


TTAB

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

GIBSON PIANO VENTURES, INC.,)
Opposer,)
v.)
MUSICAL PROPERTIES, INC.,)
Applicant.)

Opposition No.: 91153716
Serial No.: 78/099,091

BOX TTAB
NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513


06-26-2003
U.S. Patent & TMOfc/TM Mail Rcpt D#22

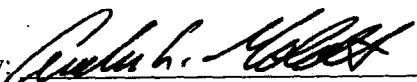
AGREED MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER

Applicant Musical Properties, Inc. ("Applicant") with the agreement of the Opposer Gibson Piano Ventures, Inc. ("Opposer") hereby moves the Board pursuant to Fed. R. Civ. P. 26(c) and Trademark Trial and Appeal Board Manual of Procedure 416.02 for the entry of the attached Stipulated Protective Order to govern the production by the parties in discovery of confidential and trade secret documents and information. In support of this motion, Applicant further states:

1. The parties have discussed the need for and the terms of a Stipulated Protective Order in this matter to restrict disclosure and protect the confidentiality of certain discovery materials.
2. The parties propose that the Board enter the Stipulated Protective Order attached hereto. Counsel for each of the respective parties has executed it.

WHEREFORE, Applicant, with the agreement of Opposer, respectfully requests that the Board enter the attached Stipulated Protective Order, and grant such other relief as it deems necessary and just.

MUSICAL PROPERTIES, INC.

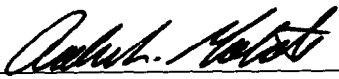
By: 
One of its attorneys

Date: June 26, 2003

Andrew L. Goldstein
David J. Dicker
FREEBORN & PETERS
311 South Wacker Drive, Suite 3000
Chicago, Illinois 60606
(312) 360-6000
519151

Certificate of Service

I hereby certify that a copy of the foregoing **AGREED MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER** was mailed first-class mail, postage prepaid, to Edward D. Lanquist, Jr., Waddy & Patterson, 414 Union Street Suite 2020, NationsBank Plaza, Nashville, Tennessee 37219, attorneys for Opposer, this 26th day of June, 2003.



Andrew L. Goldstein

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service by Express Mail No. EL 541139250 W in an envelope addressed to the Assistant Commissioner for Trademarks, Box TTAB NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513 on June 26, 2003



Deanne Van Natta

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STIPULATED PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and pursuant to the stipulation and agreement of the parties,

IT IS HEREBY ORDERED, that if, in the course of this proceeding, either party has the occasion to disclose information reasonably believed by such party to constitute confidential proprietary information of the type contemplated by Rule 26(c), Fed. R. Civ. P., the following procedures shall be employed and the following restrictions shall govern:

1. Any documents, answers to interrogatories or document requests, deposition transcripts, or portions thereof, responses to requests for admissions, or any other material or portions thereof provided by either party to the other party during the pendency of this proceeding (hereinafter "Material") reasonably believed to necessary to be shielded from public access may be designated and marked, in whole or in part, "Confidential" by the party producing such Material or by counsel for the party producing such Material, at the time of production thereof. In addition, if such Material contains information reasonably believed to be a trade secret or otherwise highly confidential, such Material may be designated and marked, in whole or in part, "Confidential - Attorneys Only" by the party producing such Material or by counsel for the party producing such Material, at the time of production thereof. Material designated as "Confidential" or "Confidential - Attorneys Only" shall collectively be referred to as "Confidential Material." Inadvertent disclosure of information which the producing party intended to designate as subject to such protection shall not constitute waiver of any right to claim the information as confidential upon

discovery of the error, so long as the inadvertent disclosure without appropriate designation shall be remedied within thirty (30) days after production of the information.

2. Information may not be designated as subject to any form of protection pursuant to this Protective Order if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document, including, by way of example and not limitation, advertisements, press releases, annual reports and other documents which have already been disclosed to the public; (b) is acquired by the receiving party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by the receiving party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by the receiving party or non-party witness legally compelled to disclose the information; or (e) is disclosed by the receiving party with the approval of the designating party.

3. Confidential Material that is disclosed with appropriate designation as confidential shall be revealed to or used only by Qualified Persons as provided for in paragraphs 4 or 5 hereof, and shall not be communicated in any manner, either directly or indirectly, to any person or entity not permitted disclosure pursuant to this Protective Order. Any copies of such Confidential Material, abstracts, summaries or information derived therefrom, and any notes or other records regarding the contents thereof, shall also be deemed to have the same confidentiality designation as the originals, and the same terms regarding confidentiality of these materials shall apply as apply to the originals, and shall hereinafter collectively be deemed to be a part of the Confidential Material. Confidential Material shall be used only for purposes directly related to this action and for no other purpose whatsoever.

4. As used herein, the term "Qualified Persons" with respect to Material designated as "Confidential – Attorneys Only" means:

- (a) The following counsel for the parties to this case, including said outside counsels' associate attorneys, legal assistants and/or paralegals and

stenographic and clerical employees (including shorthand reporters) who are directly involved with this proceeding:

- (i) For Applicant: Freeborn & Peters, and the in-house attorneys of Musical Properties, Inc.
- (ii) For Opposer: Waddey & Patterson, and the in-house attorneys of Gibson Piano Ventures, Inc.

(b) Any technical and/or financial experts not in the personal employ, regularly retained, or otherwise related to Opposer or Applicant, employed or retained by a party or its attorney in connection with this proceeding (collectively, "Experts"), ten (10) days following opposing counsel's receipt of the Expert's executed Confidentiality Undertaking pursuant to paragraph 6 of this Protective Order and a description of the Expert's current affiliation; and opposing counsel has not objected within the ten-day period. If the parties are unable to settle any dispute with respect to such objection, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

5. As used herein, the term "Qualified Persons" with respect to Material designated solely as "Confidential" and not as "Confidential – Attorneys Only" means:

- (a) the persons identified in paragraph 4 in this Protective Order; and
- (b) the parties.

6. Counsel in receipt of Confidential Material from the other party shall notify counsel for that party of the disclosure of such Confidential Material to any Experts. Each Expert shall, in turn, hold such Confidential Material in confidence pursuant to the terms of this Protective Order,

and, ten (10) days prior to disclosure to such person of such Confidential Material, shall be required to sign a Confidentiality Undertaking in the form as follows:

The undersigned has read the Stipulated Protective Order pursuant to Federal Rules of Civil Procedure 26(c) and confirms: (1) that he/she shall fully abide by the terms thereof; (2) that he/she shall not disclose the Confidential Material to or discuss the Confidential Material with any person who is not authorized pursuant to the terms of said Protective Order to receive the disclosure thereof; and (3) that he/she shall not use such Confidential Material for any purpose other than for the purposes of this case.

7. Acceptance by a party of any information, document, or thing disclosed with designation as confidential shall not constitute a concession that the information, document or thing is confidential. Either party may contest a claim of confidentiality. In the event that the receiving party disagrees with the designation and marking by any producing party of any Material as "Confidential" or "Confidential – Attorneys Only," then the parties shall first try to resolve such dispute on an informal basis. If agreement cannot be reached between counsel, then such dispute shall be presented to the Trademark Trial and Appeal Board for resolution. The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

8. The subject matter of all depositions given in connection with this proceeding and the original and all copies of the transcript of any such deposition, shall be deemed to come within the term "Confidential Material" for a period ending ten (10) business days after the transcript is received by counsel. On or before the tenth (10th) business day after any such transcript is received by counsel, such transcript may be designated and marked, in whole or in part, with appropriate designation as confidential by counsel for the respective party, and the portions of the transcript of the deposition so designated and marked shall be subject to the provisions of this Protective Order. Confidential Material produced during a discovery deposition, or offered into evidence during a

testimony deposition should also be orally noted as such by the producing or offering party at the outset of any discussion of the Material or information contained in the document. In addition, the Confidential Materials must be prominently stamped or marked with the appropriate designation.

9. Where a document, deposition transcript or other tangible thing to be produced contains portions which have been designated confidential such Confidential Material shall be deleted therefrom before disclosing such Confidential Material to any person other than Qualified Persons as designated in paragraphs 4 and 5. If the producing party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the producing party what documents are to be copied, the producing party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1.

10. Deletions made from any Confidential Material in accordance with the terms of this Protective Order shall not affect the admissibility of any such Confidential Material in evidence in this proceeding.

11. If Confidential Material is to be made of record in this proceeding, it shall be submitted to the Trademark Trial and Appeal Board in a separate sealed envelope or other sealed container bearing the proceeding number and name, and such envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

The use of a confidentiality legend different in form from the language quoted above shall not constitute a waiver of the confidential status of the Confidential Material. Judges, attorneys, and

other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order.

12. After this proceeding is finally completed, including all appeals, counsel for each party shall return or destroy all Confidential Materials provided to them by the other party. However, each party shall be permitted to keep, and shall maintain the confidentiality of, any briefs, memoranda, summaries, and the like, which discuss, attach, or in any way refer to such Confidential Material.

The undersigned parties hereto hereby stipulate to the foregoing and consent to the entry of the above Protective Order.

MUSICAL PROPERTIES, INC.

By: Edward F. Richards

Name: Edward F. Richards

Title: Secretary

FREEBORN & PETERS

By: Andrew L. Waldstein

Name: ANDREW L. WALDSTEIN
Attorneys for Applicant

GIBSON PIANO VENTURES, INC.

By: David H. Berryman

Name: DAVID H. BERRYMAN

Title: PRESIDENT

WADDEY & PATTERSON

By: Edward D. Unger

Name: EDWARD D. UNGER
Attorneys for Opposer

#519154

SO ORDERED this _____ day of _____, 2003.

_____ Trademark Trial and Appeal Board