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

Proceeding	91181621
Party	Defendant Les Pierres Stonedge 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	Motion to Dismiss 2.132
Filer's Name	James R. Menker
Filer's e-mail	eastdocket@holleymenker.com
Signature	/jmenker/
Date	01/22/2009
Attachments	1-22-2009 Amended Motion for Judgment 91181621 - STONEDGE.pdf (4 pages)(318283 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.	)	

AMENDED MOTION FOR JUDGMENT FOR OPPOSER'S FAILURE TO PROVE CASE

Pursuant to TMEP Rule 534.02 and 37 C.F.R. Section 2.132(a), Applicant, Les Pierres Stonedge Inc. ("Applicant"), hereby moves for dismissal of the above-captioned opposition on the ground that Opposer, StonCor Group, Inc., failed to prosecute the instant opposition.

As grounds for the Motion, Applicant, by its attorneys, avers as follows:

1. On December 20, 2007, Opposer filed a Notice of Opposition seeking to prevent the registration of trademark application Ser. No. 76650832. The Notice of Opposition included copies of what are purported to be status and title copies of the pleaded registrations dated March 12, 2007 and March 13, 2007.

2. On January 2, 2008, the Board issued an Order instituting the opposition proceeding and setting forth the opposition trial dates.

3. On January 31, 2008, Applicant timely filed its Answer and Affirmative Defenses.

4. On May 19, 2008, Opposer filed a stipulated motion to suspend the opposition

proceedings for 30 days. The motion to suspend contained a new schedule for the opposition trial dates.

5. On May 19, 2008, the Board issued an Order granting the stipulated motion to suspend specifying that the opposition trial dates set forth in the motion to suspend would be followed.

6. Discovery closed on October 8, 2008. Both parties served their initial discovery requests on October 8, 2008. Although Applicant timely responded to Opposer's discovery requests, Opposer did not respond to Applicant's discovery requests despite several assurances from Opposer's counsel that responses were forthcoming.

7. Opposer's testimony period closed on January 6, 2009. On information and belief, Opposer testimony period has passed, and Opposer has not taken testimony or offered any other evidence.

8. On January 13, 2009, Applicant filed a Motion for Judgment under 37 C.F.R. Section 2.132(b). Because the copies of the registrations attached as exhibits to the Notice of Opposition were properly introduced into evidence in accordance with 37 C.F.R. Section 2.122(d), Applicant avers that its June 13, 2009 Motion is more properly a Motion for Judgment under Section 2.132(a). Applicant, therefore, submits this Amended Motion for Judgment.

9. Applicant's testimony period is set to open on February 5, 2009.

Without waiving its right to offer evidence in the event this Motion is denied, Applicant moves for dismissal of the instant opposition on the ground that Opposer failed to prosecute the instant opposition pursuant to 37 C.F.R. Section 2.132(a). In the alternative, Applicant moves for dismissal of the instant opposition on the ground that upon the law and the facts the Opposer has shown no right to relief pursuant to 37 C.F.R. Section 2.132(b).

Respectfully submitted,

LES PIERRES STONEDGE INC.

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 "AMENDED MOTION FOR JUDGMENT FOR OPPOSER'S FAILURE TO PROVE CASE" was served on Opposer's attorney, Charles N Quinn of Fox Rothschild LLP with an address at 2000 Market Street, 10th Floor, Philadelphia, PA 19103-3291, via first class mail, postage prepaid, today January 22, 2009.

By: _____
James R. Menker