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

Proceeding	92042132
Party	Plaintiff DIVA DESIGNS / BIMBO ,
Correspondence Address	PAUL C. RAPP, Esq. 348 Long Pond Road Housatonic, MA 01236 UNITED STATES paul@paulrapp.com
Submission	Reply For Motion to Reopen
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

_____)	
Diva Designs / Bimbo))	
Petitioner,))	
))	
v.))	
))	Cancellation No.: 92042132
Troy Dendekker))	
Registrant.))	Registration No.: 2554024
))	
_____))	

REPLY BRIEF FOR MOTION TO REOPEN TIME

Petitioner herein submits for consideration a Reply Brief in her motion to extend and/or reopen the discovery and testimony periods in the above proceeding. Counsel for Plaintiff never received the scheduling order that was apparently issued by the TTAB on or about June 20, 2004.

Registrant claims that Petitioner has failed to meet the Pioneer Investment Services excusable neglect standard. The arguments provided by Registrant for this claim do not hold up under scrutiny.

First, Registrant claims that it will suffer prejudice because of the "relocation" of two key witnesses. Registrant fails to describe what prejudice it would suffer, to what these witness might testify, if there are other witnesses who could testify to whatever these "key witnesses" might testify, and why the mere re-location of a witness would work any prejudice in a proceeding that will be conducted, in all likelihood, on papers. Without such information, Registrant's claim must be rejected as suspect, self-serving and conclusory.

Second, Registrant claims that granting the motion will impact every other TTAB proceeding. Suffice it to say that such is the case with every motion to extend and/or reopen before the TTAB. As such, this is not an "impact to a judicial proceeding" that should be recognized as relevant to this inquiry.

Third, Registrant argues it was within counsel's reasonable control to become appraised of the deadlines in this proceeding in the absence of receiving a scheduling order from the TTAB. Registrant appears to propose that the TTAB place a duty on counsel to be aware of what, where and when the TTAB has posted information online, or to calendar when notices should arrive from the TTAB and inquire if they don't. There is simply no justification for such a position.

Because Registrant has failed to rebut Petitioner's showing of excusable neglect, it is respectfully requested that Petitioner's motion be granted.

December 20, 2004
Respectfully submitted,
/paul c rapp/
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CERTIFICATE OF SERVICE

I certify that a copy of this paper was sent by first-class mail, this 20th day of December 20, 2004, postage prepaid, to the last known address of the attorney of record for each of the parties to this action.

/paul c rapp/