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

Proceeding	91236083
Party	Defendant Kari Vettese dba Marilyn Hatten
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Submission	Motion to Reopen
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Attachments	Applicant-MRT.pdf(114324 bytes )

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

Michael Harlan Studio LLC,	)	
	)	
Opposer,	)	
	)	Opposition No.: 91236083
vs	)	
	)	
Kari Vettese DBA Marilyn Hatten,	)	
	)	
Applicant,	)	

**APPLICANT’S MOTION TO REOPEN TIME**

**I. INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure 6(b)(1)(B) and TBMP 509.01(b), Applicant, Kari Vettese DBA Marilyn Hatten (“Applicant”), by and through counsel, hereby motions the Board to reopen Applicant’s Trial Period, extend the calendar by one week, and to accept into the record the Applicant’s evidence submitted via ESTTA on October 10, 2019.

**II. BACKGROUND**

Applicant’s trial period was set to close and did close on October 3, 2019.

Applicant filed three (3) Notices of Reliance on October 10, 2019, after its trial period had expired.

Applicant is seeking relief from the Board by way of reopening the Applicant’s trial period and extending the trial calendar in order to consider the Applicant’s evidence filed October 10, 2019.

### III. LAW

Motions to reopen time may be granted at the Board's discretion in accordance with Trademark Trial and Appeal Board Manual of Procedure (TBMP) 509.01(b) and Fed. R. Civ. P. 6(b)(1)(B).

The movant must show that its failure to act during the time previously allotted therefor was the result of excusable neglect. *Id.*

A determination concerning excusable neglect 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. *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993), adopted by the Board in *Pumpkin Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997).

### IV. STATEMENT OF FACTS

A. Applicant's counsel received a copy of the Board's Order mailed May 22, 2019, which, *inter alia*, set the Applicant's (Defendant's) trial period as ending Thursday, October 3, 2019.

B. Applicant's counsel, including support staff, have come to rely on automated docketing of deadlines; however, the system used (Appcoll.com) does not offer automated docketing for TTAB matters. As such, deadlines for Trademark Trials before the TTAB are required to be manually entered.

C. Applicant's counsel unintentionally entered the deadline for close of Applicant's trial period as Thursday, October 10, 2019. It is believed that this occurred by a click-error, which is result of clicking a monthly calendar in a manner which selects a date that is adjacent to the intended date (here, directly below the intended date on a selectable monthly calendar).

D. Applicant's counsel did not have a check and balance in place sufficient to catch the docketing error, and until the error was discovered on October 10, 2019, it was believed by the Applicant's counsel that the Applicant's trial period closed October 10, 2019.

E. Applicant's counsel submitted three (3) Notices of Reliance on October 10, 2019 via ESTTA.

F. Applicant's counsel served copies of the three Notices of Reliance to Petitioner's counsel on October 10, 2019.

G. Also, on October 10, 2019, via email, the Applicant's counsel requested consent from Petitioner's counsel to file a consented motion. On October 15, 2019, Petitioner's counsel refused to provide the requested consent.

H. The delay between Thursday, October 3, 2019, the close of Applicant's trial period, and Thursday, October 10, 2019, the date Applicant's evidence was submitted, is exactly seven (7) days, or one (1) week.

I. Applicant's counsel, recognizing the error and seeking a plan to prevent a repeat of this type of error, has implemented a check and balance, namely, requiring a second and independent person on the team to review the paper calendar against electronically docketed entries to ensure accuracy.

## V. ARGUMENT

The Applicant has been notified of the circumstances and understands that errors on part of its counsel are imputed to the Applicant under our system of representative litigation.

The Applicant respectfully submits that its failure to act during the time allotted was the result of excusable neglect. Regarding “excusable neglect”, the Applicant submits the below remarks:

*No Danger of Prejudice to the Nonmovant*

The resulting delay amounts to one week. The one-week delay caused by the docketing error does not affect Petitioner’s ability to litigate the case. As such, there is no danger of prejudice to the nonmovant.

*Length of Delay and Impact on Proceedings*

The delay was exactly one-week. Accordingly, all remaining deadlines in the proceedings are affected by one week, plus any additional time required to dispose of this motion.

To mitigate the impact of the proceedings, the Applicant is willing to accept a shortened period for preparing and submitting its Brief (less than the 30-days from Plaintiff’s Opening Brief that is typically provided) such that the overall impact on the calendar is minimized.

*Reason for the Delay*

The reason for the delay is the Applicant’s counsel made a typographical and/or click-related error in its docket entry and failed to recognize the error in a timely manner. Moreover, the Applicant’s counsel should have had checks and balances in place to mitigate the risk of such errors. Applicant’s counsel accepts full responsibility for the docketing error and has since implemented procedures to prevent recurrence of the same docketing entry error. It is accepted that the reason for delay was wholly within the control of Applicant’s counsel.

Whether the Movant Acted in Good Faith

The one-week delay at issue in this motion was unintentional and not malicious or tactful in any way. The Applicant's counsel, immediately upon recognizing the error, approached Petitioner's counsel to seek consent for a resolution. The Applicant's counsel accepts that it was negligent for failing to properly docket the deadline; however, after recognizing the error, Applicant's counsel made a diligent attempt to resolve the issue in good faith.

Conclusion

It is with significant remorse that the Applicant's counsel erred in correctly docketing the close of Applicant's trial period and failed to adhere to the Board's calendar. While we know that the acts and omissions of counsel are attributed to the represented party, we hope that the Board will weigh the light extent of damage, namely: (i) that there is no prejudice to Petitioner, (ii) the one-week delay is relatively nominal, and (iii) the Applicant's counsel acted in good faith, in favor of a limited reopening of the Applicant's trial period to October 10, 2019, such that Applicant's evidence submitted on that day may be entered into the record for consideration.

Accordingly, please grant Applicant's (Defendant's) Motion to Reopen Time and reset the trial calendar with the Defendant's 30-day Trial Period Ending October 10, 2019, with all subsequent dates reset as deemed appropriate by the Board.

Respectfully submitted,

Dated: October 15, 2019

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Attorney for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing APPLICANT'S MOTION TO REOPEN TIME has been served on SHAUN P KEOUGH, counsel for Opposer, by forwarding said copy on October 15, 2019, via email to:

skeough@parkerkeough.com,  
kparker@parkerkeough.com,  
nlichtin@parkerkeough.com.

Signature: /Joshua S. Schoonover/

Date: October 15, 2019