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

In The Matter of Trademark Application:
Mark: **Adhesive R&D and design**
Serial No.:78/203,932
Filed: January 16, 2003
Published: July 27, 2004

TTAB

Adhesives Research, Inc. (Opponent)	)	Serial No. 78/203,932
	)	Opposition No. 91161723
vs.	)	
Adhesive R&D, Inc. (Applicant)	)	Atty. Docket: 2262.001OPT0/TGD/HMR

MOTION TO COMPEL OPPOSITION TO EXCECUTE PROTECTIVE ORDER, ANSWER REQUESTS FOR ADMISSION, AND PRODUCE NON-CONFIDENTIAL REQUESTED DISCOVERY INFORMATION

Commissioner for Trademarks
P.O Box 1451
Alexandria, VA 22313-1451

Applicant, Adhesive R&D, Inc., respectfully requests the attached protective order (Exhibit A) be imposed on both parties by the TTAB, so that discovery may be enjoyed by both parties. Applicant also requests that the calendar be reset. Parties had agreed to a stay, which lasted five weeks, while they tried to settle the matter. Since no resolution could be reached, and because applicant is no longer in agreement to a stay, applicant requests the calendar be revised to allow both parties time to comply, without penalizing either party, for the time that has expired during the agreed upon stay.

I. BACKGROUND

Despite over two months of negotiations, parties are unable to reach agreement on a designated recipient, acting in behalf of applicant, for trade secret/highly confidential information produced by opponent. As applicant Adhesive R&D, Inc. is representing itself "*pro se*" in these matters, any reference in the standard protective order to outside counsel, does not apply. There is no attorney of record for applicant, as applicant is being defended by Kevin Rosenberg, a Vice President employed by Adhesive R&D, Inc. Since both parties are entitled to the same type of discovery, and because Kevin Rosenberg is functioning as outside counsel for applicant, it is logical that he would need the same access to discovery information as opponents outside counsel.

II. OPPONENT HAS OFFERED NO REASONABLE ALTERNATIVE

Opponent has offered no reasonable alternative, because none exists. Opponent may argue that the information requested is not relevant, or need not be produced for another authorized reason, but that is a separate issue. The ultimate destination of such information can not be in question because any other alternative would seriously impair applicant's ability to defend itself. Information requested by either side during discovery is requested because the party needs the information as evidence to prove its case. Applicant's discovery should not have any extraordinary restrictions placed on it.

III. FAILURE TO RULE NOW IMPAIRS APPLICANTS DEFENSE

Applicant would be at a disadvantage if it has to argue not only the appropriateness of the request, but also for the ability of its *pro se* defense to see the requested information. Since any form of requested information can be labeled trade secret/commercially sensitive, it is appropriate to rule in applicants favor so that the entire matter may proceed.

IV. THE RIGHT TO DEFEND ONESELF

Implicit in the right to defend oneself, or a *pro se* defense, is the right to gather information from the other side, or to conduct discovery, under the same rules and protocol that would apply to hired counsel. If a party can appear in their own defense, then it follows that the same rules would apply to both sides. Because applicant has no right to an attorney in these proceedings, the inability to conduct discovery would render the right to defend ones self meaningless.

V. IMPORTANCE OF TRADE SECRET/COMMERCIALLY SENSITIVE INFORMATION

Relevant trade secret/commercially sensitive information, as deemed by opponent, by definition, is unavailable to the seeking party, without appropriate

discovery. Because of the sensitive nature of the information, Federal Rules of Civil Procedure (Rule 34) provides ample protections for both parties. Opponent is not arguing that a particular request does not need to be produced for a specific authorized reason, but instead has taken the position that any information requested, which it labels trade secret/commercially sensitive, whether legitimate or not, need not be produced, unless applicant obtains outside legal counsel. If this view of the law prevailed, it would give an unfair advantage to any larger entity bringing an opposition against a smaller company. Because there are a finite amount of funds available for a smaller company to defend itself, forcing a company to retain an attorney, and using tactical and procedural maneuvers to slow down the opposition, becomes a viable way of winning. A filed motion, no matter what a party's view of it, still needs to be answered. A trademark opposition should be decided on the relevant facts, on a level playing field, and the outcome should not be determined by which company is willing to spend more money.

VI. CONCLUSION OF PROTECTIVE ORDER ARGUEMENT

For the above stated reasons and because opponent is unwilling to sign the attached protective order, (Exhibit A) applicant request that TTAB compel opponent to execute the attached protective order, so both parties can comply with discovery.

VII. REQUEST TO COMPEL ANSWERS TO APPLICANT'S REQUEST FOR ADMISSIONS

Opponent returned its answers to Requests for Admission,(Attached Opponents Answers Exhibit B) to Applicant on April 8th, 2005. Requests 3, 4, 5, 6, 8 and 9 were answered inadequately, as the answers are nebulous, and provide no information.

VIII. BACKGROUND

Requests 3, 4, 5, 6, 8, and 9 deal with the specific chemistries of applicant's product line, which are well established types of products, and have been used in industry for manufacturing all types of things for decades. Because these are engineered adhesives, meaning they are designed to do, and tested in, specific applications for suitability, and because by grouping them in families such as cyanoacrylate or anaerobic, a family of them can be removed from consideration for use based upon shared properties, opponents answer regarding the chemistry for their products is essential, and applicant does not feel opponent has made a good faith effort to answer these questions.

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