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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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Date	10/22/2010
Attachments	motion to suspend 10-22-10.pdf (5 pages)(138002 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 MOTION TO SUSPEND DISCOVERY PROCEEDINGS AND ALL DEADLINES

Pursuant to 37 C.F.R. 2.127, Opposer Deere & Company (“Deere”) hereby moves for a suspension of discovery proceedings and all deadlines and in support thereof states:

1. Simultaneous with this Motion, Deere is filing a Request for Reconsideration and Modification of the October 12, 2010 Order denying its Motion for Summary Judgment.

2. Deere’s Request for Reconsideration and Modification identifies the following four errors in the Order denying its Motion for Summary Judgment:

- 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.

3. Deere respectfully submits that the multiple errors in the October 12, 2010 Order present a unique circumstance warranting a stay of proceedings and deadlines.

4. If Deere's Request for Reconsideration and Modification were to be granted, this proceeding would be resolved in its entirety.

5. For good cause, Deere requests that discovery proceedings be suspended immediately.

6. In particular, Deere requests that its obligation to respond to Applicant's interrogatories, requests for production, and requests for admission be suspended.

7. Many of the outstanding discovery requests relate to Deere's significant family of GATOR marks. Responding to the outstanding discovery requests would require substantial time and resources.

8. Applicant would also benefit from the suspension of discovery proceedings.

9. Applicant has served written responses to Deere's first and second sets of requests for production.

10. However, Applicant has not yet produced any responsive documents.

11. If discovery were suspended, then Applicant's obligation to produce documents in response to Deere's requests for production would also be suspended.

12. Granting a suspension of discovery would allow the parties to conserve resources while the Board addresses Deere's request for reconsideration and modification, which Deere respectfully submits should resolve this proceeding in its entirety.

13. In the Order denying Deere's summary judgment motion, the Board established the following deadlines: expert disclosures due on January 10, 2011; discovery closes on February 9, 2011; plaintiff's pretrial disclosures due on March 26, 2011; plaintiff's trial period ends on May 10, 2011; defendant's pretrial disclosures due on May 25, 2011; defendant's trial period ends on July 9, 2011; plaintiff's rebuttal disclosures due on July 24, 2011; and plaintiff's rebuttal period ends on August 23, 2011.

14. For good cause, Deere requests that all deadlines be suspended while the Board addresses Deere's request for reconsideration and modification.

15. Suspending these deadlines will allow the parties to conserve resources pending the resolution of Deere's request for reconsideration and modification.

16. No party would be prejudiced by granting this Motion.

17. Deere respectfully submits that granting this Motion would further the interests of justice.

WHEREFORE, Opposer respectfully requests that discovery proceedings be suspended and that all deadlines be suspended during the pendency of its Request for Reconsideration and Modification.

DEERE & COMPANY



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ELECTRONIC MAILING CERTIFICATE

I hereby certify that the OPPOSER'S MOTION TO SUSPEND DISCOVERY AND ALL DEADLINES is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (ESTTA) on this 22 day of October, 2010.

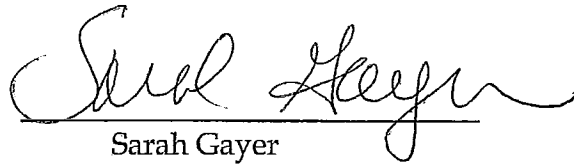


Sarah Gayer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing OPPOSER'S MOTION TO SUSPEND DISCOVERY AND ALL DEADLINES has been forwarded, this October 22, 2010 by first class mail and email to:

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Sarah Gayer