

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: February 13, 2014

Cancellation No. 92053509

Cleveland State University

v.

CampusEAI Consortium

**Ann Linnehan, Interlocutory Attorney**

This case now comes up for consideration of respondent's motion (filed on November 6, 2013 as part of respondent's main brief) to reopen its time to file its main brief. Petitioner has filed a brief in response. The Board will forego an exhaustive review of the arguments submitted by each party in an effort to determine the pending matter as expeditiously as possible.

Respondent's main brief was due on October 2, 2013.<sup>1</sup>

Respondent seeks an order reopening its time to file its trial brief. In support thereof, it states that it has "sought and received ZERO extensions for ZERO days in this matter to date"; that its counsel was delayed in meeting and being able to respond to petitioner's trial brief because

its CFO had to unexpectedly go to India for work purposes; and that its other main contact person who is also located in India permanently was traveling and preparing for a conference which happens once a year.

For the Board to grant respondent's motion to reopen, respondent must show that its failure to act in a timely manner was the result of excusable neglect. See Fed. R. Civ. P. 6(b)(1); TBMP Section 509.01 (3d ed. rev. June 2013). In *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993), as discussed by the Board in *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), the Supreme Court clarified the meaning and scope of "excusable neglect," as used in the Federal Rules of Civil Procedure and elsewhere. The Court held that the determination of whether a party's neglect is excusable is:

at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These 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.

*Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. at 395.

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<sup>1</sup> The brief of the party in the position of defendant, if filed, shall be due not later than thirty days after the due date of the first brief. See Trademark Rule 2.128(a)(1).

In subsequent applications of this test, several courts have stated that the third *Pioneer* factor, namely the reason for the delay and whether it was within the reasonable control of the movant, might be considered the most important factor in a particular case. See *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d at 1586, fn.7 and cases cited therein.

In this case, respondent's stated reason for failing to file its main brief in a timely manner is not well-taken. The fact that its CFO was in India for "work purposes" and its other "main contact person" is located permanently in India fails to explain why its counsel in the United States could not file a brief in a timely manner or seek an extension for such filing. The indicated reasons were exclusively within the control of respondent. Moreover, the reasons fail to address why respondent's counsel could not communicate with its client through the use of current technology such as by telephone or electronic mail.

With regard to the first *Pioneer* factor, the Board finds that there is no evidence of prejudice to petitioner aside from a brief delay.

With regard to the second *Pioneer* factor, the Board notes that respondent filed its motion over a month after it was due in conjunction with its brief on the case. The 35

day delay is further compounded by the length of time involved in briefing and deciding the present motion.

With regard to the fourth *Pioneer* factor, the Board finds that there is no evidence of bad faith on the part of respondent.

Based on the foregoing, the Board finds, on balance, that respondent has not made the requisite showing of excusable neglect.

In view thereof, respondent's motion to reopen is denied.

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days of completion of the taking of testimony. Trademark Rule 2.125.

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129. If no oral hearing is requested in a case, the case will be set down for final decision. See TBMP Section 803.