

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

Lykos

Mailed: December 12, 2007

Opposition No. 91178432

BBVA Bancomer, S.A.
Institucion De Banca
Multiple, Grupo Financiero
BBVA Bancomer

v.

Bancomercio de El Salvador,
Inc.

Angela Lykos, Interlocutory Attorney

On September 21, 2007, applicant was ordered to show cause why default judgment should not be entered for failure to timely answer the notice of opposition. On October 18, 2007, applicant filed a response thereto which the Board construes as a motion to set aside its technical default and to accept its late-filed answer.

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 the court may set aside and 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).

The record demonstrates that applicant's failure to timely file an answer was not willful, but due to the fact that counsel for applicant did not receive the Board's institution order. The Board can see no prejudice to opposers, other than delay -- which the Board would not characterize as significant -- that would result from accepting applicant's late-filed amended answer.

Furthermore, discovery remains open, and by this order will be extended, giving the parties sufficient time to conduct any necessary fact-finding. Finally, the Board finds that applicant has set forth a meritorious defense, by way of its denials to the essential allegations of the notice of opposition in its answer. Whether applicant will prevail in this proceeding is, of course, a matter for trial.

In view thereof, the show cause order is hereby discharged. Applicant's answer is hereby accepted and noted for the record.

Trial dates, including the close of discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE: 3/15/08

30-day testimony period for party in position of plaintiff to close: 6/13/08

30-day testimony period for party in position of defendant to close: 8/12/08

15-day rebuttal testimony period for plaintiff to close: 9/26/08

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 Rules 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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>