THIS OPINION IS NOT A
PRECEDENT OF THE TTAB

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

Baxley

Mailed: August 27, 2008

Opposition No. 91167189
Opposition No. 91174152

Lockheed Martin Corporation

v.

Raytheon Company

Before Zervas, Bergsman, and Wellington,
Adminstrative Trademark Judges

By the Board:

Raytheon Company ("applicant") seeks to register the mark PAVEWAY in standard character form for "laser guided bombs"[1] and "laser guided bomb kits"[2] in International Class 14.

Lockheed Martin Corporation ("opposer") filed notices of opposition to registration of applicant's mark in both applications on the ground of genericness. In an August 15, 2007 order, opposer was granted leave to file an amended

[1] Application Serial No. 78481770, filed September 10, 2004 and alleging 1972 as the date of first use anywhere and date of first use in commerce. This application is the subject of Opposition No. 91167189.

[2] Application Serial No. 78672972, filed July 18, 2005 and alleging 1972 as the date of first use anywhere and date of first use in commerce. This application is the subject of Opposition No. 91174152.

notice of opposition in Opposition No. 91167189 in which it added a claim of fraud based on applicant's admissions during discovery that it does not manufacture or conduct final assembly of the laser guided bombs at issue.

This case now comes up for consideration of opposer's motion (filed August 17, 2007) for summary judgment on its pleaded genericness and fraud claims. The motion has been fully briefed.

After reviewing the parties' arguments and evidence, we find that there are genuine issues of material fact which preclude disposition of these consolidated proceedings by way of summary judgment. With regard to the genericness claims in the respective proceedings, we find that, in view of applicant's evidence of long-term use of the term PAVEWAY with a capital P or in all capital letters in combination with the generic designations such as "laser guided bomb," "LGB," and "precision guided bomb," there is a genuine issue as to whether the primary significance to the relevant public of the term PAVEWAY is in reference to the class of goods on which that term is used. See *H. Marvin Ginn Corporation v. Int'l Ass'n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986). With regard to the fraud claim in Opposition No. 91167189, we find, in view of applicant's evidence that the terms "laser guided bombs" and

"laser guided bomb kits" are used interchangeably, that there is a genuine issue of material fact as to whether applicant's claim to have used the mark PAVEWAY on "laser guided bombs" is false.[3]

In view thereof, opposer's motion for summary judgment is denied.[4] Proceedings herein are resumed. The parties are allowed until thirty days from the mailing date of this order to serve responses to any outstanding written discovery requests. Discovery and testimony periods are reset as follows.

DISCOVERY PERIOD TO CLOSE:	**October 31, 2008**
Plaintiff's 30-day testimony period to close:	**January 29, 2009**
Defendant's 30-day testimony period to close:	**March 30, 2009**
Plaintiff's 15-day rebuttal testimony period to close:	**May 14, 2009**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served

[3] The fact that we have identified and discussed only these genuine issues of material fact as sufficient bases for denying the motion for summary judgment should not be construed as a finding that these are necessarily the only issues that remain for trial.

[4] The parties should note that the evidence submitted in connection with their motions for summary judgment is of record only for consideration of those motions. To be considered at final hearing, any such evidence must be properly introduced in evidence during the appropriate trial period. *See Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).

on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.l25.

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.l29.