

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

Mailed: September 3, 2010

Opposition No. **91195481**

Weyerhaeuser Real Estate
Company, Pardee Homes,
Trendmaker Homes, Inc.

v.

Rudi Weyand

Linda Skoro, Interlocutory Attorney

Pursuant to Fed. R. Civ. P. 26(f) and Trademark Rules 2.120(a)(1) and (2), the parties to this proceeding conducted a discovery conference at 1:00 pm EST, on September 1, 2010. Board participation had been requested by opposer. Opposer was represented by Ms. Teresa Wiant; Ms. Jana Smith, a paralegal for opposer, was present; Mr. Weyand appeared pro se; and the above-signed participated for the Board. The conference lasted about half an hour. The Board asked if the parties were involved in any other Board proceeding (to determine whether consolidation was appropriate) or in litigation in court (to determine whether suspension was appropriate). The Board was informed that the parties were not so involved presently.

The parties were informed that they could agree to service by email. Which they did.

The Board indicated that a review of the pleadings shows that Mr. Weyand will need to file a formal answer, which he said was on his docket. The Board noted that the primary ground in the petition is a likelihood of confusion under Section 2(d) of the Trademark Act. Given that opposer has established its pleaded registrations, priority of use is not an issue, and the primary focus of discovery should be on applicant's arguments surrounding his contention that the term "smart" may be descriptive or generic in relation to house technology. This would go to two of the DuPont factors, the strength of opposer's marks and their appropriate scope of protection.

The parties were advised of some of the areas where modification of the various discovery tools could be limited or narrowed. The parties were referred to the Board's rules and manual on the PTO website: This notice can be found on the USPTO web site at www.uspto.gov/trademarks/ttab.

Both parties were informed that the standard protective agreement is in place and that they are free to modify it, and it also is available on the web site. The Board indicated that Chapter 400 of the TBMP contained a complete discussion of discovery before the Board and, in particular, § 414 provides selected guidelines. As a reminder, expert testimony disclosures are due 30 days prior to the close of

discovery and pretrial disclosures are due 15 days prior to the opening of each testimony period.

The issue of settlement was explored. There appeared to be some meeting of the minds around a revision to applicant's description of goods. The parties agreed that opposer's counsel will draft a proposed settlement agreement providing a more narrow description of services and parameters of applicant's use of the mark. In pursuit of such a proposal, the parties stipulated to a 60-day suspension to explore settlement.

The parties are reminded of their duty to cooperate in all phases of this proceeding and that their while proceedings herein are suspended for 60 days, upon resumption applicant will be allowed 30 days within which to file a formal answer.

There were no further questions and the conference was concluded.

Accordingly, proceedings herein are suspended for 60 days and will automatically resume by the schedule set forth below.

Proceedings Resume	November 3, 2010
Time for Defendant to file formal Answer	December 3, 2010
Deadline for Discovery Conference	January 2, 2011
Discovery Opens	January 2, 2011
Initial Disclosures Due	February 1, 2011
Expert Disclosures Due	June 1, 2011

Discovery Closes	July 1, 2011
Plaintiff's Pretrial Disclosures	August 15, 2011
Plaintiff's 30-day Trial Period Ends	September 29, 2011
Defendant's Pretrial Disclosures	October 14, 2011
Defendant's 30-day Trial Period Ends	November 28, 2011
Plaintiff's Rebuttal Disclosures	December 13, 2011
Plaintiff's 15-day Rebuttal Period Ends	January 12, 2012

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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