

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

Lykos/JD

Mailed: February 6, 2008

Opposition No. 91177025

Escort Inc.

v.

Mohammad A. Mazed

Angela Lykos, Interlocutory Attorney:

I. Applicant's Motion to Set Aside Notice of Default and Accept Answer

On August 15, 2007, the Board ordered applicant to show cause why judgment by default should not be entered against it in accordance with Fed. R. Civ. P. 55(b), for failure to timely answer the notice of opposition or file a motion to extend time to answer.

On September 14, 2007, applicant filed a response thereto, moving to set aside the notice of default and accept its late-filed answer.

In support of setting aside default, applicant contends that its failure to timely answer the notice of opposition was unintentional and occurred inadvertently while the parties engaged in settlement negotiations.

The standard for determining whether default judgment should be entered is found in Fed. R. Civ. P. 55(c), which

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reads in pertinent part: "for good cause shown 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 the 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 instance, the Board finds that good cause exists to remove the notice of default. First, applicant's failure to timely answer the notice of opposition or file a motion requesting an extension of time was inadvertent and neither willful nor the result of gross neglect. Second, opposer will not be prejudiced by setting aside default since in the event proceedings are resumed, the close of discovery shall be reset. Finally, the Board finds that applicant has attempted to set forth a meritorious defense, by way of its answer. Whether applicant will prevail in this proceedings is, of course, a matter for trial.

Accordingly, the Board finds good cause for setting aside the notice of default. In view thereof, applicant's motion is

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granted. Notice of default is set aside and applicant's answer is entered into the record.

II. Motions to Amend Application and Suspend Proceedings

On September 21, 2007, applicant filed a proposed amendment to its application Serial No. 78923816, with opposer's consent. Opposer filed a stipulated motion to suspend, September 24, 2007, pending the Board's review of applicant's proposed amendment to its application.

By the proposed amendment applicant seeks to change the identification of application Serial No. 78923816 **from** "electronic and optical communications instruments and components, namely lasers not for medical use, optical transmitters, optical receivers, optical data links, optical transceivers, digital transmitters, digital receivers, digital data links, digital transceivers, multiplexers, demultiplexers, amplifiers, computer network hubs, switches and routers" **to** "electronic and optical communications instruments and components, namely optical transmitters, optical receivers, optical data links, optical transceivers, digital transmitters, digital receivers, digital data links, digital transceivers, multiplexers, demultiplexers, amplifiers, computer network hubs, switches, routers, and lasers, except those for medical, automotive or vehicle use, and further excluding lasers to detect or identify automobile or vehicle speed or location."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(b), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this resolves the dispute herein, opposer is allowed until thirty days from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended, and trial dates, including the close of discovery, shall be reset. See Trademark Rule 2.106(c).

Proceedings are otherwise suspended.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>

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