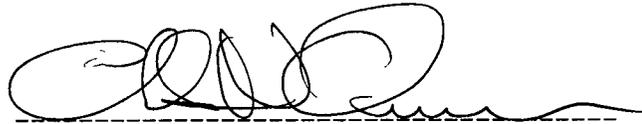
For all the foregoing reasons, opposer StonCor Group, Inc. respectfully solicits the grant of this motion to reset all dates and issuance of an order resetting all dates in accordance with the schedule set forth below.

Discovery opens	1 May 2007
Discovery closes	30 November 2007
Testimony period for party in position of plaintiff to open	1 January 2008
Testimony period for party in position of plaintiff to close	31 January 2008
Testimony period for party in position of defendant to open:	1 March 2008
Testimony period for party in position of defendant to close:	31 March 2008
15-day rebuttal testimony period for plaintiff to open:	15 April 2008
15-day rebuttal testimony period for plaintiff to close:	30 April 2008

Notification of the grant of this motion and issuance of a notice resetting all dates in this proceedings are respectfully requested.

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Respectfully submitted,



Dated: March 15, 2007

CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

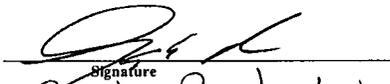


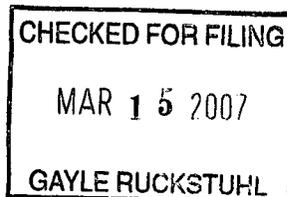
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I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

March 15, 2007  
Date of Deposit

  
Signature  
Gayle Ruckstuhl  
Type or print name of person



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

StonCor Group, Inc.

Opposer,

v.

Ayiz Bozkurt

Applicant.

Opposition No. 91170709

Application No. 76/634,457

Mark: STONEWRAP

**CERTIFICATE OF SERVICE**

I, Charles N. Quinn, of full age, by way of certification, state that a copy of Motion to Reset Dates and Declaration of Charles N. Quinn was served on Applicant's counsel on the date set forth below via first class mail, postage prepaid, addressed as follows:

Thomas N. Phung, Esq.  
Jacobson and Johnson  
Suite 285  
One West Water Street  
St. Paul, MN 55107-2080.

Date:

15 March 2007



CHARLES N. QUINN

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

StonCor Group, Inc.

Opposer,

v.

Ayiz Bozkurt

Applicant.

Opposition No. 91170709

Application Ser. No. 76/634,457

Mark: STONEWRAP

**DECLARATION OF CHARLES N. QUINN IN SUPPORT  
OF STONCOR GROUP'S MOTION TO RESET ALL DATES**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United States, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 2000 Market Street, Tenth Floor, Philadelphia, PA 19103-3291, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding registration number 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. I prepared and filed the Notice of Opposition in this trademark opposition proceeding on 19 April 2006. On 3 May 2006 we received a paper from the Trademark Trial and Appeal Board noting the due date for the answer and setting discovery and testimony periods for this proceeding. In that order discovery was to open on 23 May 2006 and close on 19 November 2006. The plaintiff's testimony period was to close 17 February 2006, the defendant's testimony period was to close 18 April 2007, and the plaintiff's rebuttal testimony period was to close 2 June 2007.

3. The applicant filed an answer to the notice of opposition that we received in our office on 19 June 2006.

4. Once the answer was received, the relevant dates for the opening and closing of discovery were entered into our docket system as were reminders for dates preceding the closing of the discovery period by one month, by two months and by three months. Additionally, the dates for closing of the various testimony periods were entered into our docketing system as were the dates for the opening of the testimony periods, which were computed by our intellectual property paralegal in charge of docketing.

5. It is our custom and practice to run a docket report for both patents and trademarks every Monday, and for the two intellectual property paralegals that work for me and my legal assistant to meet together with me on Monday morning to review items requiring action for that particular week and beyond into the future. I have no recollection of ever discussing any of the dates that had been entered into our docket system for this trademark opposition proceeding with either of the intellectual property paralegals or with my legal assistant. I believe that when we reviewed those dates, we inexplicably confused this trademark opposition proceeding that was pending with at least one and probably two other proceedings that had been

filed on behalf of the same client, StonCor Group, Inc., which had matter numbers visilby close to the matter number for this proceeding, and in both of which the applicants had defaulted thereby terminating the proceedings. One of those proceedings was opposition number 91169256 captioned StonCor Group, Inc. v. Stonegard, Inc., was our office matter number 76110.40501 and involved the mark "Stongard". The other of these proceedings was captioned StonCor Group, Inc. v. B.D. Classic Enterprises, Inc. and was trademark opposition proceeding 91169060 involving an opposition to the mark "Stone Appeal"; the matter number in our office for that proceeding was 76110.40701.

6. In the course of reviewing our docket for trademark matters for this week and the ensuing weeks I noticed that the applicant's 30 day testimony period for this proceeding opens on 19 March 2007. When I saw this I checked the file for this proceeding and noted to my great distress that the testimony period for the plaintiff, namely our client StonCor Group, Inc., had closed on 17 February 2007.

7. I further checked the file and noted that no discovery had been served by us on behalf of the opposer StonCor Group, Inc. on the applicant and that no discovery had been served on us by the applicant's counsel, on behalf of the applicant Ayiz Bozkurt. I further checked to see if we had received any notification of the applicant taking testimony. As of today, we have not.

8. Once I had come to grips with this situation, I called Mr. Thomas M. Phung, counsel for the applicant in this matter, explained that inexplicably due to an apparent oversight as respecting our docket system, this case had unexplainably escaped attention until now and I requested Mr. Phung's agreement to reset all of the dates for the proceeding so as to allow a limited amount of discovery prior to a testimony period for the opposer, whereupon there would

be a testimony period for the applicant, and a rebuttal testimony period for the opposer. Mr. Phung promised to take the matter up with his client and return my telephone call promptly. I have not heard anything from Mr. Phung. It has been several days since I spoke with him.

9. The inexplicable apparent oversight as respecting the dates for this proceeding on the docket and the failure to take action as respecting those dates was entirely unintentional. In light of the fact that the applicant has taken no discovery to date, I do not believe the applicant will be prejudiced by the resetting of the dates in this proceeding. However, if the dates are not reset, the opposer, StonCor Group, Inc. will be severely prejudiced in that its ability to present any case at all in support of its opposition to the grant of registration for the mark "Stonewrap" will be extinguished.

10. We have brought this situation to the attention of the Board promptly upon becoming aware of it. Additionally, we have taken steps to purge from our docket system information regarding closed cases, such as the two trademark opposition proceedings that I have referred to above, in order that confusion as between active and closed cases, which is the only fathomable cause for the oversight in this situation, will not occur again.

11. As a further reason as to why the applicant will not be prejudiced by the resetting of dates, the applicant's testimony period is scheduled to open on Monday, 19 March 2007, three working days from now. As I noted above, to date we have not received any notice of the taking of any testimony by the applicant as required by 37 CFR 2.123.

12. I hereby declare that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001, and further may jeopardize StonCor's position in this proceeding.

13. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Respectfully submitted,



Dated: March 15, 2007

CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)



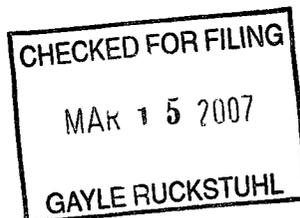
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I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

March 15, 2007  
Date of Deposit

  
Signature  
Gayle Ruckstuhl  
Type or print name of person



UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

**TTAB**

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Mark: STONE-HOLD

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S MOTION TO RESET DATES**



02-05-2008

Sir:

U.S. Patent & TMO/TM Mail Rpt Dt. #94

The instant trademark opposition proceeding was filed as part of StonCor Group's trademark enforcement program. That trademark enforcement program currently has other trademark opposition proceedings pending in the United States Patent and Trademark Office

before this Board and additional opposition proceedings pending in territories as diverse as Australia, Ecuador, the European Community Trademark Office, Canada, Korea, Spain, Portugal, India and the United Arab Emirates.

Under the schedule currently in force by the Trademark Trial and Appeal Board, opposer's testimony was supposed to coincide with the month of January.

As set forth in more detail in the attached declaration of Charles N. Quinn, opposer's counsel, Mr. Quinn's professional obligations and, more importantly, his personal and family obligations, resulting from an accident in which his son-in-law's brother was driving a car involved in a traffic accident in which one of the passengers in the car was killed, has greatly limited Mr. Quinn's time and as a result has precluded scheduling of the evidentiary deposition of the principal witness for StonCor Group, Inc. in this trademark opposition proceeding.<sup>1</sup>

As further set forth in Mr. Quinn's accompanying declaration, he has tried to contact counsel for the applicant to seek the applicant's consent to this motion to reset dates and also to discuss certain discovery issues that remain, but Mr. Quinn's telephone and e-mail messages of today have not been returned as of the writing and mailing

---

<sup>1</sup> Quinn Declaration, pages 2-6.

of this motion.<sup>2</sup> None of this is to be construed as lack of cooperation on the part of counsel for the applicant; indeed, relations between counsel for the opposer and counsel for the applicant have been professionally cordial throughout this proceeding.

In order to provide both parties counsel with the opportunity to prepare for the evidentiary deposition of the opposer's principal witness and for both parties to provide materials that have been requested in discovery but have yet to be delivered, opposer respectfully requests that dates for this proceeding be reset as per below:

Opposer's testimony period to open	1 March 2008
Opposer's testimony period to close	31 March 2008
Applicant's testimony period to open	1 May 2008
Applicant's testimony period to close	31 May 2008
Opposer's rebuttal testimony to open	15 June 2008
Opposer's brief to be due	1 July 2008
Applicant's brief in opposition to be due	15 August 2008

Opposer respectfully submits that these times are reasonable, will provide counsel with the opportunity to fulfill their discovery obligations to the opposing clients, and will provide the opportunity for opposer to take the evidentiary deposition required to support opposer's case-in-chief.

---

<sup>2</sup> Quinn Declaration, page 7.

Opposer cannot represent that this motion is unopposed; as set forth above and in more detail in the accompanying declaration of opposer's counsel, Charles N. Quinn, opposer has sought to obtain the consent of applicant's counsel but opposer's telephone and e-mail inquiries along these lines have not been returned.

Opposer respectfully solicits favorable consideration and grant of the instant motion.

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Respectfully submitted,

Dated: January 31, 2008



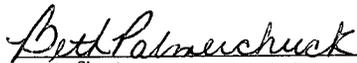
CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
JAN 31 2008  
FBI - PHILADELPHIA



PH2 679089v1 01/31/08

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<u>January 31, 2008</u> Date of Deposit	 Signature
	<u>Beth Palmerchuck</u> Type or print name of person

41701

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Mark: STONE-HOLD

CERTIFICATE OF SERVICE

I, Charles N. Quinn, of full age, by way of certification, state that a copy of the attached Motion to Reset Dates was sent to applicant's counsel on the date set forth below via first class mail, postage prepaid, addressed as follows:

Phillip D. Mitchell, Esquire  
Epstein, Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177-1211

Date:

31 January 2008

  
Charles N. Quinn

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Mark: STONE-HOLD

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

DECLARATION OF CHARLES N. QUINN

Sir:

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United states, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 2000 Market Street, Tenth Floor, Philadelphia, PA 19103-3291 and a second office at 1250 South Broad Street, Suite 1000, Lansdale, PA 19446-

0431, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding registration number 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. StonCor Group, Inc., the opposer in this proceeding, is engaged in a worldwide program to protect its rights in its portfolio of trademarks that commence with the letters "S T O N ...". This opposition proceeding is a portion of that program. At this time, StonCor Group is involved in prosecuting trademark oppositions that are in various stages, against various third party trademark applications that involve marks commencing with the sequenced four letters "S T O N ...", where third parties are seeking registration of such marks in connection with products and/or services that are competitive to or at least complementary to the products and services StonCor Group offers under various ones of its marks commencing with the sequenced letters "S T O N ....". Oppositions of this type are currently pending in Australia, Brazil, Korea, Ecuador, India, Canada, the European Community Trademark Office, the United Arab Emirates, the United Kingdom, France, Germany, Portugal and Spain. I am the attorney charged with responsibility for handling and managing all of these oppositions for

StonCor Group, Inc. This work, together with my other work in my Philadelphia office, requires a large amount of my time.

3. Additionally, several months ago, I was asked by our firm to oversee the growing intellectual property practice in our Lansdale office, in suburban Philadelphia, where I try to spend about two days each week supervising that practice. All of this has place significant time demands on me.

4. Several months ago, a close member of my family, namely my son-in-law's brother, was driving a car that was involved in a traffic accident. One of the passengers in his car was killed in the accident. The police determined that my son-in-law's brother was driving under the influence of alcohol at the time of the accident and, as a result, my son-in-law's brother was arrested, charged with negligent homicide, and jailed. He was subsequently released on bail and is awaiting trial, which is scheduled for next week.

5. While I am not a criminal lawyer and, accordingly, I am not representing my son-in-law as respecting the accident, recently much of my time has been consumed in supporting him and other members of the family, answering their questions about the past and coming proceedings, and being present to provide some fatherly support for every one involved, including my daughter and her husband and their children, as well as the charged brother, his wife, my in-laws and others.

6. Due to the time that I have had to devote to the family problem above, I have been unable to address this opposition matter in the necessary and in the manner I would like. Moreover, and specifically, there are items we owe to our opponents in response to their requests for discovery that we have not furnished since we have not received a returned signed protective order that we forwarded to our opponents some time ago, there are discovery responses that our opponents owe us that I have not been able to address, and the like. Most significantly, the StonCor officer who will be StonCor's principal witness and I have been unable to find a mutually convenient and acceptable dates to prepare for and for him to give his testimonial deposition, which will be one of the principal sources of evidence for StonCor's case in chief in this proceeding.

7. I have today tried to contact counsel for the applicant to seek their consent to the accompanying motion to reset dates and to discuss the discovery issues that remain, but my telephone and e-mail messages have not been returned as of this writing. A copy of my e-mail of this morning to them is attached.

8. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made

herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

9. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Dated: January 31, 2008

  
\_\_\_\_\_  
CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)



<b>Certificate of Mailing Under 37 C.F.R. 1.10</b>	
EXPRESS MAIL NO.: <u>EV592210443US</u>	
I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.	
<u>January 31, 2008</u> Date of Deposit	 _____ Signature
	<u>Beth Palmerchuck</u> Type or print name of person

**Quinn, Charles N.**

---

**From:** Quinn, Charles N.  
**Sent:** Thursday, January 31, 2008 11:41 AM  
**To:** 'Peter F. Berk'; 'pmitchell@ebglaw.com'  
**Cc:** Palmerchuck, Beth; Ruckstuhl, Gayle; Barag, Sherry  
**Subject:** StonCor v. Tomahawk

Gentlemen:

In accordance with a voice mail I left a minute ago for Mr. Berk, may I ask one of you to call me as respecting this proceeding, to discuss what is owed to whom and extending dates.

I should be here all day.

Charlie Quinn

Charles N. Quinn  
Attorney at Law  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA., 19103-3291, U.S.A.  
215.299.2135 - direct  
215.299.2150 - fax  
[cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)  
[www.foxrothschild.com](http://www.foxrothschild.com)

# TTAB

ATTORNEY DOCKET: 76110.41601  
TRADEMARK

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Mark: STONE-HOLD

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S SECOND MOTION TO RESET DATES**

Sir:

The instant trademark opposition proceeding was filed as part of StonCor Group's trademark enforcement program. That trademark enforcement program currently has other trademark opposition proceedings pending in the United States Patent and Trademark Office

-1-



**03-28-2008**

76110.41601

before this Board and additional opposition proceedings pending in territories as diverse as Australia, Ecuador, the European Community Trademark Office, Canada, Korea, Spain, Portugal, India and the United Arab Emirates.

Under the schedule currently in force by the Trademark Trial and Appeal Board, opposer's testimony period was to conclude on 30 March .

As set forth in more detail in the attached declaration of Charles N. Quinn, opposer's counsel, due to circumstances beyond Mr. Quinn's control, namely due to a serious health problem, those circumstances have greatly limited Mr. Quinn's working time and personal efficiency during the month of March, including the time available to be devoted to this proceeding. Among other things, Mr. Quinn's condition has precluded scheduling of the evidentiary deposition of the witnesses for StonCor Group, Inc. in this trademark opposition proceeding.<sup>1</sup>

In order to provide both parties with the opportunity to prepare for the evidentiary deposition of the opposer's witnesses, opposer respectfully requests that dates for this proceeding be reset as per below:

Opposer's testimony period to open	15 April 2008
Opposer's testimony period to close	15 May 2008
Applicant's testimony period to open	15 June 2008
Applicant's testimony period to close	15 July 2008

---

<sup>1</sup> Quinn Declaration, pages 2 and 3.

Opposer's rebuttal testimony to open	1 August 2008
Opposer's brief to be due	15 September 2008
Applicant's brief in opposition to be due	15 October 2008

Opposer respectfully submits that these times are reasonable and will provide counsel with the opportunity to fulfill their various obligations to the opposing clients.

Opposer believes that no prejudice will result to either party from grant of the instant motion.

Opposer cannot represent that this motion is unopposed; as set forth above and in more detail in the accompanying declaration of opposer's counsel, Charles N. Quinn, opposer has sought to obtain the consent of applicant's counsel by e-mail but has not heard anything further respecting opposer's request.

Opposer respectfully solicits favorable consideration and grant of the instant motion.

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Respectfully submitted,

Dated: 28 March 2008

  
CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

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I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

3/28/08  
Date of Deposit

  
Signature

Charles N. Quinn  
Type or print name of person

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Mark: STONE-HOLD

CERTIFICATE OF SERVICE

I, Charles N. Quinn, of full age, by way of certification, state that a copy of the attached Motion to Reset Dates was sent to applicant's counsel on the date set forth below via first class mail, postage prepaid, addressed as follows:

Phillip D. Mitchell, Esquire  
Epstein, Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177-1211

Date: 3/28/08

  
Charles N. Quinn

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Mark: STONE-HOLD

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF CHARLES N. QUINN IN SUPPORT OF OPPOSER'S  
SECOND MOTION TO RESET DATES**

Sir:

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United states, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 2000 Market Street, Tenth Floor, Philadelphia, PA 19103-3291 and a

second office at 1250 South Broad Street, Suite 1000, Lansdale, PA 19446-0431, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding registration number 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. StonCor Group, Inc., the opposer in this proceeding, is engaged in a worldwide program to protect its rights in its portfolio of trademarks that commence with the letters "S T O N ...". This opposition proceeding is a portion of that program. At this time, StonCor Group is involved in prosecuting trademark oppositions that are in various stages, against various third party trademark applications that involve marks commencing with the sequenced four letters "S T O N ...", where third parties are seeking registration of such marks in connection with products and/or services that are competitive to or at least complementary to the products and services StonCor Group offers under various ones of its marks commencing with the sequenced letters "S T O N ...". Oppositions of this type are currently pending in Australia, Brazil, Korea, Ecuador, India, Canada, the European Community Trademark Office, the United Arab Emirates, the United Kingdom, France, Germany, Portugal and Spain. I am the attorney charged with

responsibility for handling and managing all of these oppositions for StonCor Group, Inc.

3. I am 64 years old and have a condition that is a type of irregular heartbeat, which my electrocardiologist tells me is called "neurocardiogenic syncope". Both my internist and my electrocardiologist regularly check me as regarding this condition. I have had this condition for eight years and take medication, namely 800 milligrams of a beta-blocker sold under the trademark "Sectrol", twice daily for this condition. The medication is effective most, but not all, of the time to control the condition. When the condition occurs, the condition manifests itself by my heart rate dropping substantially, to somewhere in the neighborhood of 35 to 40 beats a minute, for a period of a minute or perhaps a little more. When that happens, I feel extremely weak and I sometimes loose consciousness, in which case I fall if I am standing or slump forward if I am sitting. Many times, but not always, I can feel these "events" coming on, and afterwards I need to lay down to rest and recover. I feel the effects, namely weakness and lightheadedness, afterward for a day or so.

4. The condition tends to occur more frequently when I have the flu or some other viral infection. During the last month or so, I have been fighting a flu-type bug and, as a result, have had some of these "events" of varying severity. Due to this I have had to very substantially

curtail my work schedule and the intensity of my activity when I have been at work.

5. As a result of this, during the testimony period that was requested in our prior motion, I have been unable to prepare for and to schedule deposition testimony of opposer's witnesses, to provide opposer's evidence in this opposition proceeding.

6. Today I have sent an e-mail to counsel for the applicant to request his consent to the instant motion. I have not received any response to that e-mail as this is written.

7. To protect StonCor's rights, I have no choice but to seek to reset the dates in this proceeding by filing the accompanying motion so that StonCor's principal witnesses may give their testimony

8. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

9. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any

accompanying papers herewith, please charge all such fees to Deposit  
Account 50-1943.

Respectfully submitted,

Dated: 28 March 2008

  
CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

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I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

3/28/08  
Date of Deposit

  
Signature

CHARLES N. QUINN  
Type or print name of person

ESTTA Tracking number: **ESTTA221979**

Filing date: **07/02/2008**

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

Proceeding	91173583
Party	Plaintiff StonCor Group, Inc.
Correspondence Address	Charles N. Quinn Fox Rothschild LLP 2000 Market Street, Tenth Floor Philadelphia, PA 19103 UNITED STATES cquinn@frof.com, dmcgregor@frof.com, bpalmerchuck@frof.com
Submission	Response to Board Order/Inquiry
Filer's Name	CHARLES N. QUINN
Filer's e-mail	cquinn@frof.com
Signature	/CHARLES N. QUINN/
Date	07/02/2008
Attachments	Opposer's Request for Reconsideration.pdf ( 7 pages )(61335 bytes )

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

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER STONCOR GROUP'S REQUEST FOR RECONSIDERATION  
OF AND RELIEF FROM THE INTERLOCUTORY ATTORNEY'S  
1 JULY 2008 ORDER**

**Introduction and Relief Requested**

This is a request for reconsideration and relief from an Interlocutory Attorney's order transmitted electronically on 1 July 2008 to counsel for the opposer, StonCor Group, Inc. in the above-captioned trademark opposition proceeding. The order denied, as being untimely filed, a motion for summary judgment that had been submitted by opposer, StonCor Group during StonCor Group's assigned testimony period. The order further provided that the testimony period for the party in the position of plaintiff, namely StonCor Group, would close on 10 July

2008 and set new dates for closure of the testimony period of the party in the position of defendant and for closure of the rebuttal testimony period.

By this request, opposer StonCor Group, Inc. seeks reconsideration of the decision denying the motion for summary judgment as being untimely, and, in the event that request is denied, seeks further relief from the order in the form of additional time in which StonCor Group, as the party in the position of plaintiff, may take its testimony in chief.

### **Statement of Facts**

StonCor Group, through its Stonhard Division, manufactures and sells epoxy resin and polyurea based floorings and coatings. StonCor owns incontestable U.S. registration 1,487,280 for the mark “STONHARD”, as well as numerous other mostly incontestable registrations, commencing with the letters “S T O N”, for flooring and flooring-related products.

StonCor’s U.S. registration 1,487,280 issued 10 May 1988 for the mark “STONHARD”, has acquired incontestable status through the filing and acceptance of declarations under 15 U.S.C. 1058 and 1065, and has been renewed.

Tomahawk filed an application on 28 September 2005 for the mark “STONE-HOLD” pursuant to serial number 78/722,348, seeking registration of that mark for use on and in connection with “non-metallic building materials, namely mortar cement, masonry cement and portland cement”.

When the “STONE-HOLD” mark was published, StonCor Group initiated this opposition proceeding.

### **The Interlocutory Attorney Abused his Discretion in Refusing Consideration of StonCor’s Summary Judgment Motion**

The primary purpose of a summary judgment is to avoid the time and expense involved in a trial. The applicable law states that motions for summary judgment *should* be filed prior to

the commencement of testimony; the relevant law does *not* state that summary judgment motions “must” or “shall” be filed prior to commencement of a testimony period.<sup>1</sup> Use of the verb “should”, as contrasted to the verb “shall”, in the relevant regulatory section as cited below means that it is within the discretion of the tribunal, in this case the interlocutory attorney, as to whether to permit the filing of a motion for summary judgment after the testimony period has commenced.

There should be no doubt concerning the distinction between the word “should” and the power it grants to the tribunal, versus the word “shall” and the requirements it places on a litigant. The 2007 Advisory Committee note addressing the latest changes to Rule 56 of the Federal Rules of Civil Procedure makes it clear that substitution of the word “should” for the word “shall” in the current versions of Federal Rules of Civil Procedure 56(c), (d), and (e) was to make it clear that tribunals have discretion with respect to the application of those portions of Rule 56.<sup>2</sup> By analogy, and under principles of comity, the same interpretation must be given to the analogous section of the Code of Federal Regulations regarding summary judgment motions before the Board.

Here, while the calendar may say that “trial” had commenced, opposer StonCor Group, relying on the summary judgment motion, had not noticed any testimony, had not retained a court reporter, and had not determined an acceptable date, on the calendars of all of the relevant people, for taking testimony.

It cannot be gainsaid that preparing a summary judgment motion and an answer to the motion, is much, much less work than conducting a trial, even a trial of the type sanctioned under the Code of Federal Regulations for the conduct of Board of Appeals proceedings. Moreover, it

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<sup>1</sup> 37 C.F.R. 2.127(e)(1).

<sup>2</sup> Advisory Committee Note Discussing 2007 Amendments; Fed. R.Civ. R. 56.

is surely less work for the Board to decide a case on summary judgment than to comb through the evidentiary record, read briefs, examine exhibits and then come to a decision, perhaps even after having had to hear an oral argument in a case.

This is not a case such as was addressed in *La Maur*<sup>3</sup> in which Assistant Commissioner Meany said that “at some point in litigation, common sense dictates that it would require as much time and effort to review a motion for summary judgment as it would to have a full trial of the merits”. This case is not even close to that. Moreover, for Commissioner Meany to make such a statement calls into question The Honorable Commissioner’s level of experience in dealing with real life trials versus motion practice. Anyone who has ever tried a case knows what is involved in a trial; a motion does not even compare.

As set forth above, in this case there is little in the way of factual dispute. The marks involved are nearly identical, the parties are engaged in the same field and sell or intends to sell their products, for which the respective marks are registered or pending registration, to the same customers who will apply the respective products sometimes side-by-side or even on top of one another. To force the parties to go through the exercise of taking testimony, writing trial briefs and perhaps arguing this case before the Board, when the case is one that cries for decision on summary judgment, is an exercise in sophistry to say the least.

Opposer StonCor Group again requests reconsideration of the 1 July 2008 interlocutory order and consideration of the summary judgment motion on the merits.

**Allowing Opposer StonCor Only a 6 Day Window in Which to Take StonCor’s Testimony in Chief was an Abuse of Discretion by the Interlocutory Attorney**

The interlocutory attorney’s order received by e-mail on Tuesday morning 1 July 2008 reset the close of StonCor Group’s testimony period for Thursday 10 July 2008. The order was

buried in the usual mass of e-mails that confront undersigned counsel every morning. Typically there are several hundred such e-mails on undersigned counsel's computer screen, many originating from overseas, requiring a substantial commitment of time by opposer StonCor's counsel to go through those e-mails and to separate the more important ones from the less important ones<sup>4</sup> and to decide which of those e-mails require immediate action. With the interlocutory attorney's e-mail order only being received on 1 July, that day could not be used to take testimony since arrangements must be made with a court reporter, notice must be given to the opposing counsel, the witness must be available to give testimony, and even if the witness has been prepared, the witness would require some assisted recollection of the preparation in order to provide meaningful testimony. Accordingly, testimony on the first of July was out of the question.

Just as far out of the question as a day for testimony is Friday, 4 July which is a national holiday. Moreover, many businesses are closed on the day before that national holiday, namely Thursday, 3 July 2008.

As a result, the interlocutory attorney's 1 July order provided six working days, at best, in which testimony could be taken.

StonCor Group respectfully submits that six (6) days is an unreasonably short period within which to require StonCor Group to take its testimony in chief. StonCor Group's intended principal witness is a Vice President of StonCor Group and has international responsibilities. During the early part of July, which is the period mandated by the interlocutory attorney for StonCor Group to take its testimony, that witness is scheduled to be engaged in overseas telephone conversations on many days, with those telephone conversations having been arranged

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<sup>3</sup> *La Maur, Inc. v. The Bagwells Enterprises, Inc.*, 1976 WL 20838 (Com'r Pat. & Trademarks), 193 U.S.P.Q. 234 (1976).

and scheduled well in advance so that relevant personnel are available and can participate in the discussions.

Additionally, StonCor's counsel had already committed to participate in a deposition in another case on Thursday, 10 July.

Accordingly, the Interlocutory Attorney's order actually provided a window of only five days for StonCor Group's testimony in chief. Since significant portions of each of those days will be consumed by the witnesses' participation in the above-discussed previously arranged conference telephone calls, StonCor Group is left with very little time on any given day within which to take the deposition of its principal witness. Based on current understanding of undersigned counsel, there will probably be only two or three hours in any one day during which testimony can be taken. There may not be any time at all for cross-examination, given the schedule imposed unilaterally by the interlocutory attorney.

StonCor respectfully submits that the schedule imposed by the interlocutory attorney for the taking of StonCor's testimony in chief in the order of 1 July 2008 is manifestly unreasonable and that StonCor Group should be allowed the full 30 day period within which to take its testimony, pursuant to 37 CFR 2.121(c).

Respectfully submitted,



Charles N. Quinn  
Attorney for Opposer

Date: 2 July 2008

FOX, ROTHSCHILD LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

---

<sup>4</sup> The unimportant e-mails have presumably already been removed by counsel's firm's spam filter.

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

StonCor Group, Inc.

Opposer,

v.

Tomahawk, Inc.

Applicant.

Opposition No. 91173583

Application Ser. No. 78/722,348

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**CERTIFICATE OF SERVICE**

I, Charles N. Quinn, of full age, by way of certification, state that a copy of Opposer StonCor Group's Request for Reconsideration of and Relief from the Interlocutory Attorney's 1 July 2008 Order was served on Applicant's counsel on the date set forth below via first class mail, postage prepaid, addressed as follows:

Phillip D. Mitchell, Esquire  
Epstein, Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177-1211

Date: \_\_\_\_\_

*2 July 2009*

  
CHARLES N. QUINN

UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

**TTAB**

StonCor Group, Inc.	:	
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Opposer	:	
v.	:	Opposition 91177161
	:	
	:	Application 78/879,396
	:	
Stonel Inc.	:	
	:	
	:	
Applicant	:	

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**OPPOSER'S MOTION TO RESET DATES**

Sir:

The instant trademark opposition was filed as part of Opposer StonCor Group's trademark enforcement program. That trademark enforcement program currently has other trademark opposition proceedings pending in the United States Patent and Trademark Office



before this Board and additional opposition proceedings pending in territories as diverse as Australia, Canada, Ecuador, the European Community Trademark Office, Korea, India, Portugal, Spain, and the United Arab Emirates.

Under the schedule currently in force by the Trademark Trial and Appeal Board, opposer's testimony period is to conclude on Friday 22 February 2008.

As set forth in more detail in the attached declaration of Charles N. Quinn, opposer's counsel, Mr. Quinn's professional obligations have greatly limited Mr. Quinn's time available to be devoted to this proceeding and has precluded scheduling of the evidentiary deposition of the witnesses for StonCor Group, Inc. in this trademark opposition proceeding.<sup>1</sup>

As further set forth in Mr. Quinn's accompanying declaration, on 19 February 2008, he has tried to call counsel for the applicant to seek the applicant's consent to this motion to reset dates, and also to discuss certain other issues and possible settlement. At that time, Mr. Quinn was told by personnel in the offices of the applicant's counsel that applicant's counsel was out of the country, vacationing in Mexico for the remainder

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<sup>1</sup> Quinn Declaration, pages 2-6.

of this week, and hence was not available.<sup>2</sup> As a result, opposer had no choice but to file the instant motion.

Nothing in this motion should be construed as lack of cooperation on the part of counsel for the applicant. Indeed, there have been no disputes between counsel for the opposer and counsel for the applicant during the course of this proceeding.

In order to provide both parties counsel with the opportunity to prepare for the evidentiary deposition of the opposer's witnesses and for both parties to provide materials that have been requested in discovery but have yet to be delivered, opposer respectfully requests that dates for this proceeding be reset as per below:

Opposer's testimony period to open	1 March 2008
Opposer's testimony period to close	31 March 2008
Applicant's testimony period to open	1 May 2008
Applicant's testimony period to close	31 May 2008
Opposer's rebuttal testimony to open	15 June 2008
Opposer's brief to be due	1 July 2008
Applicant's brief in opposition to be due	15 August 2008

Opposer respectfully submits that these times are reasonable and will provide counsel with the opportunity to fulfill their various obligations to the opposing clients.

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<sup>2</sup> Quinn Declaration, page 7.

Opposer believes that no prejudice will result to either party for grant of the instant motion.

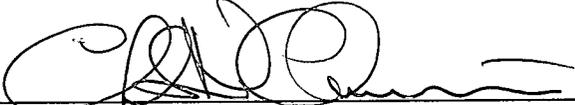
Opposer cannot represent that this motion is unopposed; as set forth above and in more detail in the accompanying declaration of opposer's counsel, Charles N. Quinn, opposer sought yesterday to obtain the consent of applicant's counsel by telephone but was told that opposer's counsel is out of the country on vacation and cannot be reached through the end of this week, after opposer's testimony period has concluded.

Opposer respectfully solicits favorable consideration and grant of the instant motion.

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of this paper and/or any accompanying papers submitted herewith, please charge all such fees to deposit account 50-1943.

Respectfully submitted,

Dated: February 20, 2008

  
\_\_\_\_\_  
CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

Certificate of Mailing Under 37 C.F.R. 1.10

EXPRESS MAIL NO.: EV592207546US

I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

February 20, 2008  
Date of Deposit

*Beth Palmerchuck*  
Signature

Beth Palmerchuck  
Type or print name of person



UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

StonCor Group, Inc.	:	
	:	
Opposer	:	
v.	:	Opposition 91177161
	:	
	:	Application 78/879,396
	:	
Stonel Inc.	:	
	:	
Applicant	:	

CERTIFICATE OF SERVICE

I, Charles N. Quinn, of full age, by way of certification, state that a copy of the attached Motion to Reset Dates with accompanying supporting declaration was sent to applicant's counsel on the date set forth below via first class mail, postage prepaid, addressed as follows:

Gordon P. Raisanen, Esquire  
Raisanen & Assoc. Law Firm, Ltd.  
15725 U.S. Highway 12 SW  
Cokato, MN 55321

Date: February 20, 2008

  
\_\_\_\_\_  
Charles N. Quinn

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.	:	
	:	
Opposer	:	
v.	:	Opposition 91177161
	:	
	:	Application 78/879,396
	:	
Stonel Inc.	:	
	:	
	:	
Applicant	:	

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
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215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF CHARLES N. QUINN**

Sir:

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United states, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 2000 Market Street, Tenth Floor, Philadelphia, PA 19103-3291 and having a second office at 1250 South Broad Street, Suite 1000, Lansdale, PA 19446-0431, a member in good standing of the Bar of the Supreme

Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding registration number 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. StonCor Group, Inc., the opposer in this proceeding, is engaged in a worldwide program to protect its rights in its portfolio of trademarks that commence with the letters "S T O N ...". This opposition proceeding is a portion of that program. At this time, StonCor Group is involved in prosecuting trademark oppositions that are in various stages, against various third parties whose trademark applications involve marks commencing with the sequenced four letters "S T O N ...", where third parties are seeking registration of such marks in connection with products and/or services that are competitive to or at least complementary to the products and services StonCor Group offers under various ones of its marks commencing with the sequenced letters "S T O N ....".

3. Oppositions of this type are currently pending in Australia, Brazil, Canada, Ecuador, the European Community Trademark Office, France, Germany, India, Korea, Portugal, Spain, the United Arab Emirates, and the United Kingdom. I am the attorney charged with responsibility for handling and managing all of these oppositions for StonCor Group,

Inc. This work, together with my other work in my Philadelphia office, requires a large amount of my time.

4. Additionally, several months ago, I was asked by our firm to oversee the burgeoning intellectual property practice in our Lansdale office, in suburban Philadelphia, where I try to spend at least two days each week supervising that practice. All of this has placed significant time demands on me.

5. Due to all of this, I have been unable to address this opposition matter in the manner I would like. Moreover, and specifically, there are discovery responses that our opponent owes us that I have not been able to address, and the like. Most significantly, the StonCor officer, who will be StonCor's principal witness, and I have been unable to find mutually convenient and acceptable dates during the past days of opposer's testimony period to prepare for and for him to give his testimonial deposition, which will be one of the principal sources of evidence for StonCor's case in chief in this proceeding.

6. Yesterday I tried to call counsel for the applicant to seek his consent to the accompanying motion to reset dates and to discuss the discovery issues that remain, but I was told by his office staff that he was vacationing in Mexico through the end of the week and could not be reached. Accordingly, to protect StonCor's rights, I had no choice but to seek to reset the dates in this proceeding so that StonCor's principal

witness could give his testimonial deposition with applicant's counsel attending, and so that other issues in this proceeding could be discussed and resolved.

7. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

8. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Dated: February 20, 2008

  
CHARLES N. QUINN  
Attorney for Opposer

Fox Rothschild LLP  
2000 Market Street, Tenth Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
Email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

Certificate of Mailing Under 37 C.F.R. 1.10

EXPRESS MAIL NO.: EV592207546US

I hereby certify that this paper, along with any paper referred to as being attached or enclosed and/or fee is being deposited with the United States Postal Service, "Express Mail - Post Office to Addressee" service under 37 C.F.R. 1.10, on the date indicated below, and is addressed to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

February 20, 2008  
Date of Deposit

Beth Palmerchuck  
Signature

Beth Palmerchuck  
Type or print name of person



ESTTA Tracking number: **ESTTA236016**

Filing date: **09/11/2008**

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

Proceeding	91177161
Party	Plaintiff StonCor Group, Inc.
Correspondence Address	Charles N. Quinn Fox Rothschild LLP 2000 Market Street, 10th Floor Philadelphia, PA 19103-3291 UNITED STATES cquinn@foxrothschild.com
Submission	Motion to Extend
Filer's Name	CHAR.ES N. QUINN
Filer's e-mail	cquinn@frof.com, ipdocket@frof.com
Signature	/CHARLES N. QUINN/
Date	09/11/2008
Attachments	Stoncor's Motion.pdf ( 15 pages )(111782 bytes )



rebuttal testimony. Additionally, other matters, including other trademark opposition proceedings pending before this Board, do not leave Mr. Quinn with enough time to prepare a full and comprehensive brief in support of StonCor Group's position.

Finally, it is noted that the briefing period for StonCor Group had only been set at 30 days, rather than the normal and customary 60 days, as allowed by the rules, in light of an earlier request involving some discovery and other issues where extended time was requested. Accordingly, this motion by StonCor Group would provide StonCor Group with the full 60 day period of time to which it is entitled under the rules to prepare and file its brief in support of its case-in-chief.

For all of these reasons, StonCor Group, Inc. respectfully requests the grant of an extension of time through 15 October to prepare and to file its principal brief in this trademark opposition proceeding.

As set forth further in the attached declarations of both Mr. Quinn and Ms. McGregor, diligent efforts have been made to contact and secure the consent of counsel for the applicant, but all of these efforts have been to no avail.

We respectfully request grant of the requested time extension, giving StonCor Group the full 60 days to which it is entitled under the applicable rules to prepare and file its principal brief in this trademark opposition proceeding.

afternoon on Monday, 8 September. The principal brief for StonCor Group, Inc. is due on Monday, 15 September.

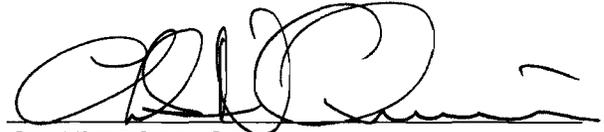
Due to the short time period between receipt of the transcript of the rebuttal testimony by StonCor Group's counsel and the limiting date for submission of the principal brief, StonCor Group's counsel endeavored to contact counsel for the applicant, by both telephone and by e-mail on Monday, September 8, to request that the applicant consent to an extension of time for the filing of StonCor's brief in support of its case-in-chief. Those efforts were unfruitful. While present in his office, calls to the office of counsel for the applicant were not put through to counsel for the applicant, as set forth in detail in the attached declaration of Deanna M. McGregor. Additionally, an e-mail letter sent to counsel for the applicant on 8 September requesting the extension of time in view of the late delivery of the deposition transcript of opposer's rebuttal testimony, and telephone calls by StonCor's counsel to counsel for the applicant went unanswered. The efforts to contact counsel for the applicant continued through Thursday morning 11 September 2008, as detailed in both the declaration of Mr. Quinn and the declaration of Ms. McGregor attached hereto.

No response has been received from counsel for the applicant as of approach of the noon hour on Thursday 11 September 2008.

As set forth in greater detail in the declaration of Mr. Quinn, Mr. Quinn needs additional time to prepare StonCor Group's brief in support of its case-in-chief due to the late delivery of the deposition transcript of StonCor Group's

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. N. Quinn', written over a horizontal line.

Date: September 11, 2008

CHARLES N. QUINN  
Attorney for Opposer  
Fox Rothschild LLP  
2000 Market Street  
Tenth Floor  
Philadelphia, PA 19103  
Tel: 215-299-2135  
Fax: 215-299-2150  
email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)



registration number 27,223 therein, and am the attorney of record for the opposer in the above-referenced trademark opposition proceeding.

2. On Monday 8 September 2008 I checked my docket to be sure that it comported with my memory and that the principal brief for StonCor Group, Inc. in connection with this matter would be due on Monday 15 September 2008. I also checked the file and determined that we still had not, to date, received the transcript of StonCor's rebuttal witness' testimony as of that morning. Later in the day, we did receive the copy of the transcript of StonCor's rebuttal witness' testimony. Realizing that the various matters requiring my attention during the week of 8 September 2008 would make it effectively impossible for me to prepare a suitable principal brief on behalf of StonCor Group, Inc. in this opposition proceeding and to file the same on or before 15 September 2008, I prepared and forwarded a letter to counsel for the applicant, Gordon P. Raisanen, Esquire, requesting an extension of the 15 September due date. Specifically in that letter I requested Mr. Raisanen to agree to at least a 30 day extension, which would give us the full 60 days to which we were normally entitled under the applicable rules of practice in trademark opposition proceedings to prepare the principal brief for StonCor Group in this matter. A copy of my e-mail letter of September 2008 to Mr. Raisanen is attached as Exhibit "A".

3. By the close of business on Tuesday 9 September 2008 I had not received any reply from Mr. Raisanen.

4. On Wednesday 10 September 2008 I instructed Ms. Deanna M. McGregor, an intellectual property paralegal in our office and who works principally for me, to contact Mr. Raisanen by e-mail respecting the requested time extension. Ms. McGregor suggested that rather than using e-mail that she call Mr. Raisanen and I agreed that was the better approach. This was at about 9:50 a.m. Eastern time that I had this discussion with Ms. McGregor since I was required to attend meetings that I knew would last from 10:00 until well into the afternoon on Wednesday 10 September 2008.

5. When I returned from those meetings I sought out Ms. McGregor and asked her whether she had been successful in securing the required extension of time from Mr. Raisanen. She told me that she had called his office at 10:15 a.m. Eastern time. She further told me that when she called the person answering the phone asked Ms. McGregor "Who was calling" and Ms. McGregor identified herself as "Deanna McGregor, paralegal to Charles Quinn at Fox Rothschild". Ms. McGregor said that she was then told by the person on the other end of the telephone line that Mr. Raisanen was unavailable at that time. Ms. McGregor told me that she then left her telephone number with Mr. Raisanen's office and asked that Mr. Raisanen call her back. Ms. McGregor told me that this occurred at 10:15 a.m. Eastern time.

6. Ms. McGregor further told me that not having heard anything from Mr. Raisanen, she called his offices again at 1:20 p.m. Eastern time and was asked by the person on the other end of the line "Are you calling from Fox Rothschild". Ms. McGregor told me that when she, Ms. McGregor, answered in

the affirmative, the person on the other end of the phone, in Mr. Raisanen's office, told Ms. McGregor that that person recognized Ms. McGregor's voice.

7. Ms. McGregor then told me that person then told her that Mr. Raisanen had left the office for the day but was planning to call her (Ms. McGregor) "from the road". Ms. McGregor told me that she had then explained to the party on the other end of the line, in Mr. Raisanen's office, that she, Ms. McGregor, would be out of the office for about the next hour and provided Mr. Raisanen's office with her (Ms. McGregor's) cell phone number, whereupon the person in Mr. Raisanen's office said that she would pass that telephone number along to Mr. Raisanen. The person speaking to Ms. McGregor from Mr. Raisanen's office then asked Ms. McGregor whether she would be back in the office after the one hour period and Ms. McGregor replied in the affirmative.

8. Ms. McGregor then told me, at approximately 3:30 p.m. Eastern time, that she had not received any further call or communication from either Mr. Raisanen or anyone in his office.

9. I called Mr. Raisanen's office at approximately 3:15 p.m. Eastern time on 10 September 2008 and was told that Mr. Raisanen had left the office and was not expected to return to the office until at least Tuesday of next week, which would be 16 September 2008, one day after the principal brief for StonCor Group in this matter is due.

10. I am the attorney that took the deposition of StonCor's principal witness both during StonCor's testimony period in chief and during StonCor's rebuttal testimony period. I am also the attorney that participated in the

deposition of Stonel's only witness when Stonel took its testimony in chief. Accordingly, I am the one attorney in this office that is knowledgeable concerning the testimony of the parties in this case; no other attorney is knowledgeable concerning that testimony. As a result, it is essentially impossible for another attorney in this office to pick up this file and to prepare and file a principal brief on behalf of StonCor Group, Inc. in a timely manner.

11. In addition to this case, I am presently occupied with preparing a motion for summary judgment in the trademark opposition matter of Cytosport, Inc. v. Agropur Cooperative, trademark opposition proceeding 91182060, occupied with preparing a supplemental reply brief in the matter of ex parte Collini, serial number 75/643,651, which brief is due on Friday 12 September, am further involved in other trademark opposition proceedings both before the Trademark Trial and Appeal Board and in the European Community Trademark Office, as well as being occupied with the normal day-to-day aspects of running my office. On top of this I am required to attend a firm-wide retreat of our partners which takes place this coming weekend, commencing on Friday 12 September 2008. Accordingly, I need additional time to prepare and file a suitable principal brief on behalf of StonCor Group, Inc. in this trademark opposition proceeding. The late delivery of the transcript of StonCor's rebuttal witness, makes the position even more difficult as respecting the preparation and filing of the principal brief in this opposition proceeding.

12. As the foregoing shows, our staff and I have made more than reasonable efforts to contact counsel for the applicant to request the

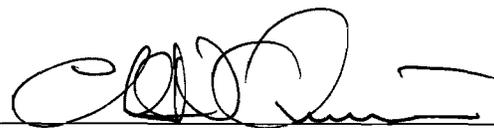
applicant's consent to this time extension. However, those efforts have been unfruitful.

13. As of 10:30 a.m. Eastern time, 11 September 2008, we still have not received any response from Mr. Raisanen.

14. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

15. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,



CHARLES N. QUINN  
Attorney for Opposer  
Fox Rothschild LLP  
2000 Market Street  
Tenth Floor  
Philadelphia, PA 19103  
Tel: 215-299-2135  
Fax: 215-299-2150  
email: [cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)

Date: September 11, 2008

# Exhibit “A”

**Quinn, Charles N.**

**From:** Quinn, Charles N.  
**Sent:** Monday, September 08, 2008 4:52 PM  
**To:** 'Gordon Raisanen'  
**Cc:** Palmerchuck, Beth; McGregor, Deanna M.; IPDocket  
**Subject:** StonCor Group v. Stonel

Charles N. Quinn  
Direct Dial: (215) 299-2135  
Email Address: cquinn@foxrothschild.com

September 8, 2008

**via e-mail to: [gpraisanen@earthlink.net](mailto:gpraisanen@earthlink.net)  
and regular mail**

Gordon P. Raisanen, Esquire  
Raisanen & Associates Law Firm, Ltd.  
15725 US Highway, 12 SW  
Cokato, MN 55321-4624

**RE: StonCor Group, Inc. v. Stonel Inc.  
Opposition No. 91177161  
Our File: 76110.42001**

Dear Gordon:

We only received the copy of the transcript of Mike Jewell's rebuttal testimony this afternoon.

As I am sure you can see looking at the schedule, this late delivery of the deposition transcript places me in a very difficult position regarding the preparation and filing of our principal brief in this trademark opposition proceeding.

Accordingly, I am requesting you, as a matter of professional courtesy, to agree to an extension of the time for us to submit our principal brief and a corresponding shift of the times for the submission of your brief and our reply brief.

Our principal brief is currently due on 15 September and this represents the end of a shortened 30 day period that I had suggested earlier on in the proceedings when we needed some additional time for discovery or some other matter that escapes my memory right now. I would request that you agree to at least a 30 day extension, which would give us the full 60 days to which we are normally entitled under the rules to prepare our principal brief in a trademark opposition proceeding.

Please let me know of your position on this by return e-mail; if you agree I will happily prepare and file a consented motion.

Regards,

Very truly yours,

Charles N. Quinn

CNQ:bap

Charles N. Quinn  
Attorney at Law  
Fox Rothschild LLP  
10 Sentry Parkway  
Suite 200

9/10/2008

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

StonCor Group, Inc.	:	
	:	
Opposer	:	
v.	:	Opposition 91177161
	:	
	:	Application 78/879,396
Stonel Inc.	:	
	:	
Applicant	:	
	:	
		Charles N. Quinn
		U.S.P.T.O. registration number 27,223
		Fox Rothschild LLP
		2000 Market Street, 10th Floor
		Philadelphia, PA 19103-3291
		215-299-2135
		215-299-2150 (fax)
		cquinn@foxrothschild.com
		Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF DEANNA M. MCGREGOR**

1. I, Deanna M. McGregor, hereby declare that I am a citizen of the United States, a resident of Wilmington, Delaware, and am employed as a paralegal in the intellectual property department of Fox Rothschild LLP, a law firm having its principal offices in Philadelphia, Pennsylvania. Fox Rothschild LLP is counsel for the opposer in this trademark opposition proceeding; Charles N. Quinn, for whom I work principally, is the lawyer representing StonCor Group, Inc. in this trademark opposition proceeding.

2. At 9:46 am on 10 September 2008, Mr. Quinn emailed me requesting that we convene in his office right away to discuss StonCor Group,

Inc. v Stonel, Inc. I met with Mr. Quinn at approximately 9:50 am. He requested that I follow-up with Applicant's counsel, Mr. Raisanen, via email, regarding a previously requested consented motion to extend time in which to file StonCor's principal brief. I proposed that I contact Mr. Raisanen via telephone as a more immediate and direct approach. Mr. Quinn agreed.

3. At approximately 10:15 am on 10 September 2008, I telephoned Mr. Raisanen's office and requested to speak with him. The person who answered the phone asked who was calling. I identified myself as "Deanna McGregor, paralegal to attorney Charles Quinn of Fox Rothschild". I was put on hold. The person who answered the phone came back on the line and told me that "Mr. Raisanen was not available" and asked if she could take a message. I asked that Mr. Raisanen return my call and I provided her with my direct office phone number.

4. At about 1:20 in the afternoon on 10 September 2008, having not heard from Mr. Raisanen, I called his office again. I asked for Mr. Raisanen and the person answering the phone asked if I was calling from Fox Rothschild. I answered that I was. She said "I thought I recognized your voice." It seemed odd to me that someone would recognize my voice after having only spoken to me one time, and briefly at that. I was then told that Mr. Raisanen had left the office for the day, but she believed he planned to call me "from the road." I informed the person to whom I was speaking that I expected to be out of the office for approximately one hour. I gave the woman I was speaking to on the phone my cell phone number in case Mr. Raisanen was planning to contact me

while I was out of the office. The woman on the phone said she would pass it along to him. She then asked me if I would be back in the office after the hour. I answered that I would.

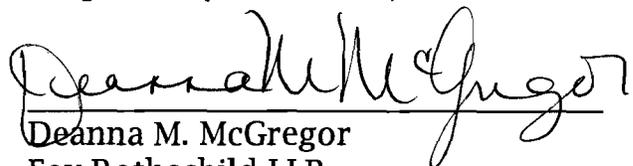
5. As of 10:30 am on 11 September 2008, I have not been contacted by either Mr. Raisanen, or any member of his office, on either my office phone or my cell phone.

6. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize StonCor's position in this proceeding.

7. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Date: 11 September 2008

Respectfully submitted,



Deanna M. McGregor  
Fox Rothschild LLP  
2000 Market Street  
Tenth Floor  
Philadelphia, PA 19103  
Tel: 215-299-2146  
Fax: 215-299-2150  
email:dmcgregor@foxrothschild.com

ESTTA Tracking number: **ESTTA235871**

Filing date: **09/10/2008**

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

Proceeding	91182060
Party	Defendant Agropur Cooperative
Correspondence Address	CHARLES N. QUINN FOX ROTHSCHILD LLP 2000 MARKET STREET, 10TH FLOOR PHILADELPHIA, PA 19103-3291 UNITED STATES cquinn@frof.com
Submission	Motion to Extend
Filer's Name	Charles N. Quinn
Filer's e-mail	cquinn@foxrothschild.com, dmcgregor@foxrothschild.com, bpalmerchuck@foxrothschild.com
Signature	/CHARLES N. QUINN/
Date	09/10/2008
Attachments	Motion for EOT - 91182060.pdf ( 5 pages )(64464 bytes )

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

Cytosport, Inc.

Opposer,

v.

Agropur Corporation

Applicant.

Opposition No. 91182060

Application Ser. No. 76/549,070

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
Fox Rothschild LLP  
2000 Market Street, 10th Floor  
Philadelphia, PA 19103-3291  
215-299-2135  
215-299-2150 (fax)  
cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**DECLARATION OF CHARLES N. QUINN**

1. I, Charles N. Quinn, hereby declare that I am a citizen of the United states, residing at 419 Bowen Drive, Exton, Pennsylvania, 19341, a partner in the law firm of Fox Rothschild LLP having my principal office at 2000 Market Street, Tenth Floor, Philadelphia, PA 19103-3291, a member in good standing of the Bar of the Supreme Court of the Commonwealth of Pennsylvania holding registration number 17,603 therein, admitted in good standing to practice in patent matters before the United States Patent and Trademark Office holding

registration number 27,223 therein, and am the attorney of record for the applicant in the above-referenced trademark opposition proceeding.

2. As representing the applicant we received discovery from the opposer in the form of a set of interrogatories and a set of requests for production of documents on 13 August 2008. As a result, the limiting date for responding to that discovery is today, 30 days as allowed by the Federal Rules of Civil Procedure, plus five days for the mailing time of that discovery.

3. We have worked on preparing responses but have been delayed and need more time due to a number of factors in order to prepare adequate and correct responses to the interrogatories and request for production of documents. These factors that have delayed preparation of the responses include personal disruptions resulting from staff vacations and personnel changes in our office, firm disruptions resulting from a merger and acquisition of another firm that has a substantial intellectual property practice with undersigned counsel being involved in that merger and acquisition activity, and involvement of undersigned counsel in taking testimony and briefing in two other pending oppositions before the Trademark Trial and Appeal Board, numbers 91182060 and 91173583. These activities plus the other day to day activities in which undersigned counsel is involved, including several trademark opposition proceedings pending in the European Community Trademark Office, have made it impossible to prepare and serve adequate and correct responses to the opposer's first set of interrogatories and opposer's first set of request for production of documents.

4. I have tried to contact opposing counsel as evidenced by the attached e-mail letter, to seek opposing counsel's consent to the extension of time sought by this motion, but have not been successful. I have not received any response from opposing counsel to the e-mail inquiry attached hereto as Exhibit "A". Accordingly, we need additional time and have filed this motion for a protective order in order to be in full compliance with the Rules of Civil Procedure as applied to this trademark opposition proceeding.

5. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize Agropur's position in this proceeding.

6. To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Date: 10 SEPTEMBER 2008



Charles N. Quinn  
Attorney for Applicant

FOX, ROTHSCHILD LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
email: cquinn@foxrothschild.com

# **EXHIBIT “A”**

**Quinn, Charles N.**

**From:** Palmerchuck, Beth on behalf of Quinn, Charles N.  
**Sent:** Wednesday, September 10, 2008 2:44 PM  
**To:** 'dejonge@tnw.com'  
**Cc:** Quinn, Charles N.; McGregor, Deanna M.; Palmerchuck, Beth  
**Subject:** Cytosport, Inc. v. Agropur, Inc.; Our Reference: 19427.40001

September 10, 2008

**Via Email to: [dejonge@tnw.com](mailto:dejonge@tnw.com)**  
**And regular mail**

Peter M. deJonge, Esquire  
Thorpe North and Western, LLP  
P.O. Box 1219  
Sandy, UT 84091-1219

**Re: Cytosport, Inc. v. Agropur Cooperative**  
**Trademark Opposition 91182060**  
**Our Reference: 18427.40001**

Dear Mr. deJonge:

We need some additional time to respond to the discovery materials you have served on behalf of your client Cytosport, Inc.

Specifically, I am asking you for three additional weeks to respond to those discovery materials. Please let me know by return e-mail some time today whether we have your consent to such additional time. If I do not hear from you by the end of the day, I will file a motion with the Board seeking such additional time.

Additionally, I would like to propose an extension of the discovery period for two months. Please let me know as to whether you will agree to this or not. If you will, I will file a consented motion with the Board seeking those two additional months of time to complete discovery in this matter.

I look forward to hearing from you concerning these issues.

Very truly yours,

Charles N. Quinn

CNQ:bap

ESTTA Tracking number: **ESTTA235882**

Filing date: **09/10/2008**

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

Proceeding	91182060
Party	Defendant Agropur Cooperative
Correspondence Address	CHARLES N. QUINN FOX ROTHSCHILD LLP 2000 MARKET STREET, 10TH FLOOR PHILADELPHIA, PA 19103-3291 UNITED STATES cquinn@frof.com
Submission	Motion to Extend
Filer's Name	CHARLES N. QUINN
Filer's e-mail	cquinn@frof.com
Signature	/CHARLES N. QUINN/
Date	09/10/2008
Attachments	Motion for Protective Order.pdf ( 7 pages )(54174 bytes )

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

Cytosport, Inc.

Opposer,

v.

Agropur Corporation

Applicant.

Opposition No. 91182060

Application Ser. No. 76/549,070

Charles N. Quinn  
U.S.P.T.O. registration number 27,223  
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cquinn@foxrothschild.com  
Deposit Account 50-1943

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION FOR PROTECTIVE ORDER RESPECTING  
RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Applicant through its undersigned counsel hereby moves this Board for a protective order extending the time for response by applicant to opposer's first set of interrogatories and first set of request for production of documents by three weeks, with such time terminating on 1 October 2008. The reasons for seeking this protective order and the extension of time are set forth in more detail in the attached Declaration of applicant's counsel.

We respectfully solicit careful consideration and grant of this motion for a protective order extending the time for response to opposer's first set of interrogatories and request for production of documents.

To the extent there is any fee required in connection with the receipt, acceptance and/or consideration of declaration and/or any accompanying papers herewith, please charge all such fees to Deposit Account 50-1943.

Respectfully submitted,

Date: 10 SEPTEMBER 2008



---

Charles N. Quinn  
Attorney for Applicant

FOX, ROTHSCHILD LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
email: cquinn@foxrothschild.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Cytosport, Inc.

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**DECLARATION OF CHARLES N. QUINN**

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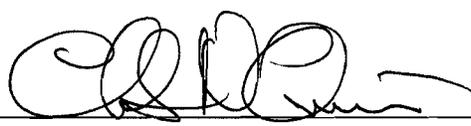
4. I have tried to contact opposing counsel as evidenced by the attached e-mail letter, to seek opposing counsel's consent to the extension of time sought by this motion, but have not been successful. I have not received any response from opposing counsel to the e-mail inquiry attached hereto as Exhibit "A". Accordingly, we need additional time and have filed this motion for a protective order in order to be in full compliance with the Rules of Civil Procedure as applied to this trademark opposition proceeding.

5. I hereby declare, under penalty of perjury pursuant to 28 USC 1746, that all statements made herein are true and that all statements made herein on information and belief are believed to be true and further that I realize that false statements and the like so made herein are punishable by fine, or imprisonment or both, under 18 USC 1001 et seq., and further may jeopardize Agropur's position in this proceeding.

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Respectfully submitted,

Date: 10 SEPTEMBER 2008

  
\_\_\_\_\_  
Charles N. Quinn  
Attorney for Applicant

FOX, ROTHSCHILD LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103-3291  
Tel: 215-299-2135  
Fax: 215-299-2150  
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# **EXHIBIT “A”**

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**Sent:** Wednesday, September 10, 2008 2:44 PM  
**To:** 'dejonge@tnw.com'  
**Cc:** Quinn, Charles N.; McGregor, Deanna M.; Palmerchuck, Beth  
**Subject:** Cytosport, Inc. v. Agropur, Inc.; Our Reference: 19427.40001

September 10, 2008

**Via Email to: [dejonge@tnw.com](mailto:dejonge@tnw.com)  
And regular mail**

Peter M. deJonge, Esquire  
Thorpe North and Western, LLP  
P.O. Box 1219  
Sandy, UT 84091-1219

**Re: Cytosport, Inc. v. Agropur Cooperative  
Trademark Opposition 91182060  
Our Reference: 18427.40001**

Dear Mr. deJonge:

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I look forward to hearing from you concerning these issues.

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Charles N. Quinn

CNQ:bap

9/10/2008