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

Proceeding	91223088
Party	Plaintiff Lytx, Inc.
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Date	04/08/2016
Attachments	motion to extend discovery.pdf(85418 bytes)

In the United States Patent and Trademark Office

Before the Trademark Trials and Appeals Board

Lytx, Inc., Opposer, vs. Liberty Mutual Insurance Company, Applicant.	)	Opposition No.: 91223088 MOTION TO EXTEND DISCOVERY AND TRIAL PERIODS.

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

I. INTRODUCTION

Opposer Lytx, Inc. ("Opposer") hereby moves the Board for an order extending all discovery and trial period deadlines, including the expert disclosure deadline, by 180 days.

To date, neither Opposer nor Applicant has propounded any discovery requests on the other party.

Opposer maintains that there is good cause for the extension request, as the parties have been engaged in prolonged settlement discussions that commenced at Commencement of Discovery, and have continued over that period, with the most recent exchange of proposed terms occurring on February 22, 2016 (approximately six weeks prior to today). Opposer's delay in requesting this extension is reasonable because Applicant's counsel has consistently indicated that Applicant was interested in discussing

potential terms for settlement. Opposer was further informed by Applicant's counsel at the time of initial settlement discussions in October of 2015 that Opposer should expect delays in any responses to proposed terms because of Applicant's nature as a very large organization. In December 2015, and as recently as February 21, 2016, Applicant's counsel requested that the undersigned provide a written settlement proposal in advance of scheduling a telephone conference on the subject. Today, Applicant's counsel refused Opposer's request to extend discovery and trial periods. This is the first indication that Opposer has had that Applicant was apparently not genuine in its desire to settle the subject Opposition.

II. ARGUMENT

Trademark Rule 2.120(a)(2) provides, in part, as follows:

> The discovery period may be extended upon stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board. If a motion for an extension is denied, the discovery period may remain as originally set or as reset. Disclosure deadlines and obligations may be modified upon written stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.

In accordance with Trademark Rule 2.120(a)(2), Opposer respectfully submits that there is good cause to extend time so that the parties may conduct discovery.

First, the time for discovery has not yet closed. As such, Applicant should not be held to the *Pioneer* standard articulated by the Supreme Court under circumstances where the Discovery time period has expired.[1]

Second, Applicant's reliance upon: (a) Opposers repeated repesentations that they were amenable to settlement discussions for the duration of the Discovery period, (b) Opposer's recent request for Applicant to propose a written settlement proposal, and (c) Opposer's counsel's representation that Applicant should expect a significant delay in Opposer's response all render Applicant's failure to request a suspension or extension prior to now reasonable.

Third, Applicant's actions meet the standards articulated in *Pioneer* for excusable neglect. In *Pioneer* the Court held that excusable neglect should be determined considering the circumstances surrounding the failure to extend prior to expiration:

(1) the prejudice to the non-moving party,

(2) the length of delay and its potential impact on judicial proceedings,

(3) the reason for the delay, and whether it was within the reasonable control of the movant, and

(4) whether the moving party had acted in good faith.

[1] The Court articulated the rule regarding the reopening of an expired time period where the failure to act is due to exclusable neglect. *Pioneer Invest. Svcs. Co. v. Brunswick Assoc. Ltd. P'shp*, 507 U.S. 380,395 (1993).

Here, because neither party has propounded any discovery, Applicant will not be prejudiced, and there will be no impact on judicial proceedings. In fact, Opposer respectfully asserts that Opposer will be prejudiced if this Motion is denied.

Applicant's delay in filing the instant request until the day before the closing of Discovery is reasonable in view of the continued representations by Applicant that settlement of the dispute was desired by Applicant. Furthermore, until today, Opposer believed that its February 22 settlement proposal would be accepted by Applicant with only minor modification in terms, if any. In view of Applicant's continued indications that settlement discussions proceed, Opposer has acted in good faith in its delay in filing the instant request.

III. CONCLUSION

Opposer submits that good cause exists for the extension of deadlines and hereby requests that the Board issue an order extending all dates set forth in the Board's August 3, 2015 Scheduling Order by 180 days.

Respectfully Submitted,

Dated: April 8, 2016

/Karl M. Steins/.

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Certificate of Service

It is hereby certified that a copy of the above Motion to Extend Discovery and Trial Periods is being forwarded on 4/8/2016 by first class mail, to Rebecca B. Lederhouse, Baker & McKenzie LLP, 300 E. Randolph Street, Suite 5000. Chicago, Illinois 60601, attorney for opposer.

/Karl M. Steins/.
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