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

Proceeding	91160119
Party	Plaintiff Quad Int'L, Incorporated ,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

QUAD INT'L, INCORPORATED,	:	**Opposition No.: 91160119**
Opposer,	:	**Serial No.:** 76/516972
vs.	:	**Mark:** CHLOE VEVRIER
	:	**Published:** March 23, 2004
ANDREA FISCHER,	:	
Applicant.	:	

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on **September 15, 2006**, this paper is being submitted to the Trademark Trial and Appeals Board electronically via the Internet, pursuant to Rule 1.26(c).

RICHARD A. MORGAN

OPPOSER'S BRIEF IN RESPONSE TO
APPLICANT'S MOTION FOR RECONSIDERATION OF
JUDGMENT AGAINST APPLICANT
37 CFR § 2.129(c)

Opposer, Quad Int'l, Incorporated, ("Opposer" or "Quad"), by and through undersigned counsel, hereby submits its brief in response to Applicant, Andrea Fischer's ("Applicant") Motion for Reconsideration of Final Judgment submitted on September 5, 2006 (the "Motion"). For the reasons more fully set forth herein, Quad respectfully requests that the Board deny Applicant Motion.

Applicant seeks relief from the Board's August 3, 2006 Order wherein the Board determined that Applicant's December 21, 2005 Response to the Order to Show Cause was insufficient. As a result, this Board deemed Applicant's application abandoned and entered Judgment in favor of Quad. It is well-settled that Motions for Reconsideration, whether pursuant

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to 37 CFR § 2.127(c) (Motion for Reconsideration of Decision on Motion) or 37 CFR § 2.129(b) (Motion for Reconsideration of Final Decision), may not properly be used to introduce additional evidence, nor should it be devoted simply to a re-argument of the points presented in a brief on the original motion. Indeed, as expressly provided in the TTAB Rules "the premise underlying a motion for reconsideration, modification or clarification is that, based upon the facts before it and the applicable law; the Board's ruling is in error and requires appropriate change." *see* TBMP § 518 (citing 37 CFR § 2.129(b)). The cited rules do not contemplate a second request for reconsideration of the same basic issue. *see Giant Food, Inc. v. Standard Terry Mills, Inc.* 231 USPQ 626 (TTAB 1986)

Applicant cannot dispute that her Motion is identical in substance to her Reply to Order to Show Cause. Both submissions recite the same decisional law for the same proposition and she once again relies entirely upon her former counsel's alleged failure to adequately represent her as the basis for the purported "excusable neglect". This Board has already considered these very assertions and the very case law submitted. Apparently dissatisfied and unwilling to accept the Board's decision, Applicant now *insists* that she was correct and demands that this Board set aside its previous Order. Applicant has failed to satisfy the requisite legal standard to prevail on her Motion. There is no support for the notion, in this Tribunal or otherwise, that a litigant is afforded repeated opportunities to argue the exact same matters. Applicant failed to raise any meritorious matters, either factual or legal, apart from those previously presented and rejected as insufficient.

Additionally, Applicant's reliance on 37 CFR § 2.129(c) is seemingly misplaced. This rule, as opposed to 37 CFR § 2.127(b) contemplates a request for " rehearing or reconsideration or modification of a decision issued after final hearing... ". A final hearing was never conducted

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in this matter. On November 22, 2005, the Board issued its Order to Show Cause. Applicants eventual response to this Order was deemed insufficient. Applicant's dissatisfaction with the result cannot serve as a basis for yet another try to alter these proceedings. Applicant's reliance on the very same record and availing herself to a Rule that contemplates a final hearing constitutes improper grounds to reopen these proceedings. Based upon the foregoing, Applicant's Motion for Reconsideration must be denied as simply duplicative of a prior motion filed in this action.

As set forth in *Gaylord Entertainment Co. v. Calvin Gilmore Productions Inc.*, 59 U.S.P.Q.2d 1369, 1372 (T.T.A.B. Apr. 25, 2000), both "the client and attorney share duty to remain diligent in prosecuting or defending client's case." Even in her Motion for Reconsideration, Applicant once again fails to establish that she adequately discharged her duty. "[C]ommunication between client and attorney is two-way affair; and . . . action, inaction, or even neglect by client's chosen attorney will not excuse inattention of the client so as to yield the client another day in court." *Gaylord*, 59 U.S.P.Q.2d at 1372. Applicant does not explain why she should be permitted to escape the consequences of her failure to maintain adequate communications with her counsel. *Id.* at 1373.

The case cited by the Board warns that a party who voluntarily chooses an attorney as its representative in the action, "cannot now avoid the consequences of the acts or omissions of this freely selected agent." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 397 (1993). Simply stated, the Motion and its substantively identical predecessor, the Reply to Order to Show Cause both fail to articulate any rationale as to why Judgment should not be entered against Applicant due to her own dilatory conduct. Even in her Motion, assuming the

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efficacy of the document, and knowing of the inherent deficiencies in her prior submission, fails to address these essential matters.

Based on the foregoing, Applicant has not demonstrated excusable neglect nor has she satisfied any of the requisite standards delineated in the controlling Rules for reconsideration. Having failed to satisfied the threshold requirements to secure reconsideration of this Board's Order and Judgment, Applicant's Motion should be denied with prejudice. Quad should not be require to expend resources responding to Motions that are legally and factually deficient.

respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this ~~14th~~ 15th day of September, 2006, by mailing by first class mail, postage prepaid, on the attorney named below:

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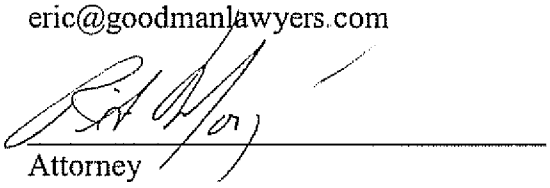

Attorney

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