

ESTTA Tracking number: **ESTTA316810**

Filing date: **11/13/2009**

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

Proceeding	91181621
Party	Plaintiff StonCor Group, Inc.
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Date	11/13/2009
Attachments	EX1-#857793-v1-COMBINED_MOTION_AND_DECLARATION_FOR_45_DAY_EXTENSION.pdf (11 pages)(103986 bytes)

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

StonCor Group, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91181621
v.)	
)	Ser. No. 76/650,832
Les Pierres Stonedge Inc.,)	
)	
Applicant.)	

**STONCOR’S MOTION FOR A FORTY-FIVE DAY EXTENSION OF TIME
TO FILE STONCOR’S PRINCIPAL BRIEF**

Introduction

Opposer StonCor Group, Inc. hereby moves this Board for a forty-five (45) day extension of time to file StonCor’s principal brief. No prior such extension has been requested. StonCor’s principal brief is currently due on 21 November 2009; grant of the requested time extension would move the limiting date for filing the brief to Tuesday, 5 January 2010.

The basis of this motion and the additional time requested is that due to StonCor’s counsel’s representation of another client in a hotly contested patent infringement suit pending in the United States District Court for the Eastern District of Pennsylvania, which infringement suit commenced shortly before StonCor’s counsel took StonCor’s rebuttal witness’s testimony in this opposition, the press of that patent infringement litigation over the past two months and especially since the rebuttal testimony transcript was received, has not left sufficient time for StonCor’s counsel to prepare and to file StonCor’s principal brief in this opposition proceeding.

Statement of Facts

On 9 September 2009, StonCor's Vice President, Mr. Michael Jewell, gave StonCor's rebuttal testimony in this proceeding.¹ StonCor's rebuttal testimony period ended on 22 September 2009, thereby making StonCor's principal brief in this trademark opposition proceeding due on 21 November 2009.²

By 7 October 2009, the date by which StonCor was obligated to furnish the transcript of Mr. Jewell's rebuttal testimony to Les Pierres' counsel, the transcript had not been finished by the court report. StonCor's counsel and Les Pierres' counsel agreed to two (2) additional weeks for StonCor to receive the transcript, process it, and to file and serve it.³

On 21 October 2009, the transcript had been received. StonCor's counsel had completed processing the exhibits that accompanied the transcript for electronic filing of the transcript together with the exhibits and service of the same on Les Pierres' counsel. Computer difficulties on the United States Patent and Trademark Office website that day prevented electronic filing and, therefore, service of StonCor's rebuttal testimony transcript and accompanying exhibits. StonCor's rebuttal testimony transcript and the accompanying exhibits were filed with the Trademark Trial and Appeal Board and sent electronically to Les Pierres' counsel the following day, 22 October 2009.⁴

Since just prior to taking StonCor's Mr. Jewell's rebuttal testimony, StonCor's counsel has been representing Novatec, Inc., as the plaintiff in a patent infringement suit pending in the

¹ ¶ 2, Accompanying Declaration of StonCor's Counsel

² ¶ 3, Accompanying Declaration of StonCor's Counsel

³ ¶ 4, Accompanying Declaration of StonCor's Counsel

⁴ ¶ 5, Accompanying Declaration of StonCor's Counsel

United States District Court of the Eastern District of Pennsylvania before the Honorable John P. Fullam. The case is *Novatec, Inc. v. The Conair Group, Inc.*, civil action 09-cv-02887.⁵

The patent infringement case has been hotly contested from the outset, with Conair raising jurisdictional and venue objections that Novatec asserts are spurious. There have been numerous motions, answers, replies, sur replies and the like filed, all with accompanying voluminous supporting affidavits and exhibits. Judge Fullam has ordered a special sixty (60) day discovery period directed to only the issues of jurisdiction and venue. The parties are currently in that 60 day period, which does not expire until 27 November. After that date, both parties will submit further motions, answers and replies addressing the jurisdictional and venue issues.⁶

Gathering information; interviewing and preparing affidavits for Novatec's witnesses; studying, analyzing and replying to Conair's various motions and other papers; dealing with a proposed protective order; and preparing for deposition testimony to be given directed to the jurisdictional and venue issues, during the special 60 day discovery period ordered by Judge Fullam, has consumed very, very substantial amounts of StonCor's counsel time over the past two months.⁷ As a result, StonCor's counsel has not had sufficient time to devote to the preparing of StonCor's principal brief in the above-captioned trademark opposition proceeding. StonCor's counsel need additional time to prepare that brief, or else StonCor's case will be severely and irreparably prejudiced.⁸

⁵ ¶ 6, Accompanying Declaration of StonCor's Counsel

⁶ ¶ 7, Accompanying Declaration of StonCor's Counsel

⁷ ¶ 8, Accompanying Declaration of StonCor's Counsel

⁸ ¶ 9, Accompanying Declaration of StonCor's Counsel

StonCor's counsel has not, to date, requested any extension of time for the preparation and filing of StonCor's principal brief. StonCor's counsel needs forty-five (45) additional days, at a minimum, for the preparation and filing of that brief.⁹

StonCor's counsel has requested the consent by counsel for Les Pierres to this motion, but has not received any reply from Les Pierres' counsel.¹⁰

Argument

The law is clear that the press of other litigation constitutes the good cause required for the grant of a time extension motion in a trademark opposition proceeding, so long as that time extension motion is filed prior to the close of the relevant period. *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Soletoducale SCRL*, 59 USPQ2d 1383 (TTAB 2001). Here, as set forth above and in more detail in the accompanying supporting declaration of StonCor's undersigned counsel, the press of *Novatec, Inc. v. The Conair Group, Inc.*, civil action 09-cv-02887 has prevented StonCor's counsel from devoting adequate time to the preparation of StonCor's principal brief in this trademark opposition proceeding. The press of the Novatec case, as detailed above and in the accompanying declaration constitutes good cause for StonCor's instant motion, which should be granted forthwith.

Conclusion and Prayer for Relief

For the foregoing reasons, StonCor respectfully submits that good cause for the requested

⁹ ¶ 10, Accompanying Declaration of StonCor's Counsel

¹⁰ ¶ 11, Accompanying Declaration of StonCor's Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing StonCor's Motion for a Forty-Five Day Extension of Time to File StonCor's Principal Brief was served on applicant's attorney via first class mail, postage prepaid:

James R. Menker, Esquire
Holley & Menker, P.A.
P.O. Box 331937
Atlantic Beach, FL 32202
jmenker@holleymenker.com

13 November 2009

By: Charles N. Quinn
Charles N. Quinn

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

StonCor Group, Inc.,)	
)	
Opposer,)	
)	Opposition No. 91181621
v.)	
)	Ser. No. 76/650,832
Les Pierres Stonedge Inc.,)	
)	
Applicant.)	

**DECLARATION OF STONCOR’S COUNSEL IN SUPPORT OF
STONCOR’S MOTION FOR A FORTY-FIVE DAY EXTENSION OF TIME
TO FILE STONCOR’S PRINCIPAL BRIEF**

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 747 Constitution Drive, Suite 100, Exton, PA 19341, 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 opposer StonCor in the above-referenced trademark opposition proceeding.

2. On 9 September 2009, StonCor’s Vice President, Mr. Michael Jewell, gave StonCor’s rebuttal testimony in this proceeding.

3. StonCor’s rebuttal testimony period ended on 22 September 2009, thereby making StonCor’s principal brief in this trademark opposition proceeding due on 21 November 2009.

4. By 7 October 2009, the date by which StonCor was obligated to furnish the transcript of Mr. Jewell's rebuttal testimony to Les Pierres' counsel, the transcript had not been finished by the court reporter. StonCor's counsel and Les Pierres' counsel agreed to two (2) additional weeks for StonCor to receive the transcript, process it, and to file and serve it.

5. By 21 October 2009, the transcript had been received. StonCor's counsel had completed processing the exhibits that accompanied the transcript for electronic filing of the transcript together with the exhibits in the Trademark Trial and Appeal Board and service of the transcript and exhibits on Les Pierres' counsel. Computer difficulties on the United States Patent and Trademark Office website that day prevented the electronic filing of StonCor's rebuttal testimony transcript and accompanying exhibits. StonCor's rebuttal testimony transcript and the accompanying exhibits were filed with the Trademark Trial and Appeal Board and sent electronically to Les Pierres' counsel the following day, 22 October 2009.

6. Since just prior to taking StonCor's Mr. Jewell's rebuttal testimony, I have been representing Novatec, Inc., as the plaintiff in a patent infringement suit pending in the United States District Court of the Eastern District of Pennsylvania before the Honorable John P. Fullam. The case is Novatec, Inc. v. The Conair Group, Inc., civil action 09-cv-02887 and commenced in late August.

7. This patent infringement case has been hotly contested from the outset, with Conair raising jurisdictional and venue objections that Novatec asserts are spurious. There have been numerous motions, answers, replies, sur replies and the like filed, all with accompanying voluminous supporting affidavits and exhibits. Judge Fullam recently ordered a special sixty (60) day discovery period directed to only the issues of jurisdiction and venue. We are currently in that 60 day period, which is currently set to expire on 27 November. After that date, both

parties will submit further motions, answers and replies addressing the jurisdictional and venue issues.

8. Gathering information; interviewing and preparing affidavits of Novatec's witnesses; studying, analyzing and replying to Conair's various motions and other papers; dealing with a proposed protective order; and preparing for deposition testimony to be given directed to the jurisdictional and venue issues, during this special 60 day discovery period ordered by Judge Fullam, has consumed very, very substantial amounts of my time over the past two months.

9. Due to the press of that litigation, I have not had sufficient time to devote to preparing StonCor's principal brief in the above-captioned trademark opposition proceeding. I need additional time to prepare that brief; otherwise StonCor's case will be severely and irreparably prejudiced.

10. I have not, to date, requested any extension of time for the preparation and filing of StonCor's principal brief. I need forty-five (45) additional days, at a minimum, for the preparation and filing of that brief. Given that we are in the holiday season, given that there will be considerable briefing addressing the jurisdictional and venue issues in the Novatec v. Conair case, and given that personnel to assist me may be scarce due to the portion of the calendar that is upcoming, I need forty-five (45) additional days.

11. I have requested Les Pierres' counsel's consent to this motion, but have not received any reply to my request.

12. 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.

13. 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: 13 November 2009

/Charles N. Quinn/
CHARLES N. QUINN
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Declaration of StonCor' Counsel in Support of StonCor's Motion for a Forty-Five Day Extension of Time to File Stoncor's Principal Brief was served on applicant's attorney electronically and via first class mail, postage prepaid to the following address:

James R. Menker, Esquire
Holley & Menker, P.A.
P.O. Box 331937
Atlantic Beach, FL 32202
jmenker@holleymenker.com

Date: 13 November 2009

By: /Charles N. Quinn/
Charles N. Quinn