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

Proceeding	91210559
Party	Plaintiff NetCloud, LLC
Correspondence Address	MORRIS E TUREK YOURTRADEMARKATTORNEY.COM 167 LAMP AND LANTERN VILLAGE #220 CHESTERFIELD, MO 63017-8208 UNITED STATES morris@yourtrademarkattorney.com
Submission	Opposition/Response to Motion
Filer's Name	Morris E. Turek
Filer's e-mail	morris@yourtrademarkattorney.com
Signature	/met20/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NetCloud, LLC)
Opposer,)
v.) Opposition No. 91210559
East Coast Network Services, LLC)
Applicant.)
_____)

**OPPOSER’S RESPONSE TO APPLICANT’S MOTION TO
REOPEN DISCOVERY AND TRIAL PERIODS**

Opposer Netcloud, LLC (“Opposer”) hereby files this Response to Applicant’s Motion to Reopen Discovery and Trial Periods. Because Applicant’s motion has no basis in fact, law, or procedure, the Board should deny Applicant’s Motion to Reopen Discovery and Trial Periods in its entirety.

ARGUMENT

I. Applicant’s Motion to Reopen Discovery and Trial Periods Should be Denied Because the Motion is Not Supported by Law.

In its Motion to Reopen, Applicant has not cited to any statute or case law which allows for the reopening of the discovery and trial periods *after* a final decision has been rendered by the Board and an opposition has been sustained in favor of the opposer. Applicant cites to TBMP § 509 and *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993) as support for reopening the discovery and trial periods. However, it is clear that TBMP § 509.01(b) contemplates motions to reopen time that are filed during the pendency of Board proceedings, and *Pioneer* dealt with late filings during the course of a bankruptcy case in

Bankruptcy Court. Because neither TBMP § 509 nor *Pioneer* support Applicant's Motion to Reopen, the Board should refuse to grant Applicant's motion.

II. Applicant's Motion to Reopen Discovery and Trial Periods Should be Denied Because Applicant has Provided No Factual Evidence Entitling Applicant to Such Reopening.

The factual basis for Applicant's Motion to Reopen consists of screenshots of Opposer's social media accounts allegedly showing that they have not been updated for approximately a year. Applicant's Motion, Exs. A, B. Applicant insists that this "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." Applicant's Motion, 1.

First of all, the social media evidence Opposer presented during its testimony period was by far not the only evidence the Board relied upon to find actual ongoing trademark use by Opposer. For example, Opposer had an active website (www.netcloud.com) and used flyers to promote its business prior to launching its social media profiles. Secondly, it is entirely possible that Opposer was not fully satisfied with the results of its marketing efforts on social media and decided to concentrate on other forms of marketing (i.e. search engine and customer referral marketing) to build its business. For Applicant to assert that Opposer's decision to move away from using social media for promotional purposes translates into Opposer being a "sham entity" that was "actively perpetrating a fraud" during the course of the opposition proceeding is quite a leap in logic and wholly unsupported.

CONCLUSION

In conclusion, Applicant has not provided any legal or factual support for its motion, nor has Applicant demonstrated any legitimate need or reason to reopen the discovery and trial

