

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

Mailed: April 19, 2012

Opposition No. 91200114

MCR Oil Tools, LLC

v.

Weir Slurry Group, Inc.

**Robert H. Coggins,
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 by telephone at 2:00 p.m. EDT, April 17, 2012. Board participation was requested by applicant. During the conference opposer was represented by J. Seth Randle, applicant was represented by Janice Housey, and participating for the Board was the above-signed attorney responsible for interlocutory matters in this case.

In addition to general comments on the nature and sequence of Board proceedings, discovery, and trial, the parties were reminded of their obligation with respect to service of papers, and the parties agreed to service by email with the reservation that documents responsive to discovery requests may be served by regular mail if the

serving party believes the documents are too voluminous to scan and send by email.

The applicability and possible amendment of the Board's standard protective order were discussed. The possibility of Accelerated Case Resolution (ACR) was discussed at length. Applicant expressed its interest in ACR, and the Board stated that this case appears to be a good candidate for ACR or for ACR-like streamlining measures such as the parties' stipulating to uncontested facts or the authenticity of documents. The parties were directed to the Board's web site for more information on ACR, and the parties agreed to revisit the issue of ACR once they have engaged in some discovery.

The parties were reminded that neither discovery nor a motion for summary judgment may be served until after initial disclosures are made.

The parties stated that they were not engaged in any related Board proceeding or civil litigation, but that they have been engaged in direct communication and settlement talks. Although they had discussed settlement, and they remain open to the possibility of settlement, the parties were not able to agree on the finer points of settlement, and, in view thereof, settlement does not appear possible at this time. The parties agreed to reassess the possibility of settlement once they have conducted some discovery. The

Board encouraged the parties to explore settlement and informed the parties that the Board is liberal with regard to suspension of proceedings to accommodate settlement discussions.

During a review of the complaint, the Board noted that opposer had alleged one ground for opposition, namely, priority and likelihood of confusion. The Board noted that opposer's pleaded registrations were not currently in evidence. Trademark Rules 2.122(c) and (d)(1). The Board also noted that opposer alleged, at paragraph 4 of the complaint, May 1, 2009, as its priority date for the pleaded M MCR OIL TOOLS mark (of Registration No. 3776826); however, opposer may be entitled to rely on an earlier priority date of December 19, 2008, (i.e., the filing date of the application which matured into the registration) for the M MCR OIL TOOLS mark if that pleaded registration is properly made of record during opposer's testimony period (or perhaps on summary judgment).

The Board discussed the use and nature of interrogatories, requests for admission, requests for production of documents and things, and depositions as discovery devices; and the parties stated that while they did not expect to engage in a great deal of discovery, they would utilize these traditional mechanisms of discovery and focus mostly on the issue of likelihood of confusion.

The Board reminded the parties of their duty to cooperate during discovery; and, at the conclusion of the conference, the parties were reminded that initial disclosures should be served no later than May 21, 2012.¹

¹ Inasmuch as May 20, 2012, is a Sunday, disclosures are due the following business day: May 21st. Trademark Rule 2.196.