

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

Taylor

Mailed: April 2, 2004

Opposition No. 91123312

Intel Corporation

v.

Stephen Emeny

Jyll S. Taylor, Attorney:

Notice of Default - Set aside

On May 20, 2003, the Board issued a notice of default in this case, for applicant's failure to file an answer to opposer's amended notice of opposition.

In response, applicant states "[t]here is no default in this case as it is evident to us that the application itself is proof that there is a bona fide intent to use the Trademark IDEAS INSIDE. The fact that no response was made to counter Intel's motion to amend has not changed the commitment and effort supporting the trademark IDEAS INSIDE." Applicant further states that he did not intentionally fail to respond to the action and should a response be required, one shall be forwarded.

Whether default judgment should be entered against a party is determined in accordance with Fed. R. Civ. P. 55(c), which reads in pertinent part: "for good cause shown

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the court may set aside an entry of default." As a general rule, good cause to set aside a defendant's default will be found where the defendant's delay has not been willful or in bad faith, when prejudice to the plaintiff is lacking, and where defendant has a meritorious defense. See *Fred Hyman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

Moreover, the Board is reluctant to grant judgments by default, since the law favors deciding cases on their merits. See *Paolo's Associates Limited Partnership v. Paolo Bodo*, 21 USPQ2d 1899 (Comm'r 1990).

In this case, the Board finds that applicant's failure to timely answer the amended notice of opposition was not willful or in bad faith but, rather, due to his misunderstanding of the Trademark Rule of Practice. Additionally, given that the motion to amend was filed late in the proceeding, the Board does not find that opposer will be suffer any prejudice if the notice of default is set aside. Last, applicant has indicated in its response to the show cause order that he has a bona fide intent to use the involved mark, thus providing a meritorious defense to opposer's new claim.

In view of the foregoing, the notice of default is hereby set aside and applicant is allowed until **thirty days**

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from the mailing date of this order to file an answer to the amended notice of opposition.

In that regard, applicant should note the following. Contrary to applicant's position, the amended notice of opposition requires a proper answer pursuant to Fed. R. Civ. P. 8. More specifically, the answer must be a "pleading" directly responsive to the amended notice of opposition. The amended notice of opposition consists of an opening paragraph, **twenty-six (26)** separately numbered paragraphs, and a closing "prayer" for relief. Each of the numbered paragraphs contains one or more allegations of fact. It is incumbent on applicant to respond to each allegation, using correspondingly numbered paragraphs, by either admitting the truth of the allegation or denying that the allegation is true. If applicant is without sufficient information to form an opinion as to the truth or falsity of a particular allegation, then applicant may say so without risk; such a response is considered to have the same effect as a denial.

The above referenced rules on filing a responsive pleading are set forth in Rule 8(b) of the Federal Rules of Civil Procedure. The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this opposition proceeding. Applicant should note that Patent and Trademark Rule 10.14

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permits any person to represent itself in a Board proceeding, though it is generally advisable for a person unfamiliar with the above-referenced rules to secure the services of an attorney familiar with such matters.

If applicant does not retain counsel, then applicant will have to familiarize himself with the rules governing this proceeding. Strict compliance with the Trademark Rules and all other applicable rules is expected of all parties, even those representing themselves.

The Trademark Rules are codified in part two of Title 37 of the Code of Federal Regulations (also referred to as the CFR). There are other rules in part one of Title 37, relevant to filing of papers, meeting due dates, etc., that are also applicable to this case. The CFR and the Federal Rules of Civil Procedure, are likely to be found at most law libraries, and may be available at some public libraries. If applicant wishes to obtain a copy of Title 37 of the CFR, it may be ordered for a fee from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.¹

One rule that applicant must pay particular attention to is Trademark Rule 2.119. That rule requires that a party

¹ The Trademark Rules of Practice can be found at on the World Wide Web at <http://www.uspto.gov>. Additional information may be obtained in The Trademark Trial and Appeal Board Manual of Procedure, (TBMP), which is also available on the World Wide Web at <http://www.uspto.gov>.

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filing any paper with the Board during the course of a proceeding must serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. With the paper that is filed with the Board, the party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to the following matters: (1) the nature of the paper being served, (2) the method of service (e.g., first class mail), (3) the person being served and the address used to effect service, and (4) the date of service.

Also, applicant should note that any paper it is required to file herein must be received by the Patent and Trademark Office by the due date, unless one of the filing procedures set forth in Patent and Trademark Rules 2.197 and 2.198 is utilized.²

Motion to Use Testimony From Related Proceeding - Granted

Opposer's motion (filed May 15, 2003) for leave to use testimony from a related proceeding is granted as uncontested. Accordingly, the testimony will be considered to the appropriate extent.

As noted above, applicant has until **30** days from the mailing date of this order to file a proper answer to the notice of opposition, failing which judgment will be entered

² Submissions may also be filed via ESTTA, as explained *infra*.

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against applicant. A copy must be sent to opposer's counsel, whose name and address is Bobby A. Ghajar, Howrey Simon Arnold & White LLP, 750 Bering Drive, Houston, TX 77057. Proof of service must be included with the answer.

Trial dates, commencing with applicant's testimony period, are reset as indicated below.³

THE PERIOD FOR DISCOVERY TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	CLOSED
30-day testimony period for party in position of defendant to close:	May 31, 2004
15-day rebuttal testimony period to close:	July 15, 2004

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 after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Rule 2.129.

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. See Rules of Practice for

³ Consequently, opposer's motion (filed October 15, 2003) to extend will be given no further consideration.

Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003)
Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.

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