

ESTTA Tracking number: **ESTTA336835**

Filing date: **03/11/2010**

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

Proceeding	91181621
Party	Defendant Les Pierres Stonedged Inc.
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Date	03/11/2010
Attachments	2010-3-11 APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO STRIKE ET AL.pdf ( 5 pages )(369449 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 TO STRIKE THE  
MATERIAL’S ATTACHED TO APPLICANT’S MAIN BRIEF AND REPLY IN  
SUPPORT OF ITS OBJECTION TO OPPOSER’S REBUTTAL TESTIMONY**

Applicant, Les Pierres Stonedge Inc. (“Applicant”), hereby opposes Opposer, StonCor Group Inc.’s Motion to Strike the dictionary definitions attached to Applicant’s Main Brief filed in connection with the above-captioned opposition.

In its Motion to Strike and in its Reply Brief, Opposer asserts that it is improper for the Board to take judicial notice of the dictionary definitions of four terms because Applicant “failed to submits its request with a notice of reliance during its testimony period, as required by TBMP Section 704.12(b) and Trademark Rule §2.122.” Opposer’s Motion to Strike, p. 2 (emphasis added).

No reasonable reading of TBMP Section 704.12 could be made that would support Opposer’s claim that a party must make a request for judicial notice during its testimony period.

TBMP Section 704.12(b) merely states that a request for judicial notice should be made during the requesting party's testimony period. Therefore, Opposer's Motion to Strike should be denied.

Opposer argues that it would be "most inequitable for the Board to take judicial notice of anything, including [Applicant's] definition, at this late stage". Applicant avers that there is nothing inequitable about taking judicial notice of facts that are not subject to reasonable dispute when it renders its decision. As explained in TBMP Section 704.12(d), "Judicial notice may be taken at any stage of a Board proceeding, even on review of the Board's decision on appeal."

In its Reply Brief, Opposer cites *Litton Business Sys., Inc. v. J. G. Furniture Co., Inc.*, 190 USPQ 431 (TTAB 1976) in support of its arguments that a request for judicial notice must be made during the requester's testimony period. However, unlike *Litton*, Applicant is not attempting to rely on judicial notice of dictionary definitions to make a *prima facie* case in order to avoid judgment under 37 C.F.R. Section 2.132. *Id.* at 434. Instead, Applicant is merely noting the dictionary definitions of a few of the terms relevant to understanding the parties' marks and goods.

As TBMP Section 5.12(b) explains, the Board will take judicial notice of a relevant fact not subject to reasonable dispute, as defined in Fed. R. Evid. 201(b), if a party (1) requests that the Board do so, and (2) supplies the necessary information. Applicant has complied with both requirements. Therefore, Opposer's sole legitimate response to Applicant's request for judicial notice is to request an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. TBMP Section 704.12(c).

Lastly, Opposer contends that it would be unfair for the Board to consider the proffered dictionary definitions because it did not have the opportunity to present rebuttal testimony with respect to those definitions. However, because the proffered dictionary definitions are no subject to reasonable dispute in that they (1) are generally known within the United States and (2) are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, Opposer's opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed provides Opposer with an adequate ability to fairly address these dictionary definitions.

In regards to the other evidentiary dispute, Applicant avers that it has properly asserted its objection to Opposer's rebuttal testimony on the grounds that it constitutes improper rebuttal. Moreover, Opposer has not and does not waive this objection. First, despite the typographical error in Applicant's Main Brief, Applicant's objection was clearly pursuant to TBMP Section 707.03(c) rather than 707.02(c). In addition, Applicant has followed the suggested procedure for raising such an objection which is described in TMEP Section 707.03(c). Opposer either blatantly misreads or purposely ignores the relevant rules. Contrary to Opposer's claim, a motion to strike is not required for Applicant to object to Opposer's rebuttal testimony on the grounds that it constitutes improper rebuttal.

[T]he objections described in this section ... generally should not be raised by motion to strike. Rather, the objections should simply be made in writing at the time specified in the rules cited above, or orally "on the record" at the taking of the deposition, as appropriate. These objections, if properly asserted and not waived or rendered moot, normally will be considered by the Board in its determination of the case at final hearing.

Additionally, in order to preserve an objection that was seasonably raised at trial, a party should maintain the objection in its brief on the case.”  
TBMP Section 707.03(c) (emphasis added) (footnote citations omitted).

Applicant unequivocally made an oral objection on the record during the testimony deposition and clearly maintained its objection in its brief on the case. Of course, Opposer makes no arguments that its rebuttal testimony did not constitute improper rebuttal only that Applicant cited the wrong section of the TBMP in its brief and did not file a motion to strike. Because it clearly constituted improper rebuttal, Opposer’s rebuttal testimony and all exhibits attached thereto should be given no consideration in the Board’s decision.

Respectfully submitted,

LES PIERRES STONEDGE INC.

Date: March 11, 2010

By:

  
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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing “MOTION TO STRIKE THE MATERIAL’S ATTACHED TO APPLICANT’S MAIN BRIEF AND REPLY IN SUPPORT OF ITS OBJECTION TO OPPOSER’S REBUTTAL TESTIMONY” 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 **March 11, 2010**.

By:

  
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Laura K. Greer