

ESTTA Tracking number: **ESTTA548124**

Filing date: **07/12/2013**

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

Proceeding	91200786
Party	Plaintiff United Global Media Group, Inc.
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Date	07/12/2013
Attachments	20130712130542 ugmg opp to motion to reopen.pdf(949093 bytes)

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

UNITED GLOBAL MEDIA GROUP, INC.,

Opposer,

v.

BONNIE TSENG,

Applicant.

Opposition No. 91200786

Mark: BEAUTV

Serial No. 85155593

OPPOSITION TO APPLICANT'S MOTION TO EXTEND TRIAL PERIOD

United Global Media Group, Inc. (“UGMG” or “Opposer”) hereby opposes Applicant Bonnie Tseng’s (“Applicant”) Motion to Extend Trial Period filed on July 1, 2013.¹ Applicant, who did not confer with UGMG prior to filing the subject motion, has not shown that Applicant’s failure to act during trial period set by the Board was the result of excusable neglect. *See* TBMP § 509.01 incorporating Fed. R. Civ. P. 6(b)(1)(B) (“When an action must be done within a specified time, the court may, for good cause, extend time on motion made after the time has expired if the party failed to act because of excusable neglect”). Moreover, Applicant’s motion fails to comply with a previously issued Board order.

For the reasons discussed below, Applicant has not established that her failure to take testimony or submit evidence during Applicant’s trial period was the result of excusable neglect. Not once during Applicant’s trial period did Applicant confer with UGMG regarding the issues raised in this Motion.

¹ Although Applicant’s Motion is styled as a request to *extend*, it is, in fact, a motion to *reopen*. The Board’s January 28, 2013 scheduling order set June 30, 2013 as the end of Applicant’s trial period. Because this Motion was filed after that period closed, it is a motion to *reopen*, and Applicant must demonstrate that her failure to timely submit evidence was attributable to “excusable neglect.” TBMP § 509.01.

Moreover, for the third time, Applicant has based a motion to extend on vague, unsupported reasons. None of the reasons Applicant cites for her inaction were outside of her reasonable control. While, Applicant blames “previously documented serious medical illnesses and a severely handicapping injury” for her inaction, Applicant has, for the third time, failed to provide any specifics regarding such illnesses and injury. Contrary to Applicant’s assertion, Applicant has *never* documented any illnesses or injuries. Applicant’s affirmative decisions to not meet the deadline, to not seek an extension before the deadline, and to instead take her chances by waiting until after the deadline to unilaterally pursue this Motion, do not come close to a showing of excusable neglect.

I. RELEVANT BACKGROUND

UGMG filed its Notice of Opposition on July 20, 2011. (Dkt. 1.) On August 26, 2011, Applicant filed a Motion to Extend Time to Answer, without consent, citing “extenuating circumstances.” (Dkt. 2.) In its order granting Applicant’s Motion to Extend Time to Answer, the Board expressly warned Applicant that “...any further motions to extend must include a proper showing of good cause and citations to appropriate cases.” (Dkt. 7.)

Due to Applicant’s failure to fully respond to UGMG’s discovery requests, on March 1, 2012, UGMG filed a Motion to Compel. (Dkt. 8.) Instead of properly opposing UGMG’s Motion to Compel, on May 29, 2012, Applicant filed a motion to extend time to answer UGMG’s interrogatories, citing “two sudden sequential documented illnesses that affected the registrant’s [sic] ability to respond.” (Dkt. 11.)

On October 1, 2012, Applicant filed a document with the Board stating, in part, “Due to physical limitations from serious injury which has left the Applicant temporarily handicapped, the Applicant respectfully requests to have a limited amount of days, until October 3, 2012, to

submit the requested documents to the opposer.” (Dkt. 13)

Pursuant to the Board’s January 28, 2012 order, the end of Opposer’s trial period was set to May 1, 2013, and the end of Applicant’s trial period was set to June 30, 2013. (Dkt. 22.)

UGMG timely submitted evidence in the form of a Notice of Reliance on April 29, 2013. (Dkt. 23). Applicant failed to submit evidence or take testimony prior to Applicant’s June 30, 2013 deadline. Applicant’s current motion again cites “previously documented serious medical illnesses and a severely handicapping injury” as reason for her failure to comply with the trial schedule, take testimony, or submit evidence. (Dkt. 24.)

Not once during the two years that this Opposition has been pending has Applicant not filed any documentation evidencing any illness suffered by her or injuries sustained by her. (Silverstein Decl. ¶ 2.) Applicant’s bald assertions have merely served to delay the final resolution of the proceeding and to run up UGMG’s costs. During the course of this proceeding Applicant has not once requested consent from UGMG to file any of Applicant’s motions. (Silverstein Decl. ¶ 3.) Applicant has never conferred with UGMG’s counsel regarding Applicant’s intent to take testimony. (Silverstein Decl. ¶ 4.) Applicant has not noticed the taking of any depositions in connection with this proceeding. (Silverstein Decl. ¶ 5.)

On July 1, 2013, Applicant unilaterally filed the present Motion.

II. ARGUMENT

A. Applicant Has Not Established That Her Failure to Take Testimony or Submit Evidence Was the Result of Excusable Neglect

Applicant did not move to extend Applicant’s trial period by June 30, 2013, the date that period closed. Accordingly, Applicant must seek leave to reopen Applicant’s testimony period to take testimony or submit evidence. Further, Applicant must establish that her failure to take submit evidence on or before June 30, 2013, was the result of “excusable neglect.” TBMP §

509.01(b)(1).

To determine whether Applicant has established excusable neglect, the Board must consider all the relevant circumstances surrounding Applicant's omission or delay, including: (1) the danger of prejudice to Opposer, (2) the length of the delay and its potential impact on the judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the Applicant, and (4) whether the Applicant acted in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 395 (1993); *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582, 1586 n.7 (TTAB 1997).

In applying the *Pioneer* test, the Board has found the third *Pioneer* factor, namely, the reason for the delay and whether it was within the reasonable control of the movant, to be of "paramount importance." *Old Nutfield Brewing Co. v. Hudson Valley Brewing Co.*, 65 USPQ2d 1701, 1702 (TTAB 2002) (citing *Pumpkin, Ltd.* 43 USPQ2d at 1586 n.7); *see also, HGK Indus. v. Perma Pipe, Inc.*, 49 USPQ2d 1156, 1157 (TTAB 1998).

1. The Reason for the Delay Weighs Heavily Against Applicant

The third and most important *Pioneer* factor, the reason for the delay and whether it was within the reasonable control of the movant, clearly weighs against granting Applicant's motion to reopen.

In the present motion, Applicant does not even attempt to argue that her failure to take testimony or submit evidence was due to excusable neglect. Regardless, this argument would clearly fail given Applicant's persistent amorphous assertions of illness and injury throughout the course of these proceedings, all the while being able to answer the Notice of Opposition, participate in the discovery conference, serve discovery, respond to discovery requests, and file motions. Moreover, Applicant was abundantly aware that, pursuant to the Board's October 7,

2011 order (Dkt. 7.), "...any further motions to extend must include a proper showing of good cause and citations to appropriate cases." Contrary to the Board's very explicit instructions, Applicant has not shown good cause (let alone excusable neglect), nor cited to any cases, in support of any of her motions to extend, or the present motion to reopen. Applicant has only made bald assertions to support her motions throughout this proceeding. Opposer believes that the time has finally arrived for Applicant's charade to come to an end.

2. Opposer Will Be Prejudiced If the Board Grants Applicant's Motion to Reopen

The Board has consistently denied motions to reopen where the movant's inaction was within its reasonable control, even in the absence of prejudice to the non-moving party. *See, e.g., Vital Pharmaceuticals*, 99 USPQ2d at 1710-11 (denying motion to reopen even though there was no measurable prejudice to the non-movant); *Jodi Kristopher Inc. v. International Seaway Trading Corp.*, 88 USPQ2d 1798, 1799 (TTAB 2008) (same); *Atlanta-Fulton County Zoo Inc. v. DeParma*, 45 USPQ2d 1858, 1860 (TTAB 1998) (same); *Pumpkin Ltd.*, 43 USPQ2d at 1587 (same); *HGK Indus.*, 49 USPQ2d at 1157-58 (same).

Although the non-moving party need not prove prejudice, here Opposer would be prejudiced if Applicant's motion is granted. Opposer diligently pursued its case during Opposer's testimony period by timely filing its Notice of Reliance. Opposer expended time, resources, and effort to comply with the Board's current trial schedule. Thus, when Applicant failed to take testimony before the close of her testimony period (and made no attempt to schedule depositions, submit evidence, or extend the deadline until the untimely filing of this motion), Opposer reasonably assumed Applicant would timely move forward with her rebuttal testimony period. Now, Applicant seeks to significantly delay the proceeding by a last-minute Motion, causing prejudice to Opposer. If Applicant's motion to reopen is granted, Opposer will

be forced to spend time and additional resources. In view of this prejudice to Opposer, this *Pioneer* factor weighs in Opposer's favor.

3. The Length of the Delay Justifies Denial of Opposer's Motion

The second *Pioneer* factor, the length of the delay and its potential impact on the judicial proceedings, also weighs against a finding of excusable neglect. In considering the issue of excusable neglect, it is appropriate to consider the additional delay required to brief and decide a motion to reopen and the additional delay associated with rescheduling. *Old Nutfield Brewing Co.*, 65 USPQ2d at 1703.

The Board has stated that it has an interest in seeing the expeditious resolution of proceedings and that its workload is unnecessarily increased when it must devote time and resourced to ruling on motions resulting from avoidable delays. *Id.* Here, Applicant's inaction has, on a number of occasions, resulted in delays. There is no legitimate reason for Applicant's delay and she should not be allowed to continue to profit from her dilatory conduct. Accordingly, the second Pioneer factor also weighs against a finding of excusable neglect.

4. Applicant's Motion Must Be Denied Because Applicant Has Not Acted in Good Faith

Based on a review of Applicant's course of conduct, serious questions arise as to whether Applicant's excuses for her continuous delays have been in good faith. Applicant's numerous motions for extensions have been completely devoid of any evidence supporting Applicant's purported reasons for her delays. For two years, Applicant has simply made bald assertions regarding illnesses and injuries. Applicant's unsupported motions continued even after the Board, in its October 7, 2011 order, expressly instructed Applicant that "...any further motions to extend must include a proper showing of good cause and citations to appropriate cases." The only logical conclusion one can draw from Applicant's failure to comply with the Board's

explicit instruction is that Applicant *cannot* show good cause, excusable neglect, or cite to appropriate cases. Applicant's Motion is clearly a result of her own lack of diligence.

II. CONCLUSION

For the reasons discussed above, Applicant has failed to establish excusable neglect sufficient to warrant reopening Applicant's testimony period. Accordingly, Applicant's Motion should be denied and the parties should be directed to proceed pursuant to the current trial schedule.

Respectfully submitted,

UNITED GLOBAL MEDIA GROUP, INC.

By its attorneys,

Dated: July 12, 2013

/Aaron Y. Silverstein/

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CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2013, a true and complete copy of the foregoing **OPPOSITION TO APPLICANT'S MOTION TO EXTEND TRIAL PERIOD**, was served on Applicant by email, by prior agreement of the parties, and via United States first class mail, postage prepaid, to:

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