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

Proceeding	91193562
Party	Plaintiff Deere & Company
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Attachments	request for reconsideration 10-22-10.pdf (19 pages)(690633 bytes)

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

DEERE & COMPANY,	)	
	)	Opposition No. 91193562
	)	
Opposer,	)	
	)	Serial No.: 77/715,080
v.	)	
	)	Mark: GEAR GATOR
	)	
UNIPAT PRODUCTS, VIRGINIA, LLC,	)	
	)	Published: December 1, 2009
	)	
Applicant.	)	

OPPOSER'S REQUEST FOR RECONSIDERATION AND MODIFICATION

Pursuant to 37 C.F.R. 2.127(b), Opposer Deere & Company ("Deere") hereby requests reconsideration and modification of the October 12, 2010 Order denying its Motion for Summary Judgment and in support thereof states as follows:

1. Deere respectfully submits that the Board's denial of Deere's summary judgment motion is in error and should be reversed, based on the applicable law and the undisputed facts. See 37 § C.F.R. 2.127(b); TBMP § 518.

2. The denial of Deere's summary judgment motion is based on the following errors:

a) The Board erred in applying Federal Circuit case law regarding the "sham affidavit" rule;

b) The Board erred in determining that the "sham affidavit" rule does not apply when a party contradicts a prior answer to interrogatory;

c) The Board erred in accepting attorney argument regarding the contradiction of Unipat's prior interrogatory answer, when the contradiction must be explained by the party under oath; and

d) The Board erred in finding a genuine issue of material fact regarding whether Unipat is a successor of Sayre Enterprises, Inc. for purposes of Section 10 of the Trademark Act.

Procedural Background

3. Section 10 of the Trademark Act prohibits the assignment of an intent-to-use application except for an assignment "to a successor to the business of the applicant...." 15 U.S.C. § 1060(a)(1).

4. The Board has held that the exception for business succession under Section 10 requires that "the business be transferred with the mark, or at least that portion of the business to which the mark pertains be transferred with the mark...." Oyj v. D'Ascoli, 2008 WL 4354180 at * 9 (TTAB 2008) (not precedential); The Clorox Co. v. Chemical Bank, 40 U.S.P.Q.2d 1098, 1996 WL 579826 at * 7 (TTAB 1996).

5. Applicant Unipat (owned by R. Scott Sayre) claims that it acquired the intent-to-use GEAR GATOR application through an assignment from Sayre Enterprises, Inc. (owned by Sayre and his wife).

6. On June 4, 2010, in its answer to interrogatory 32, Unipat admitted: "The only asset acquired by Applicant from Sayre Enterprises, Inc. as part of the succession was the trademark application that is the subject of this opposition proceeding." (Deere's Motion for Summary Judgment - Exhibit D).

7. Sayre signed the answer to interrogatory 32 as President of Unipat. (Deere's Motion for Summary Judgment – Exhibit D).

8. Because Sayre is both the CEO of Sayre Enterprises and the President of Unipat, and indeed owns both Sayre Enterprises and Unipat, Sayre had full and complete knowledge regarding the transaction between Sayre Enterprises and Unipat when he signed the answer to interrogatory.

9. In answering this interrogatory, Unipat was obligated to respond "fully" and to furnish all of the information available to it. See Fed. R. Civ. P. 33(b).

10. Unipat's answer to interrogatory 32, which was verified, constitutes sworn testimony. See e.g., Jack v. Trans World Airlines, 854 F. Supp. 654, 660-1 (N.D. Cal. 1994) (even unverified answers to interrogatories constitute sworn testimony when the answering party's counsel represented that they could be treated as verified).

11. Deere moved for summary judgment on the basis of Unipat's answer to Interrogatory 32.

12. In an attempt to avoid summary judgment, Unipat produced an amended interrogatory answer and a declaration by Mr. Sayre claiming that Unipat had acquired more than the trademark application from Sayre Enterprise and claiming that Unipat is the successor to Sayre Enterprise's business regarding the GEAR GATOR mark. (Unipat's Brief in Opposition to Deere's Summary Judgment Motion – Exhibits B and C).

13. Both the amended interrogatory answer and the declaration were drafted after Deere filed its summary judgment motion.

14. In its reply, Deere explained that the amended interrogatory answer and Sayre's declaration must be disregarded because they contradict Unipat's prior sworn answer to interrogatory, under the doctrine commonly known as the "sham affidavit" rule.

15. The Board correctly determined that the amended interrogatory answer and Sayre's declaration both <u>contradict</u> Unipat's original interrogatory answer. (Order p. 8).

16. However, the Board refused to disregard the amended interrogatory answer and the declaration. Based on the amended interrogatory answer and the declaration, the Board denied Deere's summary judgment motion. This ruling was erroneous in each of the following respects.

<u>I. The Board erred in applying Federal Circuit case law regarding the "sham affidavit" rule.</u>

17. Deere's reply brief in support of its summary judgment motion cited case law from numerous jurisdictions regarding the "sham affidavit" rule.

18. The Board's ruling only cites decisions by the Federal Circuit, which it describes as "[the Board's] primary reviewing Court." (Order p. 8).

19. The Board observed that the Federal Circuit had not applied the "sham affidavit" rule under the circumstances of the present case, *i.e.* contradiction of a prior sworn answer to interrogatory. (Order p. 9).

20. It was error for the Board to apply Federal Circuit case law regarding this issue and, in particular, to focus on whether the Federal Circuit had applied the "sham affidavit" rule under the precise circumstances of this case.

21. When applying the "sham affidavit" rule, the Federal Circuit does not apply its own body of law but rather "appl[ies] the law of the appropriate regional circuit...." Brand Management, Inc. v. Menard, Inc., 135 F.3d 776, 1998 WL 15241 at * 8-9 (Fed. Cir. 1998) (applying Eighth Circuit case law regarding the sham affidavit rule).

22. Courts throughout the country apply the "sham affidavit" rule when a party attempts to contradict a prior answer to interrogatory, as explained below in Section II. Furthermore, courts universally require that the party explain - under oath - the contradiction. Attorney argument regarding the contradiction is insufficient, as explained below in Section III. Under these fundamental principles, Unipat's amended interrogatory answer and Sayre's declaration should have been disregarded.

II. The "Sham Affidavit" rule applies when a party contradicts a prior sworn answer to interrogatory.

23. The Board appears to have determined that the "sham affidavit" rule applies only when a party contradicts prior deposition testimony, not when it contradicts a prior sworn interrogatory answer.

24. In actuality, the "sham affidavit" rule does apply when a party contradicts a prior interrogatory answer. See Ball v. United GT Corp., 2010 WL

680348 at * 2 (S.D. Ind. 2010) ("In general, the nonmoving party cannot contradict deposition testimony or interrogatory answers with later-filed contradictory affidavits") (emphasis added); Grice Construction, LLC v. Foremost Ins. Co., 2009 WL 901133 at * 1 (N.D. Ga. 2009) ("Plaintiff has failed to offer a reasonable explanation for the contradiction between his answers to interrogatories provided February 18, 2008, and his affidavit dated June 19, 2008. Therefore, the Court will not consider Grice's testimony given in his affidavit"); Boulanger v. U.S. Bureau of Prisons, 2009 WL 1146430 at * 15 (D.N.H. 2009) ("Thus, to the extent that Plaintiff contends he suffered physical injury due to lack of exercise and restraints, the Court disregards such contention because it contradicts plaintiff's earlier answer to Interrogatory 8"); Toney v. Perrine, 2007 WL 2688549 at * 1 (D. N.H. 2007) ("[T]he non-moving party cannot create a dispute concerning material facts by simply submitting an affidavit that contradicts his or her complaint, deposition testimony, or answers to interrogatories without providing an adequate explanation for that discrepancy") (emphasis added); Hill v. Bowles, 2005 WL 1420864 (W.D. Tenn. 2005) ("[A]ll portions of Jimmie and Barbara Hill's affidavits that are in contradiction to their answers to Defendants' interrogatories or their sworn depositions are struck pursuant to Rule 37(c)") (emphasis added); Stone-Graves v. Cooperative Elevator Co., 2003 WL 1867921 at * 3 (E.D. Mi. 2003) ("[T]o the extent Plaintiff's February 17, 2003 affidavit contradicts her earlier answers to interrogatories, the court will disregard the later filed affidavit"); Hanley v. The Dow Chemical Co., 1999 WL 33603133 at * 5 (N.D.N.Y. 1999) ("Factual assertions

made in an affidavit submitted in opposition to a motion for summary judgment may be disregarded by earlier statements in response to interrogatories"); Montelbano v. Information Resources, Inc., 1998 WL 265105 at * 5 n. 3 (N.D. Ill. 1998) ("The Court disregards [the nonmoving party's] factual statement because it directly contradicts [his] prior admission in his response to Interrogatory No. 2, which Fed.R.Civ.P. 33(b)(1) requires to be under oath"); Jack v. Trans World Airlines, 854 F. Supp. 654, 660-1 (N.D. Cal. 1994) (disregarding affidavit as contradictory to answers to interrogatories even though the answers were unverified).

25. For example, in Martell v. Guilbeau Marine, the determinative issue was whether the plaintiff was a "guest" in the motor vehicle at the time of the subject accident. 2010 WL 1267842 (E.D. La. 2010). To resist the defendant's summary judgment motion, the plaintiff submitted an affidavit stating that the purpose of the trip was to purchase supplies for a party. Id. at * 2. In an earlier answer to interrogatory, the plaintiff had stated that he was being transported to deliver documents to the Coast Guard. Id. The court explained that "a party is not permitted to manufacture a genuine issue of material fact by submitting an affidavit that, without explanation, directly contradicts his prior testimony." Id. at * 2. It found that "plaintiff's affidavit in support of his opposition to summary judgment cannot be reconciled with his answer to the interrogatory because the affidavit directly contradicts his prior testimony." Id. at * 3. The court held that the affidavit would be disregarded because of the contradiction with the

interrogatory answer: "Plaintiff's affidavit tells the same story differently and will be disregarded by the Court." Id.[1]

26. It is true, as the Board observed, that the Federal Circuit has not specifically held "that a party may not rely on a declaration which contradicts a prior inconsistent interrogatory response." (Order p. 9). However, this is only because the Federal Circuit has not been asked to address this precise question. If faced with the issue, the Federal Circuit would follow the overwhelming weight of authority, demonstrated above, and refuse to consider an affidavit that contradicts a prior answer to interrogatory.

27. The fact that the Federal Circuit would not limit the "sham affidavit" rule to the contradiction of prior deposition testimony is revealed by the Federal Circuit's 2010 Delaware Valley decision. Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, LLC, 597 F.3d 1374 (Fed. Cir. 2010). In Delaware Valley, the Federal Circuit quotes with authority the Eleventh Circuit's decision in McCormick v. City of Fort Lauderdale, 333 F.3d 1234 (11th Cir. 2003). Delaware Valley, 597 F.3d at 1381. In McCormick, the Eleventh Circuit applied the "sham affidavit" rule when a party contradicted a prior sworn statement given to the police. The McCormick decision, relied upon by the Federal Circuit in Delaware Valley, makes

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1. The fact that the "sham affidavit" rule is not limited to the contradiction of deposition testimony is also revealed by the fact that courts disregard affidavits that contradict sworn pleadings. See Johnson v. Keaton, 2008 WL 4493242 at * 7 n. 4 (M.D. Ala. 2008) ("The court may disregard Johnson's affidavit filed in response to the motion for summary judgment to the extent it directly contradicts the statements contained in his sworn complaint"); Stefanik v. Friendly Ice Cream Corp., 183 F.R.D. 52, 54 (D. Mass. 1998) (not allowing the plaintiff to contradict his sworn complaint in an attempt to avoid summary judgment).

clear that the application of the "sham affidavit" rule does not depend on the form of the prior sworn testimony.

28. Furthermore, Deere respectfully submits that it would be illogical for the Federal Circuit to refuse to allow a party facing a summary judgment motion to contradict sworn testimony in the form of deposition testimony but to allow the party to contradict sworn testimony in the form of an answer to interrogatory. See generally Brio Corp. v. Meccano S.N., 690 F. Supp.2d 731, 748 (E.D. Wisc. 2010) ("In this circuit, it is well established that a party may not create an issue of fact by submitting an affidavit whose conclusions contradict prior deposition or other sworn testimony") (emphasis added); Nuzzi v. St. George Community Consolidated School District No. 258, 688 F. Supp.2d 815, 831 (C.D. Ill. 2010) ("[A] party cannot prevail on a motion for summary judgment by submitting an affidavit containing conclusory allegations which contradict plain admissions in prior deposition or otherwise sworn testimony") (emphasis added).

29. It would also undermine the summary judgment rule if a party were allowed to avoid summary judgment by contradicting prior sworn answers to interrogatories. The Federal Circuit has explained that "to allow [a party] to preclude summary judgment simply by contradicting [its] own prior statements would seriously impair the utility of Federal Rule of Civil Procedure 56." Sinskey v. Pharmacia Ophathalmics, 982 F.2d 494, 498 (Fed. Cir. 1992), abrogated in part on other grounds, Pfaff v. Wells Elecs., 525 U.S. 55, 67-68 (1998).

III. The contradiction must be explained – under oath - by the party; attorney argument regarding the contradiction is not sufficient.

30. When a party attempts to rely on a contradictory affidavit, the party himself (not his lawyer) must explain – under oath - the contradiction. See Beckel v. Wal-Mart, 301 F.3d 621, 623 (7th Cir. 2002) ("The explanation... must come in the affidavit itself ... not a lawyer's musings... which are not evidence"); Brand Management, Inc. v. Menard, Inc., 135 F.3d 776, 1998 WL 15241 at * 9 (Fed. Cir. 1998) (a contradictory affidavit may be considered only if "the contradictory affidavit adequately explains why the earlier testimony is in conflict with the affidavit") (applying Eighth Circuit case law); Jackson v. Consolidation Coal Co., 21 F.3d 422, 1994 WL 89801 at * 3 (4th Cir. 1994); Nuzzi v. St. George Community Consolidated School District No. 258, 688 F. Supp.2d 815, 831 (C.D. Ill. 2010) ("[A]ffidavits, when offered to contradict the affiant's deposition are so lacking in credibility as to be entitled to zero weight in summary judgment proceedings unless the affiant gives a plausible explanation for the discrepancy. ....This explanation must come in the affidavit itself"); Reginald Martin Agency v. Conseco Medical Ins. Co., 478 F. Supp.2d 1076, 1082-3 (S.D. Ind. 2007) ("Where an affiant, within the same affidavit, cannot provide a plausible explanation for any discrepancy between the affidavit testimony and previous deposition testimony, a court may not properly consider the affidavit testimony"); The Coakley Landfill Group v. IT Corp., 116 F.Supp.2d 237, 243 (D. N.H. 2000) (considering affidavit that contradicted an answer to interrogatory only because "the affidavit provides a

sufficient explanation for the contradiction ... between the interrogatory answer ... and the affidavit...."); Jack v. Trans World Airlines, 854 F. Supp. 654, 660 (N.D. Cal. 1994) ("The person offering the changed testimony, not his or her lawyer, should explain why his or her testimony has changed").

31. In Jackson, the Fourth Circuit held that the district court had properly disregarded a contradictory affidavit, noting that "the record is silent" regarding the contradiction. 21 F.3d 422, 1994 WL 89801 at * 3. The Fourth Circuit cited with approval a Third Circuit decision which also struck a contradictory affidavit because "the affiant provided no satisfactory explanation for the contradiction." Id.

32. In Sinskey, the Federal Circuit held that the contradictory declaration was properly disregarded, noting "the declaration does not attempt to reconcile the conflict...." 982 F.2d at 498.

33. An attorney's argument is insufficient to explain the contradiction with prior sworn testimony. See Beckel v. Wal-Mart, 301 F.3d 621, 623 (7th Cir. 2002); Jack v. Trans World Airlines, 854 F. Supp. 654, 660 (N.D. Cal. 1994) ("The person offering the changed testimony, not his or her lawyer, should explain why his or her testimony has changed").

34. In Beckel, the Seventh Circuit rejected the attorney's explanation for the contradiction, explaining that attorney argument "is entitled to no weight because it is just a lawyer's unsworn argument, not the affiant's testimony (or testimonial equivalent) under oath." 301 F.3d at 623-4 (emphasis added).

35. Sayre's declaration, which contradicts the prior answer to interrogatory that Sayre himself verified, offers no explanation for the contradiction. (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment - Exhibit C).

36. Unipat's amended answer to interrogatory (verified by Sayre) also provides no explanation for the contradiction with the initial answer to interrogatory (verified by Sayre). (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment - Exhibit B).

37. The only explanation offered by Unipat is attorney argument - consisting of just one sentence in Unipat's Brief. (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment p. 4).

38. As a matter of law, the attorney argument in Unipat's brief is inadequate to explain the contradiction between a) Unipat's initial answer to interrogatory and b) Unipat's amended answer to interrogatory and Sayre's declaration. See Beckel v. Wal-Mart, 301 F.3d 621, 623 (7th Cir. 2002); Brand Management, Inc. v. Menard, Inc., 135 F.3d 776, 1998 WL 15241 at * 9 (Fed. Cir. 1998); Jackson v. Consolidation Coal Co., 21 F.3d 422, 1994 WL 89801 at * 3 (4th Cir. 1994); Nuzzi v. St. George Community Consolidated School District No. 258, 688 F. Supp.2d 815, 831 (C.D. Ill. 2010); Reginald Martin Agency v. Conseco Medical Ins. Co., 478 F. Supp.2d 1076, 1082-3 (S.D. Ind. 2007); The Coakley Landfill Group v. IT Corp., 116 F.Supp.2d 237, 243 (D. N.H. 2000); Jack v. Trans World Airlines, 854 F. Supp. 654, 660 (N.D. Cal. 1994).

39. Unipat's failure to explain under oath the contradiction precludes the Board from relying on Unipat's amended answer to interrogatory or Sayre's declaration.

40. Even if attorney argument could be offered to explain the contradiction with sworn testimony, which it cannot, the explanation offered by Unipat's attorney would not suffice. Unipat's Brief states that "after conducting further discovery, Unipat has discovered facts which prove that Sayre transferred more than just the GEAR GATOR application to Unipat." (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment p. 4). This is simply not credible. Mr. Sayre is the CEO of Sayre Enterprises and the president of Unipat. (Deere's Motion for Summary Judgment - Exhibit C). Sayre owns both Sayre Enterprises and Unipat. (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment - Exhibit C ¶ 2). When Unipat made its initial answer to interrogatory 32, it was obligated to respond "fully" and to furnish all of the information available to it. See Fed. R. Civ. P. 33(b). In that initial answer, which was verified by Sayre, Unipat unequivocally admitted that the only transferred asset was the trademark application itself: "The only asset acquired by Applicant from Sayre Enterprises, Inc. as part of the succession was the trademark application that is the subject of this opposition proceeding." It is implausible that after reading Deere's motion for summary judgment, Unipat (Sayre) somehow "discovered" additional facts regarding the assignment from Sayre's business Sayre Enterprise to Sayre's business Unipat.

41. Thus, even if the Board were inclined to accept attorney argument regarding the contradiction, which it should not because of the case law cited above, the explanation offered by Unipat's attorney should be rejected as an entirely unsatisfactory explanation for the contradiction. See e.g., Brand Management, Inc. v. Menard, Inc., 135 F.3d 776, 1998 WL 15241 at * 9 (Fed. Cir. 1998) (affirming the district court's finding that the affiant "failed to provide a satisfactory explanation for the discrepancy between his deposition testimony .... and subsequent declaration... and that therefore the declaration did not create a genuine issue of material fact").

IV. The Board erred in finding a genuine issue of material fact as to whether Unipat is Sayre Enterprise's successor.

42. Sayre's declaration and Unipat's amended answer to interrogatory – and all arguments based thereon and all documents attached thereto - should have been disregarded for all of the reasons discussed above.

43. Once the declaration and amended answer to interrogatory are disregarded, there are no genuine issues of material fact.

44. Unipat's initial interrogatory answer explains that "The only asset acquired by Applicant from Sayre Enterprises, Inc. as part of the succession was the trademark application that is the subject of this opposition proceeding." (Deere's Motion for Summary Judgment – Exhibit D).

45. The purported assignment violates Section 10, as a matter of law.

46. Even if the documents attached to Sayre's declaration are considered – which they should not be – there is no genuine issue of material fact. See Unipat's Brief in Opposition to Deere's Motion for Summary Judgment – Exhibit C.

47. Exhibit 1 to the declaration contains emails from December 2008 regarding a GEAR GATOR sign. The emails are between various representatives of Sayre Enterprises, as evidenced by their "sayreinc.com" email addresses. The emails make no mention of Unipat and certainly do not establish that Unipat is a successor of Sayre Enterprises.

48. Exhibits 2 and 3 to the declaration are emails to Scott Sayre regarding boxes and websites. The emails are dated January 2009 and March 2009 and make no mention of Unipat. Again, the emails do not establish that Unipat is a successor of Sayre Enterprises.

49. Exhibit 4 to the declaration is a March 30, 2009 email from a Sayre Enterprises representative named Jeremiah Forquer to Sayre regarding GEAR GATOR box art. The email refers to the "Sayre logo." The email does not mention Unipat and plainly does not establish that Unipat is a successor of Sayre Enterprises.

50. Exhibit 5 to the declaration contains April 2009 emails and designs with the Sayre logo. The emails do not even mention Unipat. They cannot possibly establish that Unipat is a successor of Sayre Enterprises.

51. Exhibits 6, 7, and 8 are emails from April 21, 2009; May 4, 2009; and May 6, 2009. These emails were written after the date (April 17, 2009) when Sayre

claims (in his declaration) to have begun transferring the GEAR GATOR business from Sayre Enterprises to Unipat. (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment - Exhibit C ¶ 17). Tellingly, Sayre used his "Sayre Enterprises" email address to correspond about GEAR GATOR in these emails - revealing that the business was not transferred away from Sayre Enterprises. For instance, on May 6, 2009, Sayre used his Sayre Enterprises email address (scott@sayreinc.com) to send an email to Sayre Enterprises representative Jeremiah Forquer asking him to work on the dimensions of the GEAR GATOR box. (Unipat's Brief in Opposition to Deere's Motion for Summary Judgment - Exhibit C, Exhibit 8 thereto). These emails certainly do not establish a transfer of business to Unipat. Moreover, the attachments to the emails only show that the Unipat name was added to the instruction manual and a flyer. Again, these fall far short of establishing business succession.

52. Unipat would be deemed the successor to Sayre Enterprise's business only if that portion of the business to which the GEAR GATOR mark pertained was "transferred" to Unipat. See Oyj v. D'Ascoli, 2008 WL 4354180 at * 9 (TTAB 2008) (not precedential); The Clorox Co. v. Chemical Bank, 40 U.S.P.Q.2d 1098, 1996 WL 579826 at * 7 (TTAB 1996).

53. There is absolutely no evidence that any portion of Sayre Enterprise's business was transferred to Unipat.

54. If Unipat were in fact a successor to Sayre Enterprise's business, Unipat would have produced an asset purchase agreement or some other

document effectuating a transfer of assets between the companies. Unipat failed to do so.

V. Conclusion.

55. Sayre's declaration and Unipat's amended answer to interrogatory – both written after Deere filed its summary judgment motion - must be viewed as a poor attempt to avoid summary judgment.

56. The universal rule is that a party cannot avoid summary judgment by contradicting prior sworn testimony, including an answer to interrogatory. See Stefanik v. Friendly Ice Cream Corp., 183 F.R.D. 52 (D. Mass. 1998) (in refusing to allow the plaintiff to contradict his sworn pleadings to avoid summary judgment, explaining that a party "is not permitted to kick over the chess board in the face of a checkmate").

57. Unipat has admitted that the "only asset" it acquired from Sayre Enterprises "was the trademark application that is the subject of this opposition proceeding." (Deere's Motion for Summary Judgment – Exhibit D).

58. There are no genuine issues of material fact.

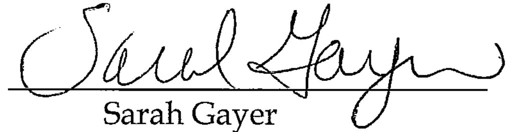
59. There is no evidence that Unipat is Sayre Enterprise's business successor for purposes of Section 10.

60. As a matter of law, the purported assignment violates Section 10.

61. Deere's motion for summary judgment should have been granted.

62. Accordingly, Deere respectfully requests reconsideration and modification of the order denying its motion for summary judgment.

DEERE & COMPANY



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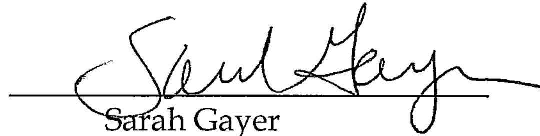
ELECTRONIC MAILING CERTIFICATE

I hereby certify that the OPPOSER'S REQUEST FOR RECONSIDERATION is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (ESTTA) on this 22 day of October, 2010.



Sarah Gayer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing REQUEST FOR RECONSIDERATION has been forwarded, this October 22, 2010 by first class mail and email to:

Angela Holt
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2101 West Clinton Ave., Suite 102
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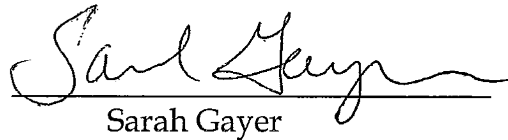

Sarah Gayer