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Filing date: **04/26/2015**

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

Proceeding	91210559
Party	Defendant East Coast Network Services, LLC
Correspondence Address	RUSSELL LOGAN 2735 WESTMINSTER RD ELLICOTT CITY, MD 21043-3599 UNITED STATES russell.logan@gmail.com
Submission	Motion to Reopen
Filer's Name	Russell Logan
Filer's e-mail	russell.logan@gmail.com
Signature	/Russell Logan/
Date	04/26/2015
Attachments	Motion to Reopen.pdf(3355097 bytes)

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

NetCloud, LLC
Opposer

v.

East Coast Network Services, LLC
Applicant

Opposition No. 91210559

MOTION TO REOPEN DISCOVERY AND TRIAL PERIODS

Pursuant to TBMP § 509, Applicant East Coast Network Services, LLC moves to reopen the discovery and trial periods in this proceeding, in order to take discovery and introduce newly discovered evidence showing that Opposer's evidence is a sham that was fabricated solely to create the illusion of an operating business with the goal of fraudulently obtaining trademark rights in the NETCLOUD mark.

In support of this motion, Applicant attaches copies of Opposer's Facebook page (attached as Exhibit A) and Opposer's Twitter page (Exhibit B). Both social media accounts, a key component of Opposer's claims of alleged trademark use, have not been updated since April 9, 2014, over one year ago and just prior to the date Opposer's depositions took place. The abrupt cessation of use of these social media platforms, coinciding with Opposer's deposition dates and the end of Opposer's trial period, clearly shows that Opposer was not engaged in actual trademark use but was merely creating a false appearance of trademark use solely for this opposition proceeding.

Motions to reopen are governed by a multi-factor test set out in *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993). TBMP § 509. The factors include (1) the danger of prejudice to the nonmovant, (2) 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. TBMP § 509.

It has been held that the third *Pioneer* factor, i.e., “the reason for the delay, including whether it was within the reasonable control of the movant,” may be deemed to be the most important of the *Pioneer* factors in a particular case. TBMP § 509.

Applicant could not have reasonably discovered this evidence during the period previously allotted for discovery and trial because Opposer was still actively perpetrating the fraud during that time.

Further, Opposer will not be prejudiced by the delay because Opposer is merely a sham entity created December 31, 2012, after Applicant's application date of November 12, 2012, and has no legitimate trademark rights in the NETCLOUD mark.

Accordingly, Applicant requests that the Board reopen the discovery and trial periods in this proceeding so that Applicant may demonstrate that Opposer's purported use of the NETCLOUD mark is a mere sham.

Dated this 26th day of April, 2015.

/Russell Logan/
Russell Logan, Esquire
Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **MOTION TO REOPEN DISCOVERY AND TRIAL PERIODS** has been served on NetCloud, LLC by emailing said copy on 4/26/2015, to Morris E. Turek, counsel for Opposer, at morris@yourtrademarkattorney.com.

/Russell Logan/
Russell Logan, Esquire
Attorney for Applicant

Exhibit A

Email or Phone

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NetCloud is on Facebook.
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Internet/Software

True Cloud Servers
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PEOPLE

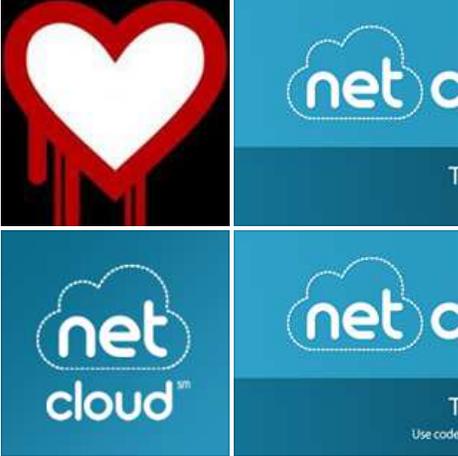
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ABOUT

Based in Austin, TX, NetCloud was founded with a simple goal, to provide reliable and affordable Cloud Hosting along with the best support for any user.

<http://www.netcloud.com/>

PHOTOS



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 **NetCloud**
April 9, 2014 ·

Heartbleed Bug, Are you protected? <http://blog.netcloud.com/protect-your-server-from-heartble.../>



Rest Assure, Your Server with NetCloud is protected from 'Heartbleed' bug?

Yesterday one of the Google Security Engineer, Neel Mehta reported a serious bug with current openssl! ...

BLOG.NETCLOUD.COM | BY NETCLOUD BLOGGERS

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 **NetCloud**
April 7, 2014 ·

How to Deploy wordpress with git?
<http://blog.netcloud.com/deploying-wordpress-with-git/>



Deploying wordpress with git

Git is the most popular version control system. If you're not already familiar with git you can learn some basics here – Try Git. For managing wordpress website (making changes to theme files etc), you may have been using FTP Client such as FileZilla but you

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April 4, 2014 ·

Setting up Wordpress with nginx and Ubuntu VPS
<http://blog.netcloud.com/setting-up-wordpress-with-nginx-a.../>



English (US) · Privacy · Terms · Cookies · More
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Setting up Wordpress with nginx and Ubuntu VPS

WordPress is undoubtedly the most popular blogging platform. WordPress is written in php and it uses MySQL as database, so it's widely used with LAMP (Linux, Apache, MySQL, PHP) setup. But you can also use some other web server such...

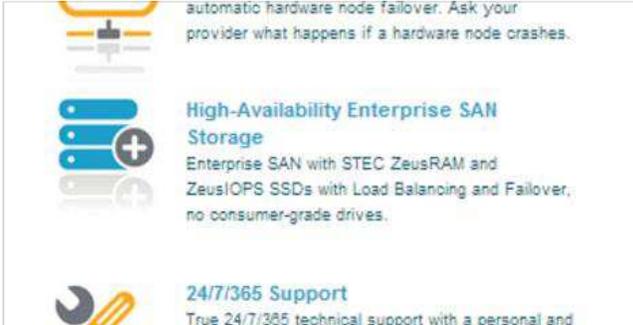
BLOG.NETCLOUD.COM | BY NETCLOUD BLOGGERS

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January 2, 2014 ·

Scale Up with PHP Cloud Hosting Services



Scale Up with PHP Cloud Hosting Services

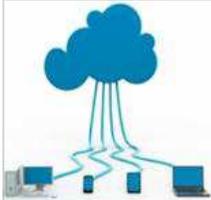
PHP is a software language that is used in developing unique websites that cater to the IT needs of various different businesses.

BLOG.NETCLOUD.COM | BY NETCLOUD BLOGGERS

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 **NetCloud**
November 29, 2013 ·

Software as a Service (SaaS) Business Models Running in Parallel in the Cloud - See more at: <http://blog.netcloud.com/software-as-a-service-saas-busin.../>



Software as a Service (SaaS) Business Models Running in Parallel in the Cloud | NetCloud - Cloud...

The cloud offers a pay-as-you-go scheme which...

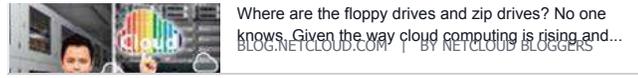
BLOG.NETCLOUD.COM

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 **NetCloud**
November 7, 2013 ·

<http://blog.netcloud.com/what-is-the-future-of-on-premise-.../>

What is the future of On-Premise Data Centers? | NetCloud - Cloud Hosting Blog



Where are the floppy drives and zip drives? No one knows. Given the way cloud computing is rising and...
BLOG.NETCLOUD.COM | BY NETCLOUD BLOGGERS

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Looking for an Ideal Cloud Hypervisor? Check out KVM - See more at:
[http://blog.netcloud.com/looking-for-an-ideal-cloud-hyper.../...](http://blog.netcloud.com/looking-for-an-ideal-cloud-hyper.../)



Looking for an Ideal Cloud Hypervisor? Check out KVM | NetCloud - Cloud Hosting Blog

For enterprises, transitioning to the clouds has not been exactly as easy as a fish taking to water. The...

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October 23, 2013 ·

<http://blog.netcloud.com/healthcare-cloud-computing-set-to.../>



Healthcare Cloud Computing Set to Grow By 20.5% by 2017 | NetCloud - Cloud Hosting Blog

A new MarketsandMarkets report points to a tremendous spurt in cloud computing use by the...

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October 17, 2013 ·

<http://blog.netcloud.com/cloud-resources-traded-like-stocks/>



Cloud Resources traded like stocks? | NetCloud - Cloud Hosting Blog

Possibility of cloud resources being traded like stocks opens up exciting possibilities for all stakeholders. Commodities, currency and metals are traded online. Even power is traded online, bridging the gap...

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October 16, 2013 ·

Public-Private-Hybrid-Clouds to be worth 468 Billion By 2018.

<http://blog.netcloud.com/public-private-hybrid-clouds-wort.../>

Public-Private-Hybrid-Clouds worth 468 Billion By 2018: MarketsandMarkets | NetCloud - Cloud...



MarketsandMarkets have recently published a...
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NetCloud
 October 13, 2013 ·

<http://blog.netcloud.com/cloud-computing-post-prism-era/>



Cloud Computing: Post Prism Era | NetCloud - Cloud Hosting Blog

The clandestine mass surveillance and data mining program code named PRISM and conducted by NSA since 2007 came to light and has shaken the foundations of the IT World, especially cloud service...

BLOG.NETCLOUD.COM | BY NETCLOUD BLOGGERS

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NetCloud
 October 10, 2013 ·

<http://blog.netcloud.com/major-challenges-resolved-by-clou.../>



Major Challenges Resolved By Clouds | NetCloud - Cloud Hosting Blog

Cloud computing has been growing exponentially in recent years due to its many benefits and...

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NetCloud
 October 9, 2013 ·

The HIPAA Omnibus Rule - as of September 23, 2013 organizations can be held accountable for noncompliance and face fines of up to \$1.5 million per violation :

<http://www.govhealthit.com/.../9-steps-secure-phi-file-transf...>

9 steps to secure PHI file transfer under new HIPAA rule | Government Health IT

It's when patient rights are broadened and fines become steeper as the HIPAA Omnibus Final Rule goes into effect.

GOVHEALTHIT.COM

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NetCloud
 October 7, 2013 ·

<http://www.computerweekly.com/.../Half-of-large-enterprises-w...>



Half of large enterprises will have hybrid cloud by 2017, says Gartner

About half of large enterprises will have adopted a hybrid cloud computing model in the next four years, according to Gartner

COMPUTERWEEKLY.COM

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 **NetCloud** · September 26, 2013 ·

<http://blog.netcloud.com/5-best-cloud-backup-services-for-.../>



5 Best Cloud Backup Services for SMBs | NetCloud - Cloud Hosting Blog

Cloud backup services are fast becoming a divine blessing for those who wish to set up small...

BLOG.NETCLOUD.COM | BY NETCLOUD BLOGGERS

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 **NetCloud** updated their cover photo. · September 24, 2013 ·



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 **NetCloud** · September 24, 2013 ·

<http://blog.netcloud.com/advantages-of-cloud-hosting-over-.../>



Advantages of Cloud Hosting Over Web Hosting | NetCloud - Cloud Hosting Blog

Cloud hosting is gaining in popularity for a variety of reasons not the least of which are scalability, cost...

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 **NetCloud** · September 5, 2013 ·

Saves Money - X
Better Performance - X
Faster Time to Market - X
Cleaner Environment - X... [See More](#)



Virtualization could save businesses \$6b in costs by 2020: IDC

If Australian companies were to virtualize their servers and physical infrastructure, \$6 billion in costs could be saved from now to 2020, according to a new whitepaper by research firm IDC.

CIO.COM.AU

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August 19, 2013 ·

<http://www.businesscloudnews.com/.../busting-the-top-5-cloud.../>



Busting the Top 5 Cloud Computing Myths | Business Cloud News

It is common knowledge among IT professionals that cloud is no longer merely "hype" and is fundamentally changing the way companies buy and use IT. However, despite this acceptance, there are still...

BUSINESSCLOUDNEWS.COM

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Exhibit B



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NetCloud @NetCloudLLC · 9 Apr 2014
Heartbleed Bug, Are you protected? #heartbleed #bug #heartbleedbug
blog.netcloud.com/protect-your-s...



NetCloud @NetCloudLLC · 7 Apr 2014
How to deploy wordpress with git?
blog.netcloud.com/deploying-word...



NetCloud @NetCloudLLC · 4 Apr 2014
Setting up WordPress with nginx and Ubuntu VPS
blog.netcloud.com/setting-up-wor...



NetCloud @NetCloudLLC · 31 Mar 2014
Network issues at @gnax have been resolved.



NetCloud @NetCloudLLC · 31 Mar 2014
Sorry for the inconvenience, @gnax core router failed and failover didn't kick in. Network engineers currently working to resolve the issue



NetCloud @NetCloudLLC · 10 Mar 2014
NetCloud at #SXSW,





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NetCloud @NetCloudLLC · 20 Feb 2014

Looking for a host that prides itself on uptime and excellent support around the clock? Look no further, you are at home with @NetCloudLLC

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NetCloud @NetCloudLLC · 2 Jan 2014

Scale Up with PHP Cloud Hosting Services blog.netcloud.com/scale-up-with-...

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php.net @php_net · 12 Dec 2013

New PHP versions 5.5.7, 5.4.23, 5.3.28 released!

← ↻ 188 ★ 24 ⋮



NetCloud @NetCloudLLC · 9 Dec 2013

Why cloud makes sense for business of any size? blog.netcloud.com/why-cloud-make...

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The Cloud Network @TheCloudNetwork · 23 Nov 2013

SaaS: two types of business models in one cloud prsm.tc/Yloif2 via @prismatic

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Cheapest VPS @CheapestVPS · 23 Nov 2013

@NetCloudLLC is having a 50% OFF on all #VPS #Hosting plan with coupon "WHT50" order here : netcloud.com/plans.php

← ↻ 1 ★ ⋮



NetCloud @NetCloudLLC · 18 Nov 2013

Become a Successful Cloud Hosting Reseller, blog.netcloud.com/becoming-a-suc... via @sharethis

← ↻ ★ ⋮



NetCloud @NetCloudLLC · 14 Nov 2013

Private Cloud Adoption Expected to Reach \$69B in Revenue by 2018 thewhir.com/web-hosting-ne... via @thewhir

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The Cloud Network @TheCloudNetwork · 30 Oct 2013

Public vs. Private vs. Hybrid Cloud — What are the Pros and Cons? prsm.tc/kf36fJ via @prismatic

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NetCloud @NetCloudLLC · 30 Oct 2013

How I failed radar.oreilly.com/2013/09/how-i-...



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NetCloud @NetCloudLLC · 27 Oct 2013

Looking for an Ideal Cloud Hypervisor? Check out KVM - See more at: [blog.netcloud.com/looking-for-an...](http://blog.netcloud.com/looking-for-an-...) #cloud #kvm #hypervisor #cloudcomputing



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The official Twitter account of the U.S. Small Business Administration. News, tips, and resources for the small biz community.



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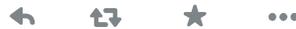
openKVM @OpenKVM · 22 Oct 2013

KVM and the Cloud: a match made in heaven ibm.co/1a69XD7 #openkvm #openstack



NetCloud @NetCloudLLC · 22 Oct 2013

Apple Makes OS X Mavericks A Free Upgrade, Available Today [techcrunch.com/2013/10/22/app...](http://techcrunch.com/2013/10/22/app-...)



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