

ESTTA Tracking number: **ESTTA40870**

Filing date: **08/02/2005**

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

Proceeding	91157923
Party	Defendant Solo Cup Company Solo Cup Company 1700 Old Deerfield Road Highland Park, IL 60035
Correspondence Address	LINDA A. KUCZMA, ESQ. WALLENSTEIN, WAGNER & ROCKEY, LTD.. 311 SOUTH WACKER DRIVE 53RD FLOOR CHICAGO, IL 60606-6622 brademaker@wwrfirm.com
Submission	Motion to Compel Discovery
Filer's Name	Bradley F. Rademaker
Filer's e-mail	brademaker@wwrfirm.com
Signature	/Bradley F. Rademaker/
Date	08/02/2005
Attachments	Motion to Compel and Extend Discovery Period.pdf (26 pages)

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

GEORGIA PACIFIC CORPORATION)
and FORT JAMES OPERATING)
COMPANY,)

Opposers,)

v.)

SOLO CUP COMPANY,)

Applicant.)

Opposition No. 91157923

**APPLICANT'S MOTION TO COMPEL PRODUCTION OF OPPOSERS'
FINANCIAL DOCUMENTS AND TO EXTEND DISCOVERY PERIOD**

Applicant respectfully requests the Board to issue an Order compelling Opposers to provide discovery of financial information, including sales and manufacturing costs for Opposers' domed hot-cup lids, which are competing alternative lid designs on the market. Applicant also respectfully requests that the Board issue an Order granting an extension of time for completion of limited discovery relating to such financial information.

The information sought is relevant to Opposers' allegations that Applicant's Mark is "functional" as a result of a comparatively cheaper/easier method of manufacturing coffee cup lids. Applicant disagrees with this contention, and instead believes that the cost of making its lids is equal to, if not greater than, the cost of making competing domed hot cup lids such as the domed lids sold by Opposers. Thus, discovery regarding Opposers' cost of manufacturing domed hot-cup lids, as competing lids that differ in appearance from Applicant's Mark, is directly relevant. Indeed, Opposers agreed to produce this information, and the parties had worked out an agreement for additional exchanges of financial information to avoid depositions

and hiring of experts, including a supervised conference call between the parties' personnel to finalize the exchange of information. However, that promised exchange of discovery did not occur at the critical time to resolve outstanding discrepancies during the discovery period.

Thus, pursuant to Rule 2.120(a) and (e), Applicant moves for an order: (1) compelling Opposers to produce a witness who can testify with respect to the Opposers' financial information; and, (2) extending the discovery period for the limited purpose of allowing Applicant to retain a financial expert to study Opposers' information and compare such information with that of Applicant, and to make any necessary adjustments to its financial information.

I. FACTS SUPPORTING THE MOTION TO COMPEL/EXTEND DISCOVERY

For several months, the parties have been working on completion of discovery with a sense of cooperation concerning outstanding financial discovery (sales, cost of manufacture, etc.) relating to domed hot-cup lids of each party. This cooperative approach of financial discovery was aimed at avoiding the cost of hiring expert witnesses to decipher the financial data being produced. Instead, the parties contemplated reaching a stipulated exchange of financial-information reports in an "apples to apples" manner that allowed each side to easily compare data such as the parties' manufacturing costs. Further, this agreed exchange of information had to be accomplished in a manner that preserved this extremely confidential information.

Pursuant to this approach, the parties preliminarily exchanged summary charts of financial information, though the charts are not readily compatible because of the differences in calculations and reporting methods. This was to be followed by depositions, and then revisions to the charts, until the parties had exchanged compatible financial data. Thus, the parties hoped to avoid expert fees, and instead rely upon the agreement to distill out any incompatibilities in

the reports. However, this objective was not achieved due to Opposers' failure to provide the cooperative discovery promised.

Very little deposition testimony was provided regarding Opposers' financial information chart. Applicant conducted a Rule 30(b)(6) examination of Opposers on June 2 -3, 2005, which included limited examination regarding the draft financial reports of Opposers. However, that witness was not fully knowledgeable of the information used to compile Opposers' financial reports, or all of the information being provided in the reports. Opposers counsel even acknowledged that the witness being proffered would not likely be knowledgeable regarding the financial information (**EXHIBIT A**), and had acknowledged that an additional witness would need to be provided later. (**EXHIBIT B**).

Rather than later providing such a witness, Opposers' offered that the parties cooperate to reconcile the financial information produced by each party. The parties agreed to conduct a telephone conference with persons (in-house financial personnel) knowledgeable of the reports from each party, along with counsel from each party, to reconcile the parties' information. Further, Applicant agreed to provide revised financial information which was delivered to Opposers on June 21, 2005. (**EXHIBITS C and D**).

As the June 29, 2005 close of discovery approached, the exchange of financial information was incomplete. Thus, the parties agreed to extend discovery thirty additional days to July 29, 2005.¹ This extended discovery expressly included an agreement for the parties to

¹ The parties' stipulated Motion to extend the discovery period from June 29, 2005 to July 29, 2005 was granted. (**EXHIBIT E**). The purpose of the extension was to enable the parties to address the outstanding issues then identified by the parties, which included reconciliation of the financial information. (**EXHIBIT F**).

complete the planned conference call and the planned supplemental exchange of financial discovery. (**EXHIBIT F**, paragraph nos. 1 and 5a.).

Despite Opposers' June 29, 2005 agreement to complete the exchange of financial-information discovery, Opposers have failed to do so, and have still not answered Applicant's June 21, 2005 letter regarding the exchange of financial information. (**EXHIBIT D**) Further, a month later, when discovery was closing on July 29, 2005, Applicant still had not received a response to its June 21, 2005 letter. Now, Opposers have refused to stipulate to another extension, and do not agree to continue the cooperative effort to complete the financial discovery.²

Thus, after several months of purported agreements of cooperative discovery regarding the financial information, on August 1, 2005, Opposers advised that they will not provide what was promised, and that they would not agree to any further discovery extension for the financial discovery.

II. THE RELIEF REQUESTED FROM THE BOARD

A. ORDER COMPELLING FINANCIAL DISCOVERY FROM OPPOSERS

In view of Opposers' refusal to work out the remaining issues relating to the parties' financial information, Applicant requests that Opposers be required to produce a witness to testify with respect to the relevant categories identified in the Amended Notice of Rule 30 (b)(6) Deposition of Georgia Pacific Corporation, namely, category numbers: 3 - 7, 31, and 32.

² On Monday August 1, 2005, Opposers advised of their decision to not continue any further discovery on the financial information and not seek an additional discovery extension for the same. Pursuant to stipulation between the parties, if Applicant files its Motion on August 2, 2005, as it has done, then the Motion is considered to be timely filed within the discovery period, and shall not be opposed on the basis of alleged un-timeliness. (**EXHIBIT G**).

(EXHIBIT H).³ The production of such a witness was clearly required by Applicant's timely served Amended Notice of Deposition, and is unavoidable now that Opposers refuse to cooperate as promised. Certainly, Opposers' failure to produce a witness on these categories of the Notice, and their subsequent refusal to continue to reconcile the financial discovery, prejudice Applicant. The relevance of the financial issues is not in dispute - - nor could it be, in light of Opposers' own allegation that its lid design is a competing alternative design in the market.

In view of the foregoing, Applicant requests an order compelling Opposers to produce a 30(b) (6) witness with respect to categories 3 - 7, 31 and 32 in the Amended Notice of Deposition.

B. REQUESTED EXTENSION OF DISCOVERY

Applicant also requests at least a six (6) week extension of the discovery period for Applicant to retain a financial expert to decipher Opposers' information, and to provide a comparison of that information with like information from Applicant. Because Opposers are not following through with their promise of cooperative discovery, Applicant is set back to the same position it was in long ago - - it must hire a consultant to study the financial information and provide his/her observations of comparison with Applicant's information.

Further, the financial information produced by both parties, including cost of manufacturing and sales information, has been designated as HIGHLY CONFIDENTIAL information under the Protective Order. Thus, Applicant must use an "outside" expert, and must now initiate its search for such an expert. Additionally, the June 29, 2005 stipulation regarding outstanding discovery recognized the need for production of additional financial information

³ Applicant also served an identical Amended Notice of Rule 30(b)(6) Deposition of Fort James Operating Company. The same witnesses testified on behalf of Opposers in response to both Amended Notices of Deposition.


from Applicant as well. (**EXHIBIT F**, paragraph nos. 1 and 5a.). Thus, Applicant also requests that it be provided the extension of discovery to produce revised reports of its own cost/financial information, should it be necessary to reconcile with Opposers' information.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests the Board to issue an Order: (1) compelling Opposers to produce a 30(b)(6) witness to testify with respect to certain information identified in Applicant's Amended Notice of Deposition, namely, financial information concerning Opposers' competing domed lid; and (2) providing a limited 6 week extension of the discovery period to enable Applicant to retain a financial expert to study Opposers' information and adjust the reporting of financial information regarding Applicant's lids covered by the Mark.

Respectfully submitted,

Date: 8/2/05

SOLO CUP COMPANY
By: 

Linda A. Kuczma, Esq.
Bradley F. Rademaker, Esq.
Gregory G. Schlenz, Esq.
WALLENSTEIN, WAGNER & ROCKEY, LTD.
311 South Wacker Dr., 53rd Floor
Chicago, Illinois 60606-6604
Telephone: (312) 554-3300
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Attorneys for Applicant

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June 1, 2005

VIA ELECTRONIC MAIL ONLY

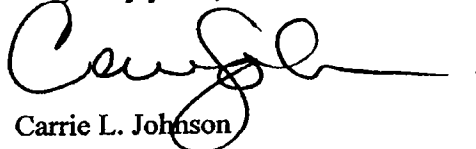
Bradley F. Rademaker, Esq.
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive
53rd Floor
Chicago, Illinois 60606-6630

Re: Georgia-Pacific Corporation and Fort James Operating Company v. Solo Cup Company
Opposition No. 91157923
Our Matter No.: GEPA:007 (10308254)

Dear Brad:

I write in response to your letter dated May 31, 2005, which we received this morning. Opposers have never committed to providing a witness on financial topics. Opposers have committed to providing witnesses on technical and manufacturing topics as well as sales and marketing topics. However, as we have told you on multiple occasions, we will not have a witness available on June 2nd and 3rd who can testify with respect to costs, pricing, profit margins, etc. We may be able to have a general discussion on financial topics, but we do not have a witness available who can address these topics in detail.

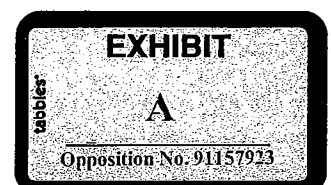
Very truly yours,



Carrie L. Johnson

CLJ/jcd

Enclosure



25540709.1

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May 26, 2005

VIA FACSIMILE VIA FIRST CLASS MAIL

Bradley F. Rademaker, Esq.
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive
53rd Floor
Chicago, Illinois 60606-6630

Re: Georgia-Pacific Corporation v. Solo Cup Company
Client-Matter No. GEPA:007 (10308254)

Dear Brad:

We write regarding Solo's Amended 30(b)(6) Notices of Deposition and your May 25, 2005 letter.

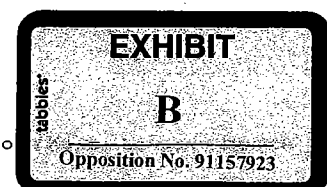
Scheduling

Opposers confirm that they will present the same 30(b)(6) designees for both Georgia-Pacific and Fort James Operating Company. Accordingly, please plan on the depositions being combined according to the subject matter of the testimony. Currently, Opposers plan to present a witness on sales and marketing topics on June 2, 2005 and a witness on technical and engineering topics to begin right after the first deposition is completed. We will promptly advise you if this scheduling changes for any reason.

Objections

Opposers object to Solo's Amended 30(b)(6) Notices of Deposition as follows (each listed objection applies to Schedule A of the Amended Notices of Deposition for both Georgia-Pacific and Fort James) and therefore will not be providing a designee to testify on these topics:

- 1) Opposers object to topic numbers 14, 15 and 16 as seeking information that is not relevant or not reasonably calculated to lead to the discovery of admissible evidence in this opposition proceeding which is limited to determining whether




Bradley F. Rademaker, Esq.
May 26, 2005
Page 2

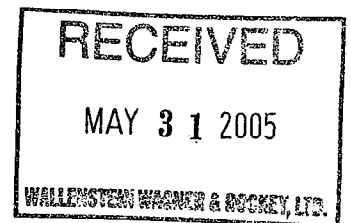
Applicant's Claimed Mark for its lid configuration is distinctive and non-functional. Opposers common law trademark rights, applications or registrations for product configuration or packaging have absolutely no relevance to determining whether Applicant's Claimed Mark is distinctive or non-functional.

- 2) Opposers object to topic number 17 on the basis of attorney/client privilege and the attorney work product doctrine. At this time, Opposers have not consulted with any testifying expert regarding Applicant's Claimed Mark or Applicant's hot cup-lids. Pursuant to the rules, if Opposers decide to use a testifying expert, Applicant may pose any questions related to topic number 17 to such expert during his or her discovery or trial deposition.
- 3) Opposers object to topic number 25 on the basis of attorney/client privilege and the attorney work product doctrine.
- 4) Opposers object to topic numbers 31, 32 and 33 as untimely. These topics were added to the Amended Notice of Deposition and faxed to our office at the end of the business day on May 25, 2005, a mere four business days before the first scheduled deposition on June 2, 2005. Opposers' current designees are not the designees who can answer questions on these topics, and Opposers do not have enough time to secure additional witnesses. Opposers will investigate and determine who the appropriate designees(s) is (are) on topics 31 and 32. We will then need to schedule an additional date in Atlanta in the future to conduct the deposition on those topics.
- 5) Opposers also object to topic number 33 on the basis of attorney/client privilege and the attorney/client work product doctrine. Applicant and Opposers already met and conferred – on March 11, 2005 – and during numerous subsequent calls to discuss the topic of redactions, and we have clearly explained Opposers' position.

Please call me if you have any questions or if you wish to discuss these matters further.

Very truly yours,


Carrie L. Johnson



CLJ/jcd

From: Greg Schlenz
To: Carrie, Johnson,
Date: 6/10/05 5:32PM
Subject: Cost Documents

Carrie,

This email is in response to the voicemail message you left me this morning regarding your search for documents concerning the cost of manufacture of Solo Cup's lids. Pursuant to agreement of the parties (by conversations between Tim and Brad), the parties have sought to exchange summary information on the cost of manufacture of their respective domed lids, rather than the voluminous underlying documents. I believe the parties are still working on perfecting this exchange of summary information.

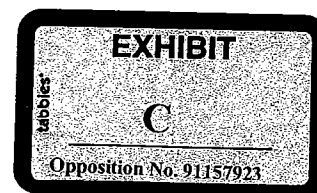
More recently, Linda has proposed a protocol to Tim whereby redacted versions of a party's cost summary reports are given to the opposing party to ensure consistency in format for both sides. A conference call between counsel has also been proposed involving financial persons from both companies to clear up the manner in which these cost summaries will be presented.

Please confer with Tim to ensure that there is no confusion on this point, and get back to us if you have any questions.

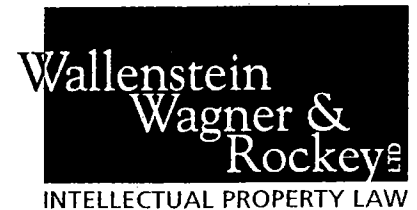
Sincerely,

Gregory G. Schlenz
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive, 53rd Floor
Chicago, Illinois 60606
gschlenz@wwfirm.com
Telephone: (312) 554-3300
FAX: (312) 554-3301

CC: Kuczma, Linda; Rademaker, Bradley; tkenny@fulbright.com



June 21, 2005



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VIA FACSIMILE AND HAND DELIVERY ON 6/22/05

Linda A. Kuczma
LKuczma@wwrfirm.com

Timothy Kenny, Esq.
Fulbright & Jaworski L.L.P.
2100 IDS Center
80 South Eighth Street
Minneapolis, MN 55402-2112

Re: *Georgia Pacific Corporation et al. v. Solo Cup Company*
Opposition No. 91157923
Our File No. 3177 T 476

Dear Tim:

This letter responds to your letter of June 20, 2005, regarding the cost of manufacturing information. You are correct that Solo prepared and provided a two-paged summary chart of its manufacturing costs. In an effort to aid our respective review of the parties' cost information, Solo has agreed to provide the cost information in a format that reports such information in a manner that is more similar to the manner in which Opposers have provided their cost information.

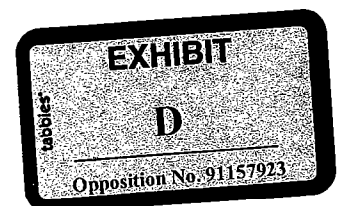
Accordingly, we are producing documents bearing production numbers SLC010997-SLC011018 consisting of a breakdown of the components of Solo's variable and fixed overhead, together with a cost summary by product. The cost summary is in accordance with the GAAP standards for product costs (i.e., shipping, distribution, and warehousing are excluded). Please note that all documents are designated "Trade Secret/Commercially Sensitive."

Please contact us to set a time to discuss the cost information provided by both parties.

Very truly yours,

Linda A. Kuczma

LAK/gmf (227156)
Enclosures



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

Jun 29, 2005

PROCEEDING NO. 91157923

Georgia-Pacific Corporation and Fort James Operating Company

v.

Solo Cup Company

MOTION TO EXTEND GRANTED

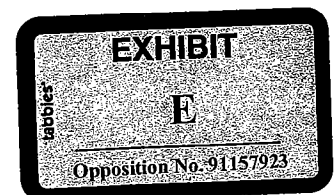
Georgia-Pacific Corporation and Fort James Operating Company's consent motion filed, Jun 29, 2005, to extend the discovery period until Jul 29, 2005, is granted.

Accordingly, discovery and trial periods are reset as indicated below.

DISCOVERY PERIOD TO CLOSE: Jul 29, 2005

Thirty-day testimony period for party in
position of plaintiff to close: Oct 27, 2005

Thirty-day testimony period for party in
position of defendant to close: Dec 26, 2005



Fifteen-day rebuttal testimony period

to close:

Feb 09, 2006

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 Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

***By the Trademark Trial
and Appeal Board***

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PARTNER
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FACSIMILE: (612) 321-9600

June 29, 2005

VIA ELECTRONIC MAIL ONLY

Bradley F. Rademaker, Esq.
Wallenstein Wagner & Rockey, Ltd.
311 South Wacker Drive
53rd Floor
Chicago, Illinois 60606-6630

Re: Georgia-Pacific Corporation and Fort James Operating Company v. Solo Cup Company
Opposition No. 91157923
Our Matter No.: GEPA:007 (10308254)

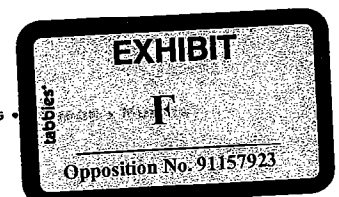
Dear Brad:

This letter is to follow up on our conversations yesterday afternoon and this afternoon (and has been revised to reflect our conversation today) regarding an extension of the discovery deadline in the above-referenced proceeding to conduct and complete limited follow-up discovery relating to specific, pending document requests and interrogatories. You and I agreed to a 30-day extension of the discovery deadline to complete the following specific items only:

1. Financial information - To date, the parties have exchanged information relating to sales of domed hot cup lids and the cost of manufacturing such lids. We discussed and acknowledged that we need to re-visit this issue and determine whether the exchanged information permits an "apples to apples" comparison. We agreed that after reviewing the documents we may need to convene a call of counsel and a representative from the respective companies to determine whether, in fact, the documents permit such a comparison and, if not, what additional information/documents may be needed.
2. Discovery responses - We agreed that the parties need to revise their discovery responses to conform to the evidence and the facts now known, now that most of the documents have been produced.
3. Documents requested during depositions - Both sides requested documents during depositions. We agreed that both sides would seek to locate the requested documents and produce responsive, relevant, non-privileged documents or expressly represent in writing that they had conducted a reasonable and diligent search for the requested document(s)

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and been unable to locate them. In addition to whatever documents Opposers requested during the depositions, and regardless of whether they were requested during the depositions (I can't remember whether they were), I indicated to you during our call that there are two other categories of documents that are the subject of prior requests by Opposers (and the subject of some recent correspondence between counsel) that Opposers need to obtain during the extension period, namely a copy of the file wrapper for Solo's U.S. Patent No. 4,589,569 and copies of the pleadings, motion papers, orders from the *Solo v. Sweetheart* patent infringement case regarding that patent. Solo agrees to investigate whether the last possible known repository of those documents – McAndrews, Held & Malloy – has a copy of the file wrapper and the *Solo v. Sweetheart* litigation file (whether on-site or in off-site storage) and will produce such documents if they exist.

4. Deposition of Solo's Expert - We agree to take the deposition of Dr. Singh on July 28. Please let us know whether that deposition will be at your offices in Chicago or in East Lansing, MI.
5. More witnesses - At this point, you and I agreed that we did not see the need for additional depositions, with the following possible exceptions:
 - a. We have not had an opportunity to review the transcripts from the 30(b)(6) depositions, either because they were just recently delivered or have not been delivered yet. Additionally, the parties will be exchanging additional documents and information relating to numbered paragraphs 1-3 above. We agree that while we currently do not believe it will be necessary to conduct additional depositions regarding such information and documents, either side may decide it is necessary to take limited depositions regarding those specific materials after reviewing such information and documents;
 - b. For a variety of reasons, we were not able to obtain information during the 30(b)(6) deposition of Solo about the issue of the interaction between Starbucks and Sweetheart in the 1993-96 timeframe relating to the Sweetheart's efforts to develop a domed hot cup lid for Starbucks documents relating to that issue. We will review and consider those documents more closely and visit further with you about the best and least intrusive way of obtaining Solo's/Sweetheart's knowledge about those events, but it is likely that we may need a deposition on those events.

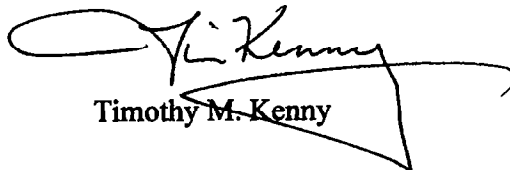
Therefore, we agree that if any additional depositions are needed to cover the limited topics covered by 5.a – b, such depositions will not exceed 2 deponents and 8 hours total running time per side.

Please countersign this letter below to indicate Solo's and your agreement to the limited discovery that the parties are agreeing to conduct during the 30-day extension. After I receive

Bradley F. Rademaker, Esq.
June 29, 2005
Page 3

the countersigned letter back from you, we will proceed to prepare and file a Consented Request to Extend the Deadlines by 30 days.

Very truly yours,


Timothy M. Kenny

TMK/jcd

AGREED TO:

Signature: 

Name: BRAD RADERMAKER

Title: Counsel for Applicant

Date: 6-29-05

From: Linda Kuczma
To: Rademaker, Bradley; Steve, Meleen,
Date: 7/29/05 4:31PM
Subject: RE: Proposal for exchange the outstanding financial information

Steve:

This will confirm our agreement to the stipulation set forth in your e-mail below. We appreciate your facilitation of this matter.

Best regards,
Linda Kuczma
Wallenstein Wagner & Rockey, Ltd.
311 S. Wacker Dr.
Chicago, IL 60606
(312) 554-3311

>>> "Meleen, Steve" <smeleen@fulbright.com> 07/29/05 04:25PM >>>

Brad,

I think this version incorporates the clarifications you requested.

As we discussed, our client contacts are not available this afternoon to discuss your request. In order to allow us to try to resolve this issue on Monday without Board intervention, we will agree to the following:

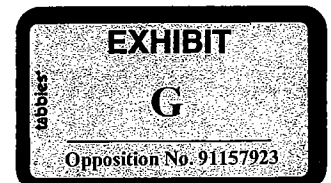
1. The parties stipulate to extend discovery on the limited issue of financial information (discussed in the June 29 letter) until August 2, 2005.
2. We will discuss your proposal (below) with our client on Monday, August 1, and respond substantively that day.
3. After the substantive conversation on Monday, if either side deems it necessary to file a motion to further extend discovery on the issue of financial information, it may do so by August 2, 2005 and the other side will not oppose such motion on the basis of timeliness.

Please confirm this stipulation.

Steve Meleen
Fulbright & Jaworski L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 536-3187 (direct)
(512) 474-5201 (firm)
(512) 536-4598 (fax)
smeleen@fulbright.com

-----Original Message-----

From: Bradley Rademaker [<mailto:brademake@wwrfirm.com>]
Sent: Friday, July 29, 2005 1:10 PM
To: Meleen, Steve
Cc: Linda Kuczma
Subject: Proposal for exchange the outstanding financial information



Steve:

As discussed, the parties have not resolved the outstanding exchange of financial information that is indicated in the June 29, 2005 letter of agreed outstanding discovery. That letter indicated the following cooperative work to be compared:

1. Financial information- To date, the parties have exchanged information relating to sales of domed hot cup lids and the cost of manufacturing such lids. We discussed and acknowledged that we need to re-visit this issue and determine whether the exchanged information permits and "apples to apples" comparison. We agreed that after reviewing the documents we may need to convene a call of counsel and a representative from the respective companies to determine whether, in fact, the documents permit such a comparison, and if not, what additional information/documents may be needed.

Thus, we propose a stipulation that the parties will continue to seek resolution of the financial information exchange, to be concluded by August 24, 2005. This stipulation may be established either by:

(1) an agreed Motion to Extend Discovery for the limited purposes indicated; or,

(2) an agreement for the parties to complete the work indicated above, and that, in the event the information exchange is incomplete or unworkable, either party may seek to re-open discovery concerning such information or may instead conduct up to 4 hours of deposition examination to resolve the information sought.

Brad
(312) 554-3317

CONFIDENTIALITY NOTE:

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CC: Koleno, Valerie; Schlenz, Greg; Tim, Kenny,

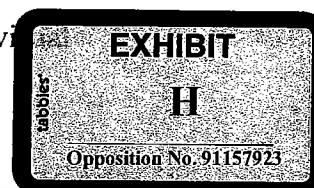
**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GEORGIA PACIFIC CORPORATION)	
and FORT JAMES OPERATING)	
COMPANY,)	
)	
Opposers,)	
)	
v.)	Opposition No. 91157923
)	
SOLO CUP COMPANY,)	
)	
Applicant.)	

**AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION
OF GEORGIA-PACIFIC CORPORATION**

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, as well as Trademark Rules 2.116(a) and 2.120(a)-(b), Applicant, Solo Cup Company, through its counsel, shall take the deposition of Opposer, Georgia-Pacific Corporation ("Georgia-Pacific" or "Opposer") through one or more of Georgia-Pacific's officers, directors, or managing agents, or other person(s) who are designated to testify on its behalf. The deposition shall commence at 9:00 a.m. on June 2, 2005 at the offices of Kilpatrick Stockton LLP located at 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309, or at such other time and place as may be mutually agreed upon by parties. The deposition will continue from day to day until completed, with such adjournments as to time and place as may be necessary.

The deposition shall be by oral examination before a notary public or some other officer authorized by law to administer oaths. Pursuant to Federal Rule of Civil Procedure 30(b)(2), testimony of the witness(es) will be recorded by stenographic means and/or sound and video means, before a Notary Public or other officer authorized by law to administer oaths.



The matters on which examination is requested are described in the attached Schedule A.

Counsel for Georgia-Pacific is invited to attend the deposition and to cross-examine.

Respectfully submitted,

SOLO CUP COMPANY

Dated: May 25, 2005

By: 

Linda A. Kuczman, Reg. No. 30,861

Bradley F. Rademaker, Reg. No. 35,331

Gregory G. Schlenz, Reg. No. 55,597

WALLENSTEIN WAGNER & ROCKEY, LTD.

311 South Wacker Drive, 53rd Floor

Chicago, Illinois 60606-6630

(312) 554-3300 (telephone)

(312) 554-3301 (facsimile)

(225442)

SCHEDULE A

1. Manufacturing process, tooling, and materials used to produce the hot cup lids currently sold by Opposer.
2. Manufacturing process, tooling, and materials used to produce the hot cup lids sold by Opposer during the years from 1985 to the present.
3. Cost of manufacture, profit margin calculations and projections, and pricing for hot cup lids sold by Opposer for all years from 1985 to present, and Opposers' knowledge regarding any changes in the cost of manufacture and pricing of hot cup lids marketed by Opposer.
4. Components of the cost of manufacture of hot cup lids, including equipment and tooling costs, material costs, and costs attributable to different features of a lid.
5. Opposers' allegations concerning the general industry knowledge of hot cup lids, hot cup lid costs, and hot cup lid methods of manufacture.
6. Studies or comparison of manufacturing costs, or cost estimates, between different hot cup lid designs, including hot cup lids produced or considered for production by Opposer.
- ⑦ Promotion, advertising, and sales (including unit and dollar sales volume) of each model or type of hot cup lids marketed by Opposer for each year from 1985 to the present, including geographical areas of such promotion, advertising, and sales.
- ⑧ Information known or available to Opposer regarding the market share of Opposer's sales of hot cup lids relative to competitors sales of hot cup lids.

9. All hot cup lids marketed or sold in the United States, including information regarding the appearance, design features, functional characteristics, competitive marketing, and identity of suppliers or/and manufacturers of such lids.
10. Opposer's production efficiency and manufacturing capacity for each model or type of hot cup lids, and changes manufacturing capacity, for each year between 1985 to the present.
11. Design selection for the hot cup lids sold by Opposer during the years from 1985 to the present, including design choices, considerations, and approval, design changes, alternative designs, and rejected design proposals.
12. All market surveys, focus group studies, or other consumer or customer testing or studies, relating to hot cup lids conducted by, on behalf of, or at the direction of Opposer.
13. Product testing, performance evaluations, or studies relating to hot cup lids conducted by, on behalf of, or at the direction of Opposer.
14. Registered trademarks owned by Opposer or filed and/or prosecuted on behalf of Opposer that depict features of a product configuration and/or packaging.
15. Applications by Opposer for trademark registration filed and/or prosecuted on behalf of Opposer that depict features of a product configuration and/or packaging.
16. Any product configuration in which Opposer claims as trademark rights.
17. Experts or consultants in communication with Opposer concerning Applicant's Mark or Applicant's hot cup lids.

18. Knowledge of hot cup lids marketed or sold in competition with Opposer's hot cup lids, and any market or technical studies regarding hot cup lids marketed in competition with Opposers' hot cup lids.

19. Opposer's contentions regarding functional features of the "Traveler" lid design, and all facts in Opposer's possession supporting Opposer's allegations of alleged functionality.

20. Opposer's marketing plans for hot cup lids and any planned, proposed, or existing new designs for hot cup lids.

21. Functional performance and advantages of hot cup lids and features, characteristics, and variables affecting product performance.

22. Knowledge and information relating to Applicant's hot cup lid, including any studies or analysis of the lid structure, cost of manufacture, consumer preferences, consumer recognition, or customer recognition of Applicant's "Traveler" lid product.

23. Any plan or proposal for Opposer to produce a hot cup lid closely resembling Applicant's Traveler lid.

24. Knowledge and information relating to Applicant's patents on disposable cup lids, especially U.S. Pat. Nos. 4,589,569 and Des. 287,919.

25. Any opinion of counsel obtained regarding U.S. Pat. Nos. 4,589,569 and/or Des. 287,919.

26. The channel(s) of trade in which Opposers' domed hot cup lid is marketed, promoted, and sold.

27. All information requested in Applicant's Interrogatories, Document Requests, or Requests for Admissions served upon Opposer.

28. All information known to Opposer regarding any hot cup lid marketed or sold in the United States which has been discontinued or otherwise no longer marketed and/or sold, including all information regarding the perceived or actual reason for such discontinued marketing or sale.

29. Opposers' contentions in the present Opposition proceeding, including the factual basis for contentions contained in the Notice of Opposition and all other documents filed or served in this proceeding.

30. Opposers' discovery responses in this proceeding and all efforts to locate information and documents responsive to Applicant's Interrogatories, Document Requests, and/or Requests for Admissions served on Opposers.

31. The information provided by Opposer in document discovery regarding domed hot cup lid manufacturing costs, sales volume, actual profit and profit margin.

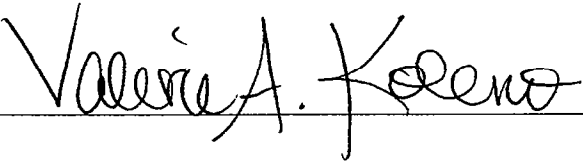
32. The information provided in documents produced by Opposers bearing production numbers OPP 0000742 through OPP 0000794, including explanation of the information provided and manner in which such information has been maintained and was compiled for use in the documents (OPP 0000742 – OPP 0000794).

33. Opposers' redaction or removal of information in its documents produced in discovery in these proceedings, and identification of subject matter of all redacted or removed information.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of **APPLICANT'S AMENDED NOTICE OF RULE 30(b)(6) DEPOSITION OF GEORGIA-PACIFIC CORPORATION**, including Schedule A, was served via facsimile and first class U.S. mail, postage prepaid, on May 25, 2005 to:

William G. Barber
Timothy M. Kenny
Carrie Johnson
FULBRIGHT & JAWORSKI L.L.P.
2100 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
(612) 321-2800 Phone
(612) 321-9600 Facsimile

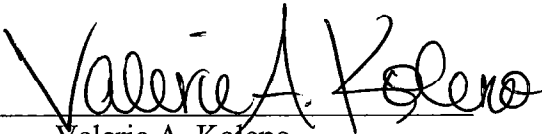


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **APPLICANT'S MOTION TO COMPEL PRODUCTION OF OPPOSERS' FINANCIAL DOCUMENTS AND TO EXTEND DISCOVERY PERIOD** was served via first-class mail, postage prepaid, on August 2, 2005, addressed to:

William G. Barber, Esq.
Timothy M. Kenny, Esq.
Carrie L. Johnson, Esq.
FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701-3248



Valerie A. Koleno