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

Proceeding	91207895
Party	Defendant Virginia Polytechnic Institute and State University
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Signature	/Diane Grace Elder;/dge;/61590/
Date	10/12/2016
Attachments	Applicant Virginia Polytechnic Institute and State Universitys Response to Opposer Hokie Objective Onomastics Society LLCs Motion for Leave to File Fifth Notice of Reliance.pdf(1743091 bytes) Declaration of Robert S Weisbein.pdf(157295 bytes)

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

-----X	:	
HOKIE OBJECTIVE ONOMASTICS SOCIETY LLC,	:	
Opposer,	:	Opposition No. 91207895
v.	:	Serial No.: 85-531,923
VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY,	:	
Applicant.	:	
-----X	:	

**APPLICANT VIRGINIA POLYTECHNIC INSTITUTE AND STATE
UNIVERSITY’S RESPONSE TO OPPOSER HOKIE OBJECTIVE
ONOMASTICS SOCIETY LLC’S MOTION FOR LEAVE TO FILE
FIFTH NOTICE OF RELIANCE**

I. PRELIMINARY STATEMENT

Applicant, Virginia Polytechnic Institute and State University (“Virginia Tech”), hereby opposes Opposer, Hokie Objective Onomastics Society LLC’s (“HOOS”), Motion for Leave to File Fifth Notice of Reliance. HOOS has not met the “excusable neglect” standard required to justify reopening its trial period to file a fifth notice of reliance. Indeed, HOOS has not provided any detailed facts upon which its excusable neglect claim is based. Accordingly, HOOS’s motion should be denied.

This motion is supported by the Declaration of Robert S. Weisbein, submitted herewith.

II. STATEMENT OF FACTS

On December 17, 2015, HOOS filed its First, Third and Fourth Notices of Reliance that sought to enter into evidence HOOS’s discovery requests, including requests to admit (Dkt. Nos. 42, 60, 63). The notices claimed that Virginia Tech failed to timely respond to HOOS’s requests

to admit thereby deeming them “admitted.” On December 23, 2015, Virginia Tech filed a motion to strike the notices of reliance or in the alternative to withdraw the admissions. On March 29, 2016, the Board denied the motion to strike, granted Virginia Tech’s alternative motion to withdraw its admissions and deemed timely the responses served January 15, 2014, and August 31, 2015, including supplemental responses served September 18, 2015. As a result, HOOS’s discovery requests have been offered in evidence, but Virginia Tech’s responses have not. Upon receipt of the Board’s March 29, 2016 order, it should have been readily apparent to HOOS that given that its requests for admission were no longer deemed admitted, it would be necessary to introduce into evidence through other means the facts and documentary evidence it sought to establish by relying on the requests for admission. Inexplicably, HOOS did not make a motion to reopen its trial period to offer Virginia Tech’s responses into evidence.

Once proceedings resumed, Virginia Tech and its counsel expended substantial time and effort preparing evidence and taking testimony during its trial period. Weisbein Dec. ¶ 3. Virginia Tech and its counsel worked together to make decisions regarding the evidence and testimony to be submitted, taking into consideration, among other things, the evidence and testimony submitted by HOOS. Weisbein Dec., ¶ 3. The fact HOOS did not put Virginia Tech’s discovery responses into evidence had a significant impact on the scope and content of Virginia Tech’s trial evidence and testimony. Weisbein Dec., ¶ 3.

On the evening of September 7, 2016, the date HOOS’s trial brief was due, HOOS requested Virginia Tech’s consent to an extension of time to file its trial brief, namely to September 22, 2016. Weisbein Dec., ¶ 4; Exh. 1. On September 8, 2016, Virginia Tech gave

HOOS its consent and HOOS filed a stipulated request for extension of time to file its trial brief. Weisbein Dec., ¶ 4; Exh. 1. The Board granted HOOS’s request for extension.¹

On the evening of September 20, 2016, two days before the extended deadline for filing its trial brief, HOOS requested Virginia Tech’s consent to the filing of a fifth notice of reliance in order to place into evidence Virginia Tech’s supplemental responses to HOOS’s third and fourth discovery requests (“Virginia Tech’s Responses”). Weisbein Dec., ¶ 5; Exh. 2. The reason given for the request was simply neglect. Specifically, counsel for HOOS stated: “in the aftermath of the Board’s ruling on the Motion to Strike, which turned aside Opposer’s strategy of relying solely upon deemed admissions, [HOOS] unfortunately neglected to bring the supplemental responses into evidence.” Weisbein Dec., ¶ 5; Exh. 2. On September 21, 2016 Virginia Tech notified HOOS that it would not give its consent. Weisbein Dec., ¶ 5; Exh. 2. HOOS filed its motion for leave to file its fifth notice of reliance on September 22, 2016. The Board suspended proceedings pending the disposition of HOOS’s motion.

III. ARGUMENT

A. Legal Standard

Rule 6(b)(1) of the Federal Rules of Civil Procedure provides:

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

¹ The Board issued an order on September 12, 2016 resetting HOOS’s testimony period to close on September 22, 2016. On September 22, 2016, this order was vacated and the Board granted HOOS’s motion to extend time to file its trial brief to September 22, 2016.

Fed. R. Civ. P. 6(b)(1); *see also* Section 509.01(b)(1), Trademark Trial and Appeal Board Manual of Procedure (“TBMP”). HOOS’s present motion, filed nine months after the expiration of its trial period, must show that its failure to act during the previously allotted time was the result of excusable neglect. According to the Supreme Court in *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Ltd. v. Seed Corps*, 43 U.S.P.Q.2d 1582 (T.T.A.B. 1997), the determination of whether a party’s neglect is excusable is:

at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These factors include...[1] the danger of prejudice to the [nonmovant], the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.

Pioneer, 507 U.S. at 395. The Board has repeatedly held that the third factor in this determination, the reason for the delay on the part of the movant, may be considered to be the most important of the factors. *Luster Products Inc. v. Van Zandt*, 104 U.S.P.Q. 2d 1877, 1878 (T.T.A.B. 2012); *Old Nutfield Brewing Co., Ltd. v. Hudson Valley Brewing Co., Inc.* 65 U.S.P.Q. 2d 1701, 1702; (T.T.A.B. 2002); *Baron Philippe De Rothschild, S.A. v. Styl-Rite Optical Mfg. Co.*, 55 U.S.P.Q. 2d 1848, 1852 (T.T.A.B. 2000).

A party moving to reopen its time to take required action must state in particularity the detailed facts upon which its claim of excusable neglect is based. *Gaylord Entm’t Co. v. Calvin Gilmore Prod. Inc.* 59 U.S.P.Q. 2d 1369, 1372 (T.T.A.B. 2000); *HKG Indus. Inc. v. Perma-Pipe Inc.*, 49 U.S.P.Q.2d 1156, 1158 (T.T.A.B. 1998). Conclusory statements claiming that delay was the result of “oversight” or the “press of other business” does not support a finding of excusable neglect. *See Baron Philippe de Rothschild S.A.*, 55 U.S.P.Q. 2d at 1853 (obligations to other

clients does not relieve counsel's obligation in the instant proceeding); *HKG Indus. Inc.*, 49 U.S.P.Q. at 1158 (failure to provide evidence linking the reason for the delay to the delay precludes a finding of excusable neglect); *Atlanta-Fulton Country Zoo Inc. v. De Palma*, 45 U.S.P.Q. 2d 1858, 1859-60 (T.T.A.B. 1998) (counsel's oversight resulting in failure to file motion to extend testimony period does not constitute excusable neglect).

B. HOOS's Failure to Act was Not the Result of Excusable Neglect

The most important factor in determining "excusable neglect" is the reason for delay and whether it was within the movant's reasonable control. The reasons provided by HOOS for its inaction are without merit and were completely within HOOS's control. Accordingly, this factor alone should preclude a finding of excusable neglect.

HOOS admits that once the Board issued its March 29, 2016 order holding that HOOS's requests were not deemed admitted, it should have realized the filing of a notice of reliance was warranted. Opposer's Motion for Leave to File Fifth Notice of Reliance ("HOOS Motion"), at 2. HOOS claims, however, that its counsel did not come to this realization until recently because of the "press of other business." HOOS Motion, at 2. The press of other business, however, is not sufficient to demonstrate excusable neglect. *See Baron Philippe de Rothschild S.A.*, 55 U.S.P.Q.2d at 1853 (Board admonished counsel that obligations to other clients and civic responsibilities do not relieve counsel of its obligations to the case at hand).

Moreover, HOOS failed to provide any details regarding the alleged "press of other business" that prevented its counsel from taking action for nearly six months. HOOS has not provided the time period during which HOOS counsel was burdened by other business. HOOS has not identified what business so pressed HOOS counsel that he was prevented from meeting his obligations to HOOS. HOOS bears the burden of stating with particularity the detailed facts

upon which its claim of excusable neglect is based. *See Gaylord Entm't Co.*, 59 U.S.P.Q. 2d at 1372. The absence of such details linking the reason for the delay to HOOS's inaction precludes a finding of excusable neglect. *See HKG Indus. Inc.*, 49 U.S.P.Q. at 1156. Frankly, even had HOOS offered such details in an attempt to legitimize its failure to timely move to reopen its trial period, it is hard to imagine a set of circumstances that would excuse such an oversight when it should have been obvious to HOOS's counsel upon issuance of the Board's March 29, 2016 Order that corrective measures would need to be taken in order to reopen its trial period to make of record the facts and documentary evidence that were the subject of its requests for admission.

HOOS also argues that its delay was excusable because it "sincerely believed" and "staunchly defended" its position that HOOS's requests for admission should have been deemed admitted. HOOS Motion, at 2. Strong belief in a rejected position, however, does not eliminate a party's obligation to follow the Board's procedural rules and it does not provide a basis for claiming excusable neglect. *See Baron Philippe de Rothschild S.A.*, 55 U.S. P.Q. 2d at 1851 (mistaken understandings such as misreading of the relevant rules and docketing errors are wholly within counsel's control and are not sufficient to demonstrate excusable neglect).

In further support of its claim of excusable neglect, HOOS asserts that it had not seen Virginia Tech's Responses until they were filed as exhibits in connection with Virginia Tech's motion to strike. HOOS Motion, at 2. Virginia Tech timely served the responses by first class mail on September 18, 2015. Weisbein Dec., ¶¶ 6 and 7; Exhs. 3 and 4. Even if it is assumed that HOOS did not receive the responses when originally served, this does not support a showing of excusable neglect. HOOS acknowledged receipt when served with the motion to strike, nearly nine months before filing the present motion.

Another factor to be assessed in determining “excusable neglect” is whether the non-movant will be prejudiced. Virginia Tech will be greatly prejudiced if HOOS is allowed to file its fifth notice of reliance because it will be required to reopen its trial period and submit substantial additional evidence and testimony in response thereto. Weisbein Dec., ¶¶ 3 and 8. The content of HOOS’s Fifth Notice of Reliance, namely Virginia Tech’s Responses, is voluminous and complex. Specifically, Virginia Tech’s Responses contain responses and objections to 15 requests to admit comprised of a total of 80 sub-parts relating to hundreds of documents referred to in HOOS’s requests. Weisbein Dec., ¶¶ 6 and 7; (Dkt. No. 82). Virginia Tech’s Responses also include 9 exhibits comprised of complex charts containing over 3400 responses and objections relating to hundreds of documents. Weisbein Dec., ¶¶ 6 and 7; (Dkt. No. 82). Reviewing and assessing the responses in order to prepare appropriate additional evidence and testimony will take significant time and effort and cause Virginia Tech to incur additional legal fees for this work. It would have been exceedingly more efficient and cost effective to prepare such evidence and testimony at the time of Virginia Tech’s original trial period. Weisbein Dec. ¶ 9. To do so now, will require Virginia Tech and its counsel to expend duplicative effort and cost to prepare and submit trial evidence a second time. Weisbein Dec. ¶ 9. For example, Virginia Tech will have to prepare for and take additional testimony of witnesses that testified during its original trial period and perhaps take the testimony of additional witnesses. Weisbein Dec. ¶¶ 3 and 9. With the submission of this testimony will HOOS now have an opportunity to make another motion seeking leave to reopen its rebuttal trial period? This would further delay the resolution of this proceeding, which has been pending since November 2012, and Virginia Tech’s ability to register its famous HOKIE trademark for educational and entertainment services.

HOOS claims Virginia Tech will not be prejudiced by putting the responses into evidence because they were prepared by counsel for Virginia Tech and submitted in connection with its motion to strike. The fact Virginia Tech counsel prepared the responses, however, does not eliminate the need to assess and supplement Virginia Tech's evidence and testimony in light of HOOS offering the responses into evidence. Further, the fact Virginia Tech submitted the responses in support of its motion to strike is irrelevant to the content of evidence Virginia Tech determines appropriate to put in during its trial period.

HOOS makes the disingenuous claim that Virginia Tech's case-in-chief would not have been different had its fifth notice of reliance been timely filed, because it is unlikely Virginia Tech would have submitted testimony to "contradict" Virginia Tech's Responses. HOOS Motion, at 2. It is not that Virginia Tech would have contradicted or challenged any of its supplemental responses, rather Virginia Tech would have taken into account the consequence of the submission of the supplemental responses and determined what additional testimony and evidence was required to fully present its case in light of that evidence.

An additional factor which weighs against a finding of "excusable neglect" is the length of delay and its potential impact on judicial proceedings. The Board issued its order deeming Virginia Tech's Responses timely filed on March 29, 2016. Upon issuance of the order, HOOS should have immediately realized it would be required to move to reopen its trial period if it wanted to put Virginia Tech's Responses into evidence. Nevertheless, HOOS delayed almost six months before filing its motion. HOOS claims that it realized its motion was warranted when it commenced preparation of its trial brief. While HOOS has not provided any detail as to when this realization occurred, the fact its motion was not filed until the day HOOS's trial brief was due evidences additional avoidable delay.

Further, as discussed above, if HOOS's motion is granted, Virginia Tech's trial period will have to be reopened to allow it to submit additional relevant testimony and evidence. But for HOOS's delay, this evidence and testimony would have been prepared and submitted during Virginia Tech's original trial period, which closed on May 25, 2016.

Finally, the proceedings have been delayed while the parties brief this motion and it is considered by the Board. *See Old Nutfield Brewing Co.*, 65 U.S.P.Q. 2d at 1701-02 (appropriate to consider delay required to brief and decide motion to reopen in assessing excusable neglect); *Pumpkin Ltd.*, 43 U.S.P.Q.2d at 1587-88 (calculation of the length of delay must take into account the time required for briefing and deciding motion to reopen). If HOOS's motion is granted it will result in an additional delay because Virginia Tech will be required to move to reopen its testimony period for the reasons discussed herein and in the Weisbein Declaration. Furthermore, should HOOS want to rebut the supplemental testimony of Virginia Tech, it will then have to move yet again to reopen its rebuttal period. Such delay has a substantial effect on this proceeding as well as the Board's docket in general. The Board's workload is unnecessarily increased when it is required to devote time and resources to rule on motions resulting from avoidable delays. *See Luster Products Inc.*, 104 U.S.P.Q. 2d at 1880; *Old Nutfield Brewing Co.*, 65 U.S.P.Q. 2d at 1703; *Pumpkin Ltd.*, 43 U.S.P.Q.2d at 1588.

IV. CONCLUSION

For the reasons stated above, HOOS has failed to demonstrate excusable neglect and its Motion for Leave to File Fifth Notice of Reliance should be denied.

Dated on this 12th day of October 2016.

Respectfully submitted,

FOLEY & LARDNER LLP

By: Diane G. Elder

Robert S. Weisbein, Esq.
Norm J. Rich, Esq.
Diane G. Elder, Esq.
FOLEY & LARDNER LLP
90 Park Avenue
New York, New York 10016
Telephone: (212) 682-7474
Facsimile: (212) 687-2329

*Attorneys for Applicant
Virginia Polytechnic Institute and State
University*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of APPLICANT VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY'S RESPONSE TO OPPOSER HOKIE OBJECTIVE ONOMASTICS SOCIETY LLC'S MOTION FOR LEAVE TO FILE FIFTH NOTICE OF RELIANCE along with the supporting DECLARATION OF ROBERT S. WEISBEIN was served by first class U.S. Mail on this 12th day of October 2016 on Opposer's correspondent of record as follows:

Keith Finch, Esq.
The Creekmore Law Firm PC
318 North Main Street
Blacksburg, VA 24060



DIANE G. ELDER

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

-----X	:	
HOKIE OBJECTIVE ONOMASTICS	:	
SOCIETY LLC,	:	
	:	
Opposer,	:	Opposition No. 91207895
	:	
v.	:	Serial No.: 85-531,923
	:	
VIRGINIA POLYTECHNIC INSTITUTE	:	
AND STATE UNIVERSITY,	:	
	:	
Applicant.	:	
-----X	:	

**DECLARATION OF ROBERT S. WEISBEIN
IN SUPPORT OF APPLICANT VIRGINIA POLYTECHNIC INSTITUTE
AND STATE UNIVERSITY’S RESPONSE TO OPPOSER HOKIE
OBJECTIVE ONOMASTICS SOCIETY LLC’S MOTION FOR LEAVE
TO FILE FIFTH NOTICE OF RELIANCE**

I, Robert S. Weisbein, under penalty of perjury under the laws of the United States of America, declare as set forth below:

1. I am an attorney licensed by the State of New York, and am a partner with the law firm of Foley & Lardner LLP, attorneys of record for Applicant Virginia Polytechnic Institute and State University (“Virginia Tech”) in the above-captioned proceeding. I have personal knowledge about the matters described in this declaration as set forth below.

2. I make this declaration in support of Applicant’s response to Opposer’s motion for leave to file fifth notice of reliance.

3. During the months of May and June 2016, I worked closely with various individuals at Virginia Tech in connection with the preparation of the Virginia Tech’s trial evidence. I also spent considerable time at Virginia Tech in Blacksburg, Virginia preparing for

and taking the testimony depositions of Virginia Tech's trial witnesses. The evidence submitted by Opposer, Hokie Objective Onomastics Society LLC ("HOOS") was given great consideration when determining the subject matter of Virginia Tech's trial evidence and testimony. The fact HOOS did not file a notice of reliance including Virginia Tech's supplemental discovery responses significantly impacted the content and scope of the evidence and testimony put in during Virginia Tech's trial period. For example, little, if any evidence was made of record by HOOS during its trial period concerning the date of first use of the HOKIE mark by Virginia Tech. HOOS had the burden of proof to demonstrate that the date of first use of the HOKIE mark was not accurate as alleged in the amended notice of opposition. However, at the time of its trial period, Virginia Tech did not believe that HOOS had met its burden of proof and, therefore, elected not to put in any evidence relating to the date of first use of the HOKIE mark and, instead, relied on the date set forth in the application. However, if HOOS is permitted to make of record Virginia Tech's supplemental discover responses, through its Fifth Notice of Reliance, this would arguably place the date of first use at issue and Virginia Tech would be required to reopen its trial period so that it could call one or more witnesses to testify regarding the date of first use of the mark HOKIE. Furthermore, upon closer examination of Virginia Tech's Responses there may be other matters that Virginia Tech will need to address through supplemental trial testimony. A reexamination of the responses will be extremely time consuming and expensive given their detailed nature and because it will require the review of hundreds of documents to which they relate. Once a litigation strategy is adopted, potential witnesses will need to be interviewed, prepared and have their testimony taken, all at great time and expense to Virginia Tech.

4. On the evening of September 7, 2016, the day Opposer's trial brief was due, counsel for Opposer, Keith Finch, sent me an e-mail requesting Applicant's consent to a 15 day extension of time to file Applicant's Trial Brief, namely until September 22, 2016. On September 8, 2016, Opposer gave its consent to the requested extension. Attached hereto as Exhibit 1 are the September 7, 2016 e-mail from Mr. Finch and my September 8, 2016 response.

5. On the evening of September 20, 2016, Mr. Finch requested Applicant's consent to Opposer filing another notice of reliance. Attached hereto as Exhibit 2 are the September 20, 2016 e-mail from Mr. Finch and my September 21, 2016 response.

6. Virginia Tech served its supplemental responses to HOOS's third discovery requests on September 18, 2016. A copy of the certificate of service for the supplemental responses is attached hereto as Exhibit 3. Virginia Tech's supplemental response to HOOS's third discovery requests contains responses and objections to 12 requests to admit comprised of a total of 62 subparts relating to hundreds of documents referred to in HOOS's requests. In addition, Virginia Tech's supplemental response to HOOS's third discovery requests includes 8 exhibits comprised of complex charts containing over 2100 responses and objections relating to hundreds of documents attached to HOOS's third discovery requests.

7. Virginia Tech served its supplemental responses to HOOS fourth discovery requests on September 18, 2015. A copy of the certificate of service for the supplemental responses is attached hereto as Exhibit 4. Virginia Tech's supplemental response to HOOS's fourth discovery requests contains responses and objections to 3 requests to admit comprised of a total of 18 subparts relating to hundreds of documents referred to in HOOS's requests. In addition, Virginia Tech supplemental response to HOOS's third discovery requests includes 1

exhibit comprised of a complex chart containing over 1300 responses and objections relating to hundreds of documents attached to HOOS's fourth discovery requests.

8. If HOOS motion for leave to file a fifth notice of reliance is granted, Virginia Tech will be required to request leave to reopen its trial period to allow for the submission of additional evidence and testimony to account for the additional evidence submitted by HOOS. Invariably, this will have a "snowball" effect of HOOS then wanting to reopen its rebuttal period.

9. Reviewing and assessing the content of HOOS's proposed fifth notice of reliance will require significant time and effort. It would have been more efficient to do so during Virginia Tech's trial period. Doing so now will result in duplicative effort, including the preparation for and taking of testimony depositions of witnesses that testified during its original trial period.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct, and that this Declaration was executed on October 11, 2016, in New York, New York.

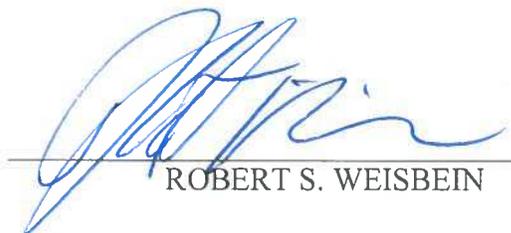

ROBERT S. WEISBEIN

EXHIBIT 1

From: Weisbein, Rob
Sent: Thursday, September 08, 2016 5:11 PM
To: Keith Finch
Cc: Rich, Norm; Elder, Diane G.; Walker Jr, William S.
Subject: RE: Request for Extension of Time

Keith, Virginia Tech agrees to the requested extension provided that HOOS will extend the same courtesy to Virginia Tech.

If you agree, please prepare a suitable stipulation for my review.

Rob

Robert S. Weisbein

Foley & Lardner LLP
90 Park Avenue
New York, NY 10016-1314
P 212.338.3528

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-----Original Message-----

From: Keith Finch [<mailto:keith@creekmorelaw.com>]
Sent: Wednesday, September 07, 2016 9:56 PM
To: Weisbein, Rob
Cc: Rich, Norm
Subject: Request for Extension of Time

Dear Rob,

I apologize for the lateness of the request, but may I ask whether you would be willing to agree to an extension of time until September 22 for the Opposer to file its Main Brief?

If so, then I will prepare a stipulation to this effect.

I look forward to receiving your reply. Thank you very much.

Sincerely,

Keith

The Creekmore Law Firm PC
318 N. Main Street Blacksburg VA 24060
540.443.9350 ext. 703 (office phone and mobile phone)

This email may contain attorney-client confidential and privileged information. If you are not the intended recipient, please delete this email and all attachments and notify the sender immediately by return email.

EXHIBIT 2

From: Weisbein, Rob
Sent: Wednesday, September 21, 2016 4:18 PM
To: Keith Finch
Cc: Rich, Norm; Elder, Diane G.; Weisbein, Rob; Walker Jr, William S.
Subject: RE: HOOS v. VT - Additional Notice of Reliance - Request for Consent

Keith, I discussed the matter with Virginia Tech and it will not consent to HOOS filing of a motion for leave to file an additional Notice of Reliance. If you file such a motion Virginia Tech will file an opposition brief.

Rob

Robert S. Weisbein

Foley & Lardner LLP
90 Park Avenue
New York, NY 10016-1314
P 212 338 3528

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[Visit Foley.com](#)



From: Keith Finch [<mailto:keith@creekmorelaw.com>]
Sent: Tuesday, September 20, 2016 9:21 PM
To: Weisbein, Rob
Subject: HOOS v. VT - Additional Notice of Reliance - Request for Consent

Dear Rob,

I apologize for the lateness of the request, but I would like to ask whether you would object to a motion by the Opposer for leave to file an additional Notice of Reliance.

The only subject of the Notice of Reliance would be your supplemental responses to Opposer's discovery requests, *i.e.*, the documents in Exhibits 8 and 9 to your Motion to Strike.

The reason for the request is that in the aftermath of the Board's ruling on the Motion to Strike, which turned aside Opposer's strategy of relying solely upon deemed admissions, the Opposer (*i.e.*, me) unfortunately neglected to bring the supplemental responses into evidence.

It seems that you put a lot of work into these supplemental responses, and so it would be a shame to leave them out.

Of course I understand that you cannot give your consent (or at any rate state that you would not make any objection) without seeing the motion in question, but if you indicate to me that you do not have any objection in principle, then I will prepare for your review a motion which states to the Board my understanding that you have no objection.

Please let me know what you think. It would be great if I could hear back from you by tomorrow. Thank you.

Sincerely,

Keith

The Creekmore Law Firm PC
318 N. Main Street Blacksburg VA 24060
540.443.9350 ext. 703 (office phone and mobile phone)

This email may contain attorney-client confidential and privileged information. If you are not the intended recipient, please delete this email and all attachments and notify the sender immediately by return email.

EXHIBIT 3

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY'S SUPPLEMENTAL RESPONSES TO OPPOSER HOKIE OBJECTIVE ONOMASTICS SOCIETY LLC'S THIRD DISCOVERY REQUESTS, was served by first class mail on this 18th day of September, 2015, to Opposer's correspondent of record as follows:

Keith Finch, Esq.
The Creekmore Law Firm PC
318 North Main Street
Blacksburg, VA 24060



WILLIAM S. WALKER, JR.

EXHIBIT 4

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY'S RESPONSES TO OPPOSER HOKIE OBJECTIVE ONOMASTICS SOCIETY LLC'S FOURTH DISCOVERY REQUESTS, was served by first class mail on this 18th day of September, 2015, to Opposer's correspondent of record as follows:

Keith Finch, Esq.
The Creekmore Law Firm PC
318 North Main Street
Blacksburg, VA 24060


WILLIAM S. WALKER, JR.