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

Proceeding	91209816
Party	Plaintiff Quantum Test Prep
Correspondence Address	MITESH PATEL RAJ ABHYANKER PC 1580 W ELCAMINO REAL, STE 13 MOUNTAIN VIEW, CO 94040 UNITED STATES mitesh@legalforcelaw.com
Submission	Other Motions/Papers
Filer's Name	Mitesh Patel
Filer's e-mail	mitesh@legalforcelaw.com
Signature	/mitesh patel/
Date	11/29/2014
Attachments	REQUEST FOR RECONSIDERATION.pdf(543541 bytes)

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

In the Matter of Trademark Application Serial Number: 85/651,128

Mark: QUANTUM PREP

Filed: June 13, 2012

Published: November 20, 2012

<p>IVY LEAGUE TEST PREP INTERNATIONAL, INC. dba QUANTUM TEST PREP</p> <p style="text-align: center;">Opposer</p> <p style="text-align: center;">v.</p> <p>SOLOMON BERMAN, An Individual,</p> <p style="text-align: center;">Applicant.</p>	<p>Opposition No. 91209816</p>
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Commissioner of Trademarks
PO Box 1451
Alexandria, CA. 22313-1451

OPPOSER'S REQUEST FOR RECONSIDERATION

Pursuant to Trademark Rule 2.127(b), Opposer Ivy League Test Prep International, Inc. d/b/a Quantum Test Prep ("Opposer"), by and through its undersigned attorney, requests that the Trademark Trial and Appeal Board (the "Board") reconsider the decision issued on October 29, 2014.

U.S. Trademark Rule of Practice 37 C.F.R. 2.129(c) states in pertinent part, that requests for reconsideration of a decision issued after final hearing must be filed within one (1) month from the date of the decision. According to Section 543 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), such requests for reconsideration are reserved for instances where, based on the evidence of record and the prevailing authorities, the Board erred in reaching the decision it issued. Here, the Board's decision was issued on October 29, 2014 and Opposer's present Request for Reconsideration is filed on November 29, 2014 and is thus timely filed.

In considering whether to open or set aside a default judgment, the TTAB has stated that "[t]he 'good and sufficient cause' standard, in the context of [37 C. F. R. § 2.132(a)], is equivalent to the 'excusable neglect' standard which would have to be met by any motion under FRCP 6(b) to reopen the plaintiff's testimony period." *HKG Indus., Inc. v. Perma-Pipe Inc.*, 49 USPQ2d 1156, 1157 (T. T. A. B. 1998). Thus, Opposer's motion to reopen the opposition is proceeding is made pursuant to that Rule. In analyzing excusable neglect, the TTAB has relied on the Supreme Court's discussion of excusable neglect in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U. S. 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993). See, e. g., *Mattel, Inc. v. Henson*, 88 Fed. Appx. 401 (Fed. Cir. 2004) (confirming applicability of *Pioneer* factors to TTAB proceedings).

Opposer has briefed the *Pioneer* factors in its prior filed motion and request, and focuses here on Opposer's reliance on the Board order issued on August 1, 2014. The order addressed withdrawal of Opposer's prior counsel and stated that "Opposer is allowed until thirty days from the mailing date of this order to appoint new counsel..." Opposer retained present counsel for the purpose of hopefully engaging in settlement discussions with Applicant which were steadfastly denied by the other party. As its settlement efforts were rebuffed, Opposer's counsel then began reviewing all documents and evidence to provide an opinion and prospective engagement for prosecuting the opposition proceeding before the Board. As it determined to proceed, Opposer's counsel then filed an appearance based on the August 1, 2014 order. The order stated that "if opposer files no response, the Board may issue an order to show cause why default judgment should not be entered against opposer based on opposer's apparent loss of interest in the proceeding." Opposer showed in interest by retaining new counsel, first for settlement discussion, and once it seemed apparent that such discussion was not possible, to prosecute the proceeding. Despite this, the next order by the Board dismissed the proceeding.

The order also stated that "Proceedings are otherwise suspended pending response to this order" and that "[t]he parties will be notified by the Board when proceedings are resumed, and dates

will be reset, as appropriate." However, again, the Board simply dismissed the proceeding without resuming the proceedings as stated in its order and failed to reset the dates as requested by Opposer. Given this order, the Board did not intend Opposer to represent itself immediately or get up to speed with new counsel and thus allowed time for Opposer to prosecute the matter and thus not only suspended proceedings but explicitly stated it would suspend proceedings and *reset* trial dates [emphasis added] based on its August 1, 2014 order. Despite this, the Board issued its next order on October 29, 2014, wrongfully dismissing the matter without allowing Opposer, who took the Board's August 1 order into account which clearly stated the trial dates would be reset and that proceedings would be suspended. Thus, any delay after the August 1 order were not due to Opposer, but suspension of the proceedings based on the Board's order and such delay cannot be attributed to Opposer in an excusable neglect analysis.

Default judgment is an extreme sanction, and "a weapon of last, not first, resort." *Martin v. Coughlin*, 895 F. Supp. 39 (N. D. N. Y. 1995). Ultimately, there is no reason in this situation to depart from the well-known preference in the federal courts that litigation disputes be resolved on their merits. *See, Richardson v. Nassau County*, 184 F. R. D. 497, 501 (E. D. N. Y. 1999). While this dismissal is not framed as a default, it in effect serves as a decision not made on the merits of the case as the above facts show are still in controversy.

The Board erred by failing to reset the trial dates and take into account its own issued suspension and language in drafting its August 1, 2014 order. As such, Opposer respectfully requests that the Board decision be set aside and that leave be granted to reopen the testimony and trial periods.

Dated: 11/29/2014

Raj Abhyanker P.C.

By: /s/ Mitesh Patel
Mitesh Patel
1580 W. El Camion Real, Suite 13
Mountain View, CA. 94040
650-390-6458
Mitesh@legalforcelaw.com

Counsel for Opposer

CERTIFICATE OF MAILING AND SERVICE

I hereby certify that a true and complete copy of OPPOSER'S REQUEST FOR RECONSIDERATION is being served by mailing a copy thereof, first class USPS addressed to the following individuals, identified in the Application as the attorneys of record and correspondents on this 29th day of November, 2014:

BRENDAN M. SHORTELL
LAMBERT & ASSOCIATES
92 STATE ST. STE 200
BOSTON, MA 02109-2004
UNITED STATES

/s/ Arun Bose
Arun bose