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TTAB

Board Certified
Personal Injury Trial Law
Texas Board of Legal Specialization

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State and Federal Courts
National Mediation Academy

75129229

February 17, 2006

Via Overnight Mail

United States Patent and Trademark Office
Trademark Trial and Appeal Board
600 Dulany Street
Alexandria, VA 22313-1451

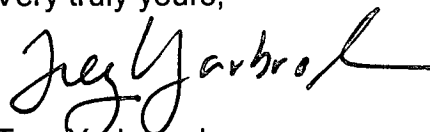
Re: Opposition No. 91155687; B&B Hardware, Inc. v. Sealtite Building
Fasteners

To the Honorable Members of the Board:

I enclose the original and one copy of Applicant's Motion for Protective Order for filing among the other papers in the above-captioned opposition proceeding. Please return a file-marked copy of this enclosure in the stamped and addressed envelope provided. A copy of this enclosure has been furnished to all counsel in the manner shown below.

Thank you for your kind attention to the foregoing.

Very truly yours,



Trey Yarbrough

TY/ljc

Enclosures

cc: Roger N. Behle (via facsimile)
Walter Ames (via first class mail)
Tom Brown (via facsimile)



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

<u>B&B HARDWARE, INC.</u>	:	
Opposer,	:	
v.	:	Opposition No. 91155687
	:	Serial No. 75129229
SEALTITE BUILDING FASTENERS,	:	
Applicant	:	

Applicant's Motion for Protective Order

To the Honorable Trademark Trial and Appeal Board:

Sealtite Building Fasteners, Applicant herein, makes and files this its Motion for Protective Order and in support of same would respectfully show the Board as follows:

1. Applicant, Sealtite Building Fasteners ("Sealtite"), seeks a protective order from the Board regarding the attempt by Opposer, B&B Hardware, Inc. ("B&B Hardware") to take the deposition of Sealtite personnel at the law offices of counsel for B&B Hardware in Costa Mesa, California. Good cause exists for the granting of such order as set forth below.
2. On January 12, 2006, the Board ruled on B&B Hardware's motion to extend the discovery and testimony periods with respect to this opposition proceeding. The Board denied B&B Hardware's request to extend the discovery period, but granted its request to extend the testimony period. The Board's ruling was mailed to the parties on January 12, 2006.

3. On February 6, 2006, B&B Hardware forwarded by overnight mail B&B Hardware, Inc.'s First Notice of Taking Testimonial Depositions of Sealtite Building Fasteners' Personnel to lead counsel for Sealtite, Walter D. Ames, Esq. A copy of the deposition notice in question is attached as Exhibit A and incorporated by reference for all purposes. The deposition notice seeks to compel Sealtite to designate a person or persons to be presented for deposition examination on February 21, 2006 at the Law Offices of Foley Bezek Behle & Curtis, LLP, at 575 Anton Boulevard, Suite 710, Costa Mesa, California 93101. Counsel for B&B Hardware made no effort, prior to the issuance of the deposition notice, to confer with Mr. Ames¹ regarding an agreeable date, time, or place for the taking of said deposition.

4. Sealtite Building Fasteners is located in Tyler, Texas. Any person who would be designated to appear for a testimonial deposition on behalf of Sealtite works and resides in Tyler, Texas or in close proximity thereto. Sealtite does not maintain any type of office or other location in the state of California. This Honorable Board generously granted B&B Hardware an extension of its testimony period. Sealtite personnel should not be required to travel across the United States, at considerable expense, for purposes of giving a testimonial deposition on behalf of the Opposer. Such depositions may be noticed for any reasonable time and place in the United States. 37 C.F.R. 2.123(c). Costa

¹ Walter D. Ames, Esquire, has served as counsel for Sealtite Building Fasteners throughout this opposition proceeding. He will continue to serve as lead counsel. Of recent, Trey Yarbrough has filed a Notice of Appearance as co-counsel and Tom Brown of the firm of Brown, Bauman & Smith has filed a Notice of Appearance as "Of Counsel."

Mesa, California is not a "reasonable" place. Any such deposition of Sealtite should be taken in Tyler, Texas.

5. As of the date of his receipt of the deposition notice, Mr. Ames was scheduled to leave for Florida on February 10, 2006 for a pre-planned two week vacation, preventing his availability to be present for a deposition of his client on February 21, regardless of the situs of the deposition. By fax dated February 8, 2006, Mr. Ames promptly notified counsel for B&B Hardware of his circumstances and Sealtite's position that the deposition situs in Costa Mesa, California is not a reasonable one. A copy of said fax is attached to this Motion as Exhibit B and incorporated by reference for all purposes. Under the circumstances, February 21, 2006 is not a reasonable time for the taking of the deposition.

6. Due to the departure of Mr. Ames for vacation on February 10, the undersigned co-counsel has attempted to confer with counsel for B&B Hardware to determine if this matter could be resolved by the parties without the intervention of the Board. Attached to this motion as Exhibit C is an accurate copy of a February 15, 2006 fax served upon counsel for B&B Hardware. The undersigned co-counsel (Trey Yarbrough) attempted to contact opposer's counsel by telephone on February 15, but was advised that counsel was out of state. The attorneys subsequently exchanged phone calls and left messages, but have been unsuccessful in communicating with one another.

7. Protective orders may be entered as are necessary to protect a party from annoyance, oppression, or undue burden or expense. F.R.C.P. 26(c). Sealtite

respectfully requests that the Board enter a protective order designating that any testimonial deposition of Applicant, Sealtite Building Fasteners, be taken at its attorney's offices in Tyler, Texas, where Sealtite and its personnel work and reside, at a date and time to be agreed upon by the parties or designated by the Board in the absence of such an agreement.

Wherefore, Applicant, Sealtite Building Fasteners, prays that the Board enter its protective order granting Applicant the protection requested herein.

Respectfully submitted,



Walter D. Ames, Esq.
6718 Wemberly Way
McLean, Virginia 22101

Of Counsel:

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Brown, Bauman & Smith
400 E. Fifth Street
Tyler, Texas 75701

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903/595-3111
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Attorneys for Applicant

Certificate Of Service

It is hereby certified that on the 17th day of February, 2006, the foregoing Applicant's Motion for Protective Order was served on Opposer, B&B Hardware, Inc. by sending a copy thereof to Roger N. Behle, Jr., Esq., Foley Bezek Behle & Curtis, LLP, 575 Anton Boulevard, Suite 710, Costa Mesa, California 92626, attorney for opposer, via facsimile transmission.



Trey Yarbrough

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