

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

gcp

Mailed: September 23, 2010

Opposition No. 91195692

THE SOLOMON-PAGE GROUP LLC,
THE CLINICAL RESOURCE NETWORK
LLC

v.

CLINICAL RESOURCES NETWORK
LLC

By the Trademark Trial and Appeal Board:

This case now comes before the Board for consideration of applicant's motion (filed August 24, 2010) to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Opposer filed a timely opposition to the motion on September 8, 2010 and, in turn, applicant filed a reply brief in support of its motion on September 23, 2010.

A review of applicant's motion, however, demonstrates that the motion is not based on the ground that opposer has failed to plead properly its asserted claim of priority and likelihood of confusion; rather, the motion argues the merits of opposer's claim. Additionally, applicant has included matter outside of the pleading in support of its motion. As such, the Board construes applicant's motion as one for summary judgment. See TBMP § 503.04 (2nd ed. rev. 2004).

A motion for summary judgment, however, may not be filed until the moving party has provided its initial disclosures to the opposing party, except if the motion is based upon claim or issue preclusion or that the Board lacks jurisdiction to entertain the case. See Trademark Rule 2.127(e)(1). Inasmuch as applicant's motion is not based upon claim or issue preclusion or that the Board lacks jurisdiction to entertain opposer's claim and because the record does not demonstrate that applicant served its initial disclosures upon opposer prior to filing its August 24, 2010 motion, applicant's motion is **denied** without prejudice as premature and will be given no further consideration.

Proceedings remain ongoing. Applicant is allowed until **October 23, 2010** in which to file and serve its answer or otherwise respond to the notice of opposition. The trial schedule is reset as follows:

Time to Answer	10/23/2010
Deadline for Discovery Conference	11/22/2010
Discovery Opens	11/22/2010
Initial Disclosures Due	12/22/2010
Expert Disclosures Due	4/21/2011
Discovery Closes	5/21/2011
Plaintiff's Pretrial Disclosures	7/5/2011
Plaintiff's 30-day Trial Period Ends	8/19/2011
Defendant's Pretrial Disclosures	9/3/2011
Defendant's 30-day Trial Period Ends	10/18/2011
Plaintiff's Rebuttal Disclosures	11/2/2011
Plaintiff's 15-day Rebuttal Period Ends	12/2/2011

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 taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.