

ESTTA Tracking number: **ESTTA373720**

Filing date: **10/18/2010**

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

Proceeding	92052927
Party	Defendant Kent G. Andereson
Correspondence Address	KENT G ANDERSON FUTURE VISIONARIES 925 N. GRIFFIN BISMARCK, ND 58501 UNITED STATES
Submission	Opposition/Response to Motion
Filer's Name	Dwayne L. Bentley Attorney for Anderson
Filer's e-mail	dlb@dlbentlelawgp.com
Signature	/Dwayne L. Bentley/
Date	10/18/2010
Attachments	Motion for Respondent.pdf (5 pages)(391055 bytes)

3. Under Federal Rules of Civil Procedure Rule 55(c), the Trademark Trial and Appeal Board may set aside an entry of default for good cause. According to the Federal Rules of Civil Procedure Rule 60(b) on motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect.

4. In this case, the law firm of DL BENTLEY LAW GROUP PLLC's Legal Assistant made a simple mistake that was inadvertent in not inserting the response date for the Answer onto Mr. Bentley's calendar so he would have time to respond to the Petition for Cancellation.

5. Also, the firm not responding to the Petition for Cancellation may be excusable neglect that must be analyzed under Supreme Court case of *Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Ltd. V. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997). These cases hold that the excusable neglect determination must take into account all relevant circumstances surrounding the party's omission or delay, including: (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.

6. With regard to the first circumstance of the danger of prejudice to the nonmovant, in this case there is no prejudice to the nonmovant because the Respondent didn't put forth an Answer by October 4th. The delay doesn't cause the Petitioner to any loss or unavailability of evidence or witness in any way. After the Answer is submitted the Petitioner

and Respondent can continue with the current schedule provided by the Trademark Trial and Appeal Board.

7. For the next point of the length of the delay, the Answer was due on October 4, 2010 and the Respondent is putting in an Answer on today October 18, 2010. This 14 day delay in responding to the Petitioner's petition is not in any way egregious because the Petitioner and Respondent still have time to continue the Cancellation process as outlined by the Trademark Trial and Appeal Board. The length of this delay doesn't have any impact on the judicial proceedings because even if the Answer accepted now the Petitioner and Respondent will follow TTAB's schedule.

8. Regarding the reason for the delay, the Legal Assistant at the firm of DL BENTLEY LAW GROUP PLLC mistakenly didn't insert the Answer date into the Dwayne L. Bentley's calendar so he wasn't aware that an Answer was due by October 4, 2010, which was an inadvertent mistake. This delay was in the reasonable control of the movant, but as was customary the due dates for these type of actions should've been on the calendar of Dwayne L. Bentley but wasn't for this matter.

9. The last circumstance of whether the movant acted in good faith, the movant is definitely acting in good faith in informing the Petitioner and TTAB as to the reasons why an Answer wasn't submitted to the TTAB and Petitioner. Respondent didn't in any way neglect his responsibility to put forth an Answer, but the date to response wasn't on his calendar so he didn't believe a response for this case.

10. The Respondent has provided a late-filed Answer with this motion and requests that this late-filed Answer be accepted and the Petitioner's Motion for Default judgment be dismissed.

Dated: October 18, 2010

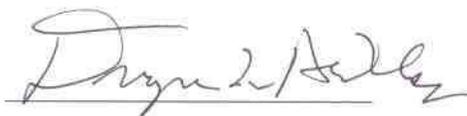
Respectfully submitted,

A handwritten signature in cursive script that reads "Dwayne L. Bentley".

Dwayne L. Bentley
DL BENTLEY LAW GROUP PLLC
Attorney for Respondent
16 Court Street, Suite 2007
Brooklyn, NY 11241
Phone: (718)797-5350
Fax: (718) 852-3309

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true copy of the foregoing RESPONDENT MOTION IN RESPONSE TO PETITIONER'S MOTION FOR DEFAULT JUDGMENT is being filed electronically with the TTAB via ESTTA on this day, October 18, 2010.



Dwayne L. Bentley

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONDENT MOTION IN RESPONSE TO PETITIONER'S MOTION FOR DEFAULT JUDGMENT was served on the Petitioner this 18th day of October 2010 by sending same via First Class Mail postage prepaid to:



Dwayne L. Bentley

Mark E. Stamelos
KING & BALLOW
315 Union Street, Suite 1100
Nashville, TN 37201