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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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Submission	Motion to Amend Pleading/Amended Pleading
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Date	06/09/2010
Attachments	motion to amend.pdf ( 12 pages )(344136 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 FOR LEAVE TO AMEND, BRIEF INCLUDED**

Pursuant to 37 C.F.R. 2.107 and Federal Rule of Civil Procedure 15, Opposer Deere & Company hereby moves for leave to amend its Notice of Opposition and in support thereof states:

1. This proceeding involves Application Serial No. 77/715,080 for the mark GEAR GATOR (hereinafter “The GEAR GATOR Application”), which is an intent-to-use application.
2. In May 2010, Opposer propounded discovery requests regarding the assignment of the GEAR GATOR Application pursuant to which Applicant claims ownership rights in the Application.
3. Opposer received Applicant’s discovery responses last week, on June 4, 2010.

4. Applicant's discovery responses reveal that the assignment of the intent-to-use GEAR GATOR Application violates Section 10 of the Trademark Act and that, as a result, the Application is void.

5. For good cause, Opposer seeks leave to amend its Notice of Opposition to assert that the Application is void because the assignment thereof violates Section 10.

6. Leave to amend a pleading shall be freely given when justice so requires. *See Fed. R. Civ. P. 15(a).*

7. Opposer respectfully submits that justice does require granting the requested leave to amend. Opposer has requested leave immediately upon receiving the relevant information regarding the assignment.

8. No party would be prejudiced by granting this Motion for Leave to Amend.

9. This proceeding is early in the discovery period.

10. The proposed Amended Notice of Opposition is attached hereto. The only proposed addition is a Claim for Relief under Section 10.

11. Opposer is simultaneously filing a motion for summary judgment.

WHEREFORE, Opposer respectfully requests that it be granted leave to file an Amended Notice of Opposition in form attached hereto.

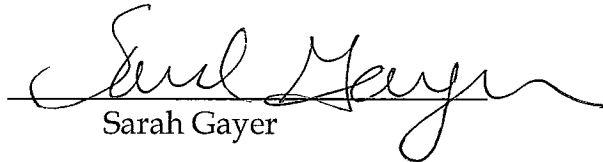
DEERE & COMPANY



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ELECTRONIC MAILING CERTIFICATE

I hereby certify that the OPPOSER'S MOTION FOR LEAVE TO AMEND is being submitted electronically through the Electronic System for the Trademark Trial and Appeal Board (ESTTA) on this 9<sup>th</sup> day of June, 2010.

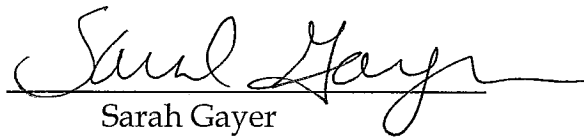


Sarah Gayer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing OPPOSER'S MOTION FOR LEAVE TO AMEND has been forwarded, this June 9, 2010 by first class mail and email to:

Angela Holt  
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Sarah Gayer

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**AMENDED NOTICE OF OPPOSITION**

Opposer Deere & Company, a Delaware corporation with a place of business at One John Deere Place, Moline, IL 61265, believes it would be damaged by the issuance of a registration for the trademark GEAR GATOR as applied for by Unipat Products, Virginia, LLC ("Applicant") in Application Serial No. 77/715,080 filed on April 16, 2009 for "ATV accessories, namely, equipment racks for ATVs" in International Class 12, and therefore opposes same. As grounds for its opposition, Opposer alleges as follows:

1. For many years, Opposer has used trademarks consisting of or prominently featuring the mark GATOR (collectively, the "GATOR Marks") in connection with a wide range of motorized off-road utility vehicles as well as numerous attachments and accessories for such vehicles. Opposer's off-road utility vehicles are also commonly referred to as all-terrain vehicles or ATVs.

2. Opposer's current line of GATOR vehicles for general and specialized purposes includes GATOR in various models for general purpose utility applications, PRO GATOR and GATOR TX Turf for golf course applications, R-GATOR and M-GATOR for military applications, and TE GATOR, an electric utility vehicle or ATV. Opposer also uses the GATOR mark or marks, including the mark GATOR GEAR, for a full line of attachments and accessories for its vehicles, including but not limited to, work lights, cab doors, roofs and sun canopies, rear hitches, bumpers, power lifts, windshields, brush guards, bedliners, floor mats and fender guards.

3. Opposer has expended significant resources to promote its products under the GATOR Marks and has distributed products under the GATOR Marks throughout the United States. As a consequence, Opposer has established common law rights in each of the marks individually and in the GATOR family of marks collectively.

4. In addition to its common law rights under the GATOR Marks, Opposer owns United States Trademark Registrations for many of its GATOR Marks, including without limitation the following: U.S. Registration No. 1,798,626 for GATOR for "all-terrain motorized cart weighing under six thousand pounds for use in material transport"; U.S. Registration No. 2,853,350 for PRO GATOR for "heavy duty utility vehicles for commercial and industrial use"; and U.S. Registration No. 3,466,044 for R-GATOR for "all-terrain vehicles" (collectively, "Opposer's Registrations"). True and correct copies of printouts from the TARR database of the United States Patent and Trademark Office showing the current status and title of Opposer's Registrations as well as copies of the registration certificates are attached hereto as Exhibit A.

5. Opposer's registrations are valid, subsisting, and in full force and effect. In addition, Opposer's Registration Nos. 1,798,626 and 2,853,350 for GATOR and PRO GATOR, respectively, are incontestable and as such serve as conclusive evidence of Opposer's exclusive rights in the marks for the goods identified therein pursuant to 15 U.S.C. Section 1115(b).

6. The GATOR Marks all share the common element GATOR, which serve to create a family of marks owned by Opposer. Opposer uses its GATOR Marks in such a way as to create common exposure and recognition of common ownership based on the common and dominant GATOR element that appears in all the GATOR Marks and is recognized by consumers as an identifying trademark of characteristic of Opposer, whether used alone or in connection with other words, terms or symbols.

7. By virtue of Opposer's extensive sales, advertising, and promotion of its goods under the GATOR Marks, individually and as a family, have become instantly recognizable by the public as exclusively denoting Opposer and its utility vehicles or ATVs, as well as its attachments and accessories for such vehicles. In addition, the GATOR Marks have come to symbolize the high quality of Opposer's products. As a result of Opposer's substantial effort and investment on behalf of its brand, the goodwill inherent in the GATOR Marks is an enormously valuable asset of Opposer.

8. Upon information and belief, Opposer's first use in commerce of each of its GATOR Marks and the GATOR family of marks precedes any priority date on which Applicant may rely.



9. As a matter of law, by virtue of Opposer's registrations, Applicant had constructive knowledge of Opposer's prior rights in the GATOR Marks prior to filing its intent-to-use application and prior to its adoption of the mark GEAR GATOR.

10. Applicant's GEAR GATOR mark incorporates the distinguishing GATOR family term used by Opposer, which term designates Opposer's family of GATOR Marks. By virtue of Applicant's adoption of a formative of the term GATOR for its mark, the GEAR GATOR mark has a similar sound, meaning, appearance and commercial impression to each of the GATOR Marks and to Opposer's family of GATOR Marks.

11. The goods in connection with which Opposer uses its GATOR Marks are identical and/or closely related to the goods claimed in Applicant's application.

12. The registration of Applicant's applied-for mark is inconsistent with Opposer's prior rights in its GATOR Marks individually and as a family of marks as well as inconsistent with Opposer's statutory grant of exclusivity for use of its registered GATOR Marks.

CLAIM FOR RELIEF UNDER SECTION 2(D)

13. Opposer repeats and realleges each and every allegation contained in paragraphs 1 through 12 as if fully set forth herein.

14. Opposer has used the GATOR Marks continually since a date prior to any date on which Applicant may rely.

15. The GATOR Marks are exclusively associated with Opposer.

16. Applicant's GEAR GATOR mark is substantially similar to each of Opposer's registered and/or prior-used GATOR Marks and has a similar sound, meaning, appearance and commercial impression to each of Opposer's GATOR Marks.

17. Because Applicant's GEAR GATOR mark incorporates the family-signifying term GATOR into a mark for goods identical or similar in nature to those offered by Opposer under its GATOR Marks, consumers are likely to believe that GEAR GATOR is yet another mark in Opposer's GATOR family of marks and that it designates products of Opposer.

18. By virtue of Opposer's long-standing use of the GATOR Marks, the goodwill associated with those Marks, and Opposer's Registrations for GATOR and GATOR-formative marks, the registration by Applicant of GEAR GATOR for goods identical or similar to the goods provided by Opposer under its GATOR Marks is likely to cause confusion or cause mistake or to deceive the purchasing public into mistakenly believing that Applicant's goods offered under the GEAR GATOR mark originate from or are otherwise associated with Opposer or that Applicant's goods are endorsed, sponsored or in some way connected with Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d). Registration of the mark GEAR GATOR by Applicant is therefore likely to cause confusion, cause mistake or to deceive.

19. By reason of the foregoing, Opposer is likely to be harmed by registration of Application Serial No. 77/715,080 for the mark GEAR GATOR.

CLAIM FOR RELIEF UNDER SECTION 10

20. Opposer repeats and realleges each and every allegation contained in paragraphs 1 through 19 as if fully set forth herein.

21. Sayre Enterprises, Inc. filed Application Serial No. 77/715,080 on April 16, 2009 under Section 1(b) of the Trademark Act for GEAR GATOR (hereinafter the "GEAR GATOR Application").

22. Unipat Products, Virginia, LLC ("Unipat") was formed the next day, April 17, 2009.

23. Sayre Enterprises, Inc. and Unipat executed an Assignment of Trademark effective as of July 20, 2009, purporting to transfer the GEAR GATOR Application to Unipat.

24. R. Scott Sayre executed the Assignment of Trademark as CEO of Sayre Enterprises and as President of Unipat.

25. Prior to the assignment, neither an amendment under Section 1051(c) nor a verified statement of use was filed.

26. The only asset that Unipat acquired from Sayre Enterprises, Inc. was the GEAR GATOR Application.

27. Unipat is not the successor to Sayre Enterprises' business or any portion thereof.

28. The assignment of the GEAR GATOR Application violates Section 10 of the Trademark Act.

29. The GEAR GATOR Application is void.

WHEREFORE, it is respectfully requested that this Opposition be sustained and that the registration sought by Applicant in Application Serial No. 77/715.080 be denied.

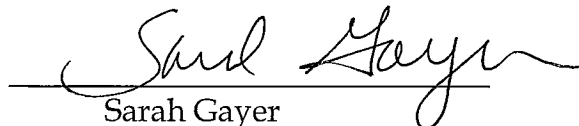
DEERE & COMPANY



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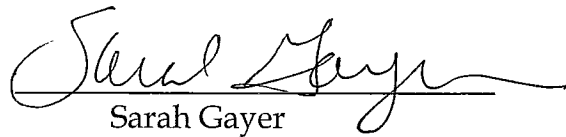


Sarah Gayer

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