

ESTTA Tracking number: **ESTTA10513**

Filing date: **06/22/2004**

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

Proceeding	91123312
Party	Plaintiff INTEL CORPORATION
Correspondence Address	BOBBY A. GHAJAR HOWREY SIMON ARNOLD & WHITEK LLP 750 BERING DRIVE HOUSTON, TX 77057
Submission	Motion to Reopen
Filer's Name	Bobby A. Ghajar
Filer's e-mail	ghajarb@howrey.com
Signature	/bobbyaghajar/
Date	06/22/2004
Attachments	ideasinsidemotiontoreopen.pdf (5 pages) ideasinsidedeclaration.pdf (2 pages)

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

Intel Corporation	§	
	§	
Opposer,	§	
v.	§	Opposition No. 123,312
	§	
Mr. Stephen Emeny	§	Serial No. 75/825,218
	§	
Applicant.	§	

MOTION TO REOPEN INTEL CORPORATION’S TESTIMONY PERIOD

Intel Corporation (“Intel” or “Opposer”) through its undersigned attorneys hereby moves to reopen its initial testimony period under TBMP § 509. Intel makes this motion because a brief reopening of its testimony period is needed for Intel to submit additional evidence in support of its Notice of Opposition against the IDEAS INSIDE mark.

On April 2, 2004, the Board issued an Order setting aside the notice of default entered against Applicant. That Order also provided a new testimony and briefing schedule. While Applicant was provided two months to submit additional testimony, the Order indicated that Intel’s testimony period was already “CLOSED.”

As discussed herein, a brief reopening of Opposer’s testimony period would not cause any prejudice to Applicant, whom has been given wide latitude in dealing with the Trademark Rules of Practice. Accordingly, Opposer requests that a new scheduling order be issued to reopen the period within which it may submit supplemental testimony by thirty days (30), and to adjust the remaining testimony and briefing cut-off dates accordingly.

BACKGROUND AND RELEVANT FACTS

On November 14, 2002, Intel filed a motion for leave to amend its notice of opposition against the IDEAS INSIDE application to allege Applicant's lack of bona fide intent to use the mark IDEAS INSIDE. (*See* Decl. of Bobby Ghajar at ¶2) On March 11, 2003, the Board granted Intel's motion and allowed Applicant thirty days to file an answer to the amended opposition. (*Id.* at ¶3) Applicant failed to meet the Board's deadline, and on May 20, 2003, two months later, the Board entered a notice of default against Applicant, giving Applicant thirty days to show cause why default should not be granted for his failure to file a timely answer to Intel's amended notice of opposition. (*Id.* at ¶4)

On June 18, 2003, Applicant filed a response to the notice of default. (*Id.* at ¶5) The proceeding then remained dormant for ten (10) months, until April 2004, when the Board issued its ruling on the notice of default. (*Id.* at ¶6) During that period, the parties engaged in a series of talks regarding the possibility of settling the U.S. and Canadian oppositions, and thus Intel took no action that would cause the parties to incur additional costs. (*Id.* at ¶7)

In granting Applicant the right to file his answer to the amended opposition, the Board reopened testimony for the Applicant, but not for Intel. (*Id.* at ¶8-10) Applicant therefore had a chance to supplement his previous testimony evidence, which had been filed in January 2003, but Opposer was not provided an opportunity to supplement its testimony first-filed in November 2002. (*Id.*)

In recent months, and in view of the posture of this case and the Canadian opposition, the parties again discussed the possibility of an amicable settlement, but have reached a further impasse. (*Id.* at ¶11) Opposer now wishes to supplement its testimony with additional evidence.

ARGUMENT

Motions to reopen a testimony period are decided pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, made applicable to TTAB proceedings under TBMP § 509.1. *See* T.B.M.P. § 509.01. Motions filed after the expiration of the period as originally set or previously extended must be substantiated by facts showing that its failure to act during the time allowed was the result of excusable neglect. Fed. R. Civ. P. 6(b)(1). Therefore, the Board must reopen a testimony period upon a showing of “excusable neglect.”

“Excusable neglect” is defined as the “failure to take the proper steps at the proper time, not in consequence of the party’s own carelessness, inattention, or willful disregard, of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.” *Hewlett-Packard Co. Olympus Corp.*, 18 USPQ 2d 1710, 1712 (Fed. Cir. 1991). In the *Pumpkin* decision, the Board reevaluated the concept of “excusable neglect” in light of Supreme Court precedent and found that “the determination of whether a party’s neglect is excusable is ‘at bottom an equitable one.’” *Pumpkin Ltd. v. The Seed Corp.*, 43 USPQ 2d 1582, 1586 (TTAB 1997) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, et al.*, 507 U.S. 380, 395 (1993)).

In *Pumpkin*, the Board identified factors and circumstances to consider in determining whether or not particular conduct constitutes “excusable neglect.” “These [factors] include . . . the danger of **prejudice** to the [nonmovant], the **length of the delay** and its potential **impact on judicial proceedings**, the **reason** for the delay, including whether it was within the reasonable control of the movant, and **whether the movant acted in good faith.**” *Id.* (quoting *Pioneer*, 507 U.S. at 395) (emphasis added).

As discussed below, Intel’s request is consistent with all of these criteria. There will be no prejudice to the non-moving party (Applicant), who had a second opportunity (whereas Intel did not) to submit testimony during his testimony period expiring May 31, 2004. Also, Opposer

is not averse to allowing Applicant to respond, within a short time period, to any testimony filed in accordance with the instant request.

Given the short amount of time requested, there will be insignificant delay and virtually no impact on these proceedings, especially against the backdrop of a proceeding in which Applicant's delay and failure to follow the Trademark Rules of Practice have caused periods of dormancy up to ten months.

Further, the reason for the delay was not within Intel's reasonable control. Intel had no control over the length of time between the notice of default (issued May 20, 2003) and the Order setting aside the default (issued April 2, 2004), nor did Intel have any control over the fact that the new April 2004 scheduling order provided Applicant, but not Opposer, an opportunity to supplement its testimony. Intel continually monitored the proceeding for a Board Order, making multiple inquiries into the status of the case. It was reasonable for Opposer to believe that the proceeding was in a different procedural posture after the notice of default issued. Intel's failure to submit additional testimony, as described above, falls within the purview of "excusable neglect," as required under TBMP § 509.

The last *Pumpkin* factor addresses whether the movant acted in "good faith." See *Pumpkin*, 43 USPQ 2d at 1586. Intel should not be penalized for events out of its control. Because the opposition was latent for nearly a year due to Applicant's default, Intel – with good reason – did not believe it necessary to file additional testimony. Further, during the period of default, Intel continued to pursue settlement with Applicant, and followed up regularly with the Board. Thus Intel acted in good faith throughout this proceeding.

Consistent with the factors identified by the Board in *Pumpkin*, Intel's motion to reopen its testimony period should be granted.

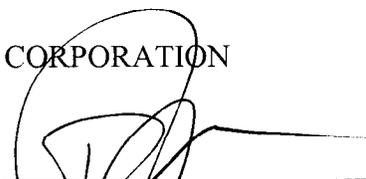
CONCLUSION

For the foregoing reasons, Opposer requests that the Board grant this motion and reopen the plaintiff's testimony period for a period of thirty (30) days, running from the date of the Board's decision on the motion, and that remaining testimony and briefing cut-offs be adjusted accordingly.

Respectfully submitted,

INTEL CORPORATION

Date: June 22, 2004

By: 

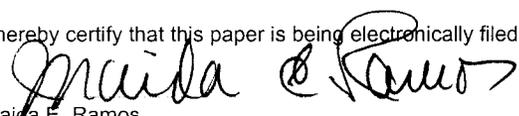
Katherine M. Basile
Bobby A. Ghajar
HOWREY SIMON ARNOLD & WHITE
301 Ravenswood Avenue
Menlo Park, CA 90071-2627
(213) 892-1800

Attorneys for Opposer

CERTIFICATE OF ELECTRONIC FILING

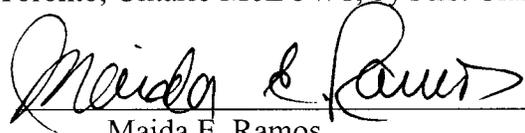
DATE: June 22, 2004

I hereby certify that this paper is being electronically filed on the PTO's website.


Maida E. Ramos

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing "Motion to Reopen Testimony Period" was served on Applicant, Mr. Stephen Emery, 93 Day Avenue, Toronto, Ontario M6E 3W1, by First Class mail, postage prepaid, this 22nd day of June, 2004.


Maida E. Ramos

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

Intel Corporation	§	
	§	
Opposer,	§	
v.	§	Opposition No. 123,312
	§	
Mr. Stephen Emeny	§	Serial No. 75/825,218
	§	
Applicant.	§	

**DECLARATION OF BOBBY A. GHAJAR IN SUPPORT OF MOTION TO REOPEN
INTEL CORPORATION'S TESTIMONY PERIOD**

I, Bobby Ghajar, hereby declare that:

1. I am an attorney at the law firm of Howrey Simon Arnold & White, LLP, counsel for Opposer, Intel Corporation. I make this declaration in support of Intel's Motion to Reopen Intel Corporation's Testimony Period. The following facts are within my personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto.

2. On November 14, 2002, Intel filed a motion for leave to amend its notice of opposition against the IDEAS INSIDE application to allege Applicant's lack of bona fide intent to use the mark IDEAS INSIDE.

3. On March 11, 2003, the Board granted Intel's motion and allowed Applicant thirty days to file an answer to the amended opposition.

4. Applicant did not file any response, and on May 20, 2003, the Board entered a notice of default against Applicant, giving Applicant thirty days to show cause why default should not be granted for his failure to file a timely answer to Intel's amended notice of opposition.

5. On June 18, 2003, Applicant filed a response to the notice of default.
6. Between May 2003 and April 2004, members of my firm and I made several enquiries as to the status of the default.
7. Between the May 2003 – April 2004 time period, Intel and Applicant engaged in a series of talks regarding the possibility of settling the U.S. and Canadian oppositions.
8. In its April 2, 2004 Order, the Board set aside the Notice of Default.
9. The April 2004 Order provided Applicant thirty days to respond to the amended notice of opposition (filed in 2002) and set a new testimony and briefing schedule.
10. The April 2004 Order indicated that discovery in the proceeding was “closed,” provided Applicant nearly two months to supplement his testimony from January 2003, but did not provide Opposer with an opportunity to supplement its testimony from November 2002, instead indicating that Opposer’s testimony period was “closed.”
11. In recent months, the parties have again discussed the possibility of an amicable settlement, but have reached a further impasse.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration was executed in Los Angeles, California, on June 22, 2004.


Bobby A. Ghajar