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

Proceeding	91181621
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@frof.com, dmcgregor@frof.com, bpalmerchuck@frof.com
Submission	Other Motions/Papers
Filer's Name	CHARLES N. QUINN
Filer's e-mail	cquinn@frof.com, dmcgregor@frof.com, ipdocket@frof.com
Signature	/CHARLES N. QUINN/
Date	06/16/2011
Attachments	16 JUNE 2011 RENEWED MOTION AS PART OF RECONSIDERATION.pdf (5 pages)(28744 bytes)

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

StonCor Group, Inc.	:	
	:	
Opposer	:	
v.	:	Opposition 91181621
	:	
	:	Application 76/650,832
	:	
Les Pierres Stonedge, Inc.	:	Mark: STONEDGE
	:	
Applicant	:	

Charles N. Quinn
U.S.P.T.O. registration number 27,223
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341
610-458-4984
610-458-7337(fax)
cquinn@foxrothschild.com
Deposit Account 50-1943

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

**STONCOR’S RENEWED MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF
ACCOMPANYING AND FORMING A PART OF STONCOR’S REQUEST FOR
RECONSIDERATION OF THE BOARD’S DECISION OF 16 MAY 2011**

StonCor hereby renews its 8 February 2011 Motion to Suspend the Rules and for Leave to File a Supplemental Brief addressing the issue of attachment of a presumption of administrative correctness to trademark registration applications approved for publication of the marks for opposition by the United States Patent and Trademark Office. StonCor makes this renewed motion in view of the dispositive nature thereof with respect to the decision issued by the Board on 16 May 2011; this Motion is submitted as a part of and complementary to StonCor’s Request for Reconsideration of the Board’s Decision of 16 May 2011.

In this proceeding, StonCor opposed the Les Pierres application for registration of the mark STONEDGE for use on and in connection with “pre-cast decorative stone” on the basis of StonCor’s registered, incontestable marks STONHARD, STONBLEND, STONCLAD, STONCRETE, STONFIL, STONLINER, STONLOK, STONSET, STONSHIELD, STONKOTE, STONCREST, STONLUX, STONPROOF and STONSEAL, which are registered for products such as mortars, grouts and adhesives.

At the oral hearing on 9 November 2010, StonCor took the position that StonCor’s rebuttal testimony and documentary evidence were admissible to rebut a presumption of administrative correctness to which the United States Patent and Trademark Office action of approving Les Pierres’ application was entitled, just as is any essentially final action of any administrative agency.

At the hearing the Administrative Trademark Judges inquired as to StonCor’s authority for the proposition that the action by the United States Patent and Trademark Office of approving Les Pierres’ application was entitled to a presumption of administrative correctness, which StonCor would be entitled to rebut with StonCor’s rebuttal testimony and evidence. In the colloquy with the Administrative Trademark Judges, StonCor stated that it did not at that time have case law authority directly addressing the proposition, but that as a general principle of administrative law, action of the United States Patent and Trademark Office resulted in such a presumption, which StonCor was entitled to rebut. In further course of the discussion, the Administrative Trademark Judges conceded that they did not know of any authority addressing the issue of whether a presumption of administrative correctness attaches to the action of the United States Patent and Trademark Office in approving a trademark application for opposition purposes.

In view of the admission/concession by the Administrative Trademark Judges at the 9 November hearing that they knew of no authority addressing the issue, it was appropriate to bring authority relevant to that issue to the Board's attention, so that the Board might render its decision consistently with decided precedent.

Subsequent to the 9 November 2010 hearing, StonCor's counsel researched the law and found bountiful case law authorities supporting the proposition that a presumption of administrative correctness attaches to a trademark registration application the United States Patent and Trademark Office approves for publication.

On 8 February 2011 StonCor, having spent considerable time and effort researching the law subsequent to the hearing and having found case law supporting StonCor's position, moved to suspend the rules and for leave to file a supplemental brief bringing such case law authority to the Board's attention.

On 25 February 2011 the Board summarily denied StonCor's motion, stating "we see no reason for allowing a supplemental brief" and rationalized its decision by asserting that any such brief would be "at this very late stage in the proceeding".

For the Board to cast a blind eye towards even the existence of such case law authorities and to ignore the opportunity for enlightenment concerning the same, by StonCor filing a brief setting forth the applicable case law, does not serve the ends of justice.

StonCor respectfully submits that as part of the Board's reconsideration of its decision of 16 May 2011, the Board should receive a brief from StonCor setting forth numerous case law authorities holding that trademark applications approved for publication of the associated mark

by the United States Patent and Trademark Office enjoy a presumption of administrative correctness attached thereto, and should then reconsider and reverse its decision of 16 May 2011.

Respectfully submitted,

Date: 16 June 2011

/Charles N. Quinn/
CHARLES N. QUINN
Attorney for Opposer, StonCor Group, Inc.
Fox Rothschild LLP
747 Constitution Drive, Suite 100
Exton, PA 19341
Tel: 610-458-4984; Fax: 610-458-7337
email: cquinn@foxrothschild.com

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Les Pierres Stonedge, Inc.	:	
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Applicant	:	

CERTIFICATE OF SERVICE

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

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

Date: 16 June 2011

/Charles N. Quinn/

Charles N. Quinn