

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

Mailed: July 8, 2009

Opposition No. **91181621**

StonCor Group, Inc.

v.

Les Pierres Stonedge Inc.

Before Walters, Zervas and Mermelstein,
Administrative Trademark Judges.

On April 15, 2009, the Board denied opposer's motion to reopen its testimony period, finding that opposer's counsel had not established excusable neglect by stating he was unable to conduct depositions during opposer's testimony as he was seriously ill. Opposer has filed a timely request for reconsideration to which applicant has objected.

Motions for reconsideration, as set forth in 37 C.F.R. § 2.127(b), provide an opportunity for a party to point out any error the Board may have made in considering the matter initially. It is not to be a reargument of the points presented in its original motion. In this case, opposer reargues the effect of his illness on the ability of counsel to file a motion for an extension of the testimony period without applicant's consent. Opposer had argued that two days after its testimony period opened, counsel became

seriously ill and had to modify his work schedule, that he was unable to work with other attorneys in his firm due to his illness and he worked from home with paralegals who filed papers in other proceedings under his direction. The only information counsel provided as to why no extension of time was filed in this proceeding was that applicant had previously refused to consent to an extension of time.

In its order, the Board noted that counsel was able to file or have filed extensions in other proceedings, and thus there was no excusable neglect established sufficient to reopen opposer's testimony period. (Order p. 4). Opposer now argues that the Board erred in "failing to appreciate that [applicant] had refused [opposer's] request for rescheduling of [opposer's] testimony prior to the start of [opposer's] testimony period" and then "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." (Br. p.1)¹

The Board did not assume that a contested motion and an uncontested motion require the same level of work.

¹ Applicant points out that opposer's previous request for an extension of time, to which it did not consent, was to extend discovery; it was not a request to extend the testimony period in light of counsel's illness.

However, the Board did consider the fact that opposer's counsel had been able to file requests for extensions of time in other proceedings that were not consented to² during his illness, and there was no evidence as to why that did not happen in this case.³ As stated in our original decision, the closing of the testimony period without submitting evidence was wholly within counsel's control in light of his ability to file or have filed extension requests in other proceedings. (Order 4). Thus, these same matters were fully considered by the Board.

Accordingly, upon careful consideration of opposer's arguments on reconsideration, we are not persuaded that there was any error in our decision. Opposer's request for reconsideration is therefore denied.

² While many of these filings were in ex parte matters, as an experienced intellectual property attorney, counsel had plenty of motions, memoranda and declarations upon which to draw, and could have tasked his paralegals or another attorney in his firm to adapt such a motion to this proceeding. Applicant points to several oppositions for the same client wherein counsel filed just such a request and could have referred his paralegal to the same. He would not have been re-inventing the wheel, as he seems to argue in this motion. (See Opposition 91182060 wherein counsel requested an extension of time to respond to discovery due to personnel issues and vacations).

³ Opposer objects to the Board's inclusion in its order of the statement that "to the extent that this case involved a docketing error". There was no evidence in the record at all as to why this case was different from other proceedings and why a motion to extend time could not have been timely filed if counsel was unable to conduct or have conducted depositions, had he been aware of the time period running.

The remaining trial dates are reset as indicated below:

Defendant's 30-day Trial Period Ends	August 8, 2009
Plaintiff's Rebuttal Disclosures	August 23, 2009
Plaintiff's 15-day Rebuttal Period Ends	September 22, 2009

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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