

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

Mailed: March 13, 2007

Opposition No. **91173354**

WACOM CO., LTD and WACOM
TECHNOLOGY CORPORATION

v.

Intuix, S.A., by change of
name from LINX SA

Linda Skoro, Interlocutory Attorney

This case now comes up on applicant's motion, filed February 6, 2007, for relief from judgment under Fed. R. Civ. P. 60(b)(1). Opposer has not objected.

The notice of opposition was filed by opposer on October 10, 2006 and was instituted by the Board on October 12, 2006. Applicant's answer was due on November 21, 2006. No answer was received nor was an extension of time requested, and the Board issued a notice of default on December 11, 2006. Receiving no response to the order to show cause, the Board entered judgment on January 30, 2007. On February 6, 2007, applicant filed its motion to set aside the default judgment together with its late answer.

According to applicant, and in support of its motion, applicant contends that the opposition proceeding was only

learned of after counsel was retained and it was found after searching another opposition to the applied-for mark.

Opposer objects by challenging movant's ability to act on behalf of applicant and further contending that applicant has not provided any evidence of "mistake, inadvertence, surprise, or excusable neglect" as required by Fed. R. Civ. P. 60(b) to justify setting aside the default judgment.

The determination of whether to grant relief from judgment under Fed. R. Civ. P. 60(b) is a matter largely within the discretion of the court, or in this instance, the Board, and such relief is granted only in exceptional circumstances. *See Case v. BASF Wyandotte*, 737 F.2d 1034, 222 USPQ 737 (Fed. Cir. 1984). Federal Rule 60(b)(1) provides that a court, in this case the Board, may relieve a party from a final judgment for "mistake, inadvertence, surprise, or excusable neglect".

In view of the totality of the events in the proceedings between these parties, the Board finds that applicant has established excusable neglect for its failure to timely file an answer or to respond to the order to show cause given the change of counsel that occurred, that it was only six days since entry of the judgment and applicant has a meritorious defense. Further, applicant filed a change of

name with the assignment division on March 6, 2007¹ establishing its ownership of the subject application. Accordingly, applicant's motion for relief from judgment is hereby granted and the Board's order entered January 30, 2007, entering default judgment, is hereby vacated.

Accordingly, proceedings are resumed, applicant's answer is of record. Trial dates are reset as indicated below.

DISCOVERY PERIOD TO CLOSE:	8/26/2007
30-day testimony period for party in position of plaintiff to close:	11/24/2007
30-day testimony period for party in position of defendant to close:	1/23/2008
15-day rebuttal testimony period to close:	3/8/2008

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.

¹ Recorded at Reel 3494/Frame 0463 on March 6, 2007 and executed on February 13, 2006.

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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 Trademark Rule 2.129.