

**UNITED STATES DISTRICT COURT DISTRICT
OF NEW HAMPSHIRE**

Plaintiff(s) T-Peg, Inc. and Timberpeg East, Inc.

v.

Civil No. C-03-462-M

Defendant(s) Stanley J. Isbitski and Vermont Timber Works, Inc.

UPDATED DISCOVERY PLAN
Fed. R. Civ. P. 26(f)

DATE/PLACE OF CONFERENCE: 10/27/2006 and following
E-mail & Telephone

COUNSEL PRESENT/REPRESENTING: Daniel Will (#12176) and/or Stephen Woods (#8240)
representing T-Peg, Inc. and Timberpeg East, Inc.
("Timberpeg"); W.E. Whittington (#6916) representing
Vermont Timber Works, Inc. and Douglas Friant ("VTW")

CASE SUMMARY

THEORY OF LIABILITY: Copyright infringement

THEORY OF DEFENSE: General denial, lack of use/copying, lack of substantial similarity, authorization,
non-copyrightability, lack of copyright ownership, among others

DAMAGES: Timberpeg's damage claim is in excess of \$75,000.

JURISDICTIONAL QUESTIONS: None

QUESTIONS OF LAW: Without limitation or concession as to validity, applicability of architectural
copyright infringement to the design, manufacture, and assembly of a timber
frame structure; whether plaintiff's drawings are copyrightable, whether there
was copyright infringement, whether a party can assert a copyright registered in
another's name, whether plaintiff gave proper notice of its alleged copyright,
whether certain elements are copyrightable, whether plaintiff authorized the use
of the elements constructed.

TYPE OF TRIAL: Jury Trial

DISCOVERY

TRACK ASSIGNMENT: NA, as this case has already completed discovery

DISCOVERY NEEDED: Discovery is complete, except for pending motions

MANDATORY DISCLOSURES (Fed. R. Civ. P. 26(a)(1))
Already completed.

COMPLETION OF DISCOVERY:
Already complete except as noted in discovery motions.

INTERROGATORIES: Complete

REQUESTS FOR ADMISSION: NA

DEPOSITIONS: NA (complete)

DATES OF DISCLOSURE OF EXPERTS AND EXPERTS' WRITTEN REPORTS AND SUPPLEMENTATIONS: NA (complete)

CHALLENGES TO EXPERT TESTIMONY: Due at same time as Pretrial Pleadings (motions in limine, jury instructions, pretrial statements).

OTHER ITEMS

DISPOSITIVE MOTIONS: Several dispositive, partially dispositive and discovery motions were made moot by the Summary Judgment ruling and may need to be revived. In addition, plaintiffs anticipate filing two additional motions if the parties cannot agree on the issues they concern. Accordingly, the parties propose the following:

1. Within 30 days of November 2, the parties will submit a list of pending motions and their respective positions on whether those motions remain viable in light of the First Circuit decision. The list will also include any additional motions any party deems appropriate and the parties' respective positions regarding same.

The defendants believe that the following motions need to be revived and addressed:

Doc. 23. Defendant's Motion For Summary Judgment I, Headings I(D) and I(E).

Doc. 33. Defendant's Motion For Judgment On The Pleadings (as to remedy only; the motion is still moot as to Counts V, VI and VII as those were dismissed with prejudice and the ruling was not appealed)

Doc. 44. Defendant's Motion For Summary Judgment On (1) Non-Copyrightability¹, and (2) VTW's Lack of Profits

Doc. 72. Defendants' Third Motion To Compel. (Plaintiffs' objection was not yet due at the time summary judgment was granted).

The defendants propose the motion deemed filed on date of hearing, 11/2/06, with an objection deadline of 30 days thereafter.

The plaintiffs propose that objections to discovery motions come due 10 days after disposition of the last dispositive motion, as set forth in section 3 below.

Doc. 87. Defendants' Fourth Motion To Compel. (Plaintiffs' objection was not yet due at the time summary judgment was granted).

The defendants propose the motion deemed filed on date of hearing, 11/2/06, with an objection deadline of 30 days thereafter.

¹ Also based on plaintiffs' authorization/consent to use design elements.

The plaintiffs propose that objections to discovery motions come due 10 days after disposition of the last dispositive motion, as set forth in section 3 below.

Plaintiffs believe that the Motion for Summary Judgment I, and on copyrightability need not be revived. The plaintiffs also believe that the defendants' motions in limine concerning plaintiffs' expert (DE 54) and concerning prior architectural plans (DE 76) need not be revived. The parties will continue to review these issues with one another and submit a list per the first paragraph of this section for this Court's review.

In addition, plaintiffs intend to file a Motion for Summary Judgment as to the access prong of copying, unless the parties agree that this issue has been determined by the Summary Judgment Order and the First Circuit decision.

2. Plaintiffs intend to appeal an Order of the Magistrate and the parties agree that plaintiffs may file any such appeal within 30 days of November 2, reserving any objections defendants may have as to timeliness and/or merits.
3. The Parties request that the Court rule on any pending motions as follows: dispositive motions at least 120 days before trial (or delay setting trial until after rulings), motions in limine and objections to expert testimony and exhibits in accordance with the final pre-trial sequencing set out in the (expected) trial order.

The plaintiffs request that this Court establish the following motion sequence: dispositive or partially dispositive motions first, discovery motions no sooner than 10 days after disposition of the final dispositive motion. The plaintiffs further propose that any party that has not objected or responded to a discovery motion whose objection period had not run at the time summary judgment was granted will have ten days after disposition of the last dispositive motion to submit a response. The defendants do not concur.

4. The parties agree that defendant Friant shall be deemed part of any motion filed by defendant Vermont Timber Works.
5. The parties agree that objections to pretrial materials already filed will not be due until the new deadline for such materials, as reset by this Court based on the new trial schedule.

SETTLEMENT POSSIBILITIES: Unknown.

WITNESSES AND EXHIBITS:

[NO DATES NECESSARY; DUE DATES--10 DAYS BEFORE FINAL PRETRIAL CONFERENCE BUT NOT LESS THAN 30 DAYS BEFORE TRIAL FOR LISTS (INCLUDED IN FINAL PRETRIAL STATEMENTS) AND 14 DAYS AFTER SERVICE OF FINAL PRETRIAL STATEMENT FOR OBJECTIONS--SET BY CLERK'S NOTICE OF TRIAL ASSIGNMENT.]

TRIAL ESTIMATE: 4-5 days

TRIAL DATE: The parties request trial dates no earlier than 120 days after this Court's disposition of the final pending dispositive motion. The parties could be ready for trial during March or the first two weeks of April, or May or June 2007 (but wish to be advised of the exact date now for planning purposes).

PRELIMINARY PRETRIAL CONFERENCE:

The parties are unable to agree on all terms of this scheduling order. If the Court wishes to conduct a pretrial conference, the defendants respectfully request, with the plaintiffs assent, that they be permitted to participate by telephone conference. [NOTE: THE PARTIES SHOULD PLAN TO ATTEND THE PRELIMINARY PRETRIAL CONFERENCE AS SCHEDULED UNLESS OTHERWISE NOTIFIED BY THE COURT.]

OTHER MATTERS:

The caption should be changed to delete Stanley J. Isbitski as a defendant as the claims against him were dismissed (see Documents 90 and 99), and no appeal was taken as to the dismissal.

Respectfully submitted,

**T-PEG, INC. AND TIMBERPEG EAST,
INC.**

By their attorneys,

**DEVINE, MILLIMET & BRANCH,
PROFESSIONAL ASSOCIATION**

Dated: November 1, 2006

/s/ Daniel E. Will
Daniel E. Will (#12176)
111 Amherst Street
P.O. Box 719
Manchester, NH 03105-0719
(603) 669-1000

Of Counsel:

Stephen S. Woods, Esquire (#8240)
General Counsel for Plaintiffs
Timberpeg East, Inc.
c/o 68 Lyme Road
Hanover, NH 03755
(603) 643-6200

VERMONT TIMBER WORKS, INC.

By their attorneys,

W.E. WHITTINGTON LAW ASSOCIATES, PLLC

Dated: November 1, 2006

/s/ Daniel E. Will for
W.E. Whittington (#6916)
35 South Main Street
Hanover, NH 03755
(603) 643-2755