

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

Mailed: April 14, 2009

Opposition No. 91179897

Information Builders, Inc.

v.

Bristol Technologies, Inc.

George C. Pologeorgis, Interlocutory Attorney:

By order dated October 9, 2008, the Board, *inter alia*, allowed applicant time in which to file an answer to opposer's amended notice of opposition. Applicant did not file an answer or otherwise respond by the due date set forth in the Board's October 9, 2008 order. In view thereof, the Board issued a notice of default on February 27, 2009 requiring applicant to show cause why judgment should not be entered against it in light of its failure to file an answer.

On March 27, 2009, applicant filed a response to the Board's default notice requesting that the Board accept its late answer concurrently with a copy of its answer to the amended notice of opposition.

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 Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 USPQ2d 1556 (TTAB 1991).

In this case, the Board finds that opposer is not prejudiced by applicant's late filing and, by filing an answer which denies the fundamental allegations in the counterclaim, applicant has asserted a meritorious defense to the notice of opposition. Moreover, the Board finds that the reasons for applicant's delay were not willful or in bad faith, but rather were based upon applicant's misinterpretation of the Board's October 9, 2008 decision to mean that the Board would next rule on the merits of opposer's asserted claims.

In view of the foregoing, applicant's motion to accept its late answer is granted, default is hereby set aside and applicant's answer to the amended notice of opposition is noted and accepted.

The parties are allowed **thirty days** from the mailing date of this order to serve responses to any outstanding discovery requests.

Discovery and trial dates are reset as indicated below:

DISCOVERY PERIOD TO CLOSE:	6/15/2009
Testimony period for party in position of plaintiff to close: (opening thirty days prior thereto)	9/13/2009
Testimony period for party in position of defendant to close:(opening thirty days prior thereto)	11/12/2009
Rebuttal testimony period to close: (opening fifteen days prior thereto)	12/27/2009

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>