

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

Winter/am

Mailed: November 30, 2007

Opposition No. 91179259

Id Software, Inc.

v.

Sayo Isaac Daniel

Jyll S. Taylor, Administrative Trademark Judge:

Answer was due in this case on October 9, 2007. Applicant did not file an answer by such date nor did it file a timely motion to further extend its time to answer. In view thereof, the Board issued a notice of default to applicant on October 25, 2007 requiring applicant to show cause why judgment should not be entered against him. On November 14, 2007, applicant filed a response, accompanied by his answer, explaining that his failure to timely file an answer to the notice of opposition was attributable primarily to an inoperative docketing system of applicant's counsel, which had resulted from a virus that had infected and disabled counsel's computer system.¹

¹ Applicant also explained that his counsel was unable to immediately address the computer failure and data recovery

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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 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).

In this case, the Board finds that applicant's failure to timely file his answer was not the result of willful inattention or bad faith; that opposer is not prejudiced by applicant's late filing; and that, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to this action.

In view thereof, the Board's notice of default dated October 25, 2007 is hereby set aside, and applicant's answer is accepted as its responsive pleading herein.

Discovery and trial dates remain as set in the Board's institution order dated August 30, 2007.

process due to various litigation matters in which counsel was involved during the same period of time.

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/stdnagmnt.htm>