

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

Mailed: February 13, 2008

Opposition No. 91180535

WiMAX Forum

v.

AirTegrity Wireless, Inc.

Frances S. Wolfson, Interlocutory Attorney:

On December 28, 2007, the Board issued a notice of default against applicant for its failure to timely file an answer to the notice of opposition. On January 10, 2008, applicant filed a response to the notice of default.

Whether default judgment should be entered against a party lies within the sound discretion of the Board. See Paolo's Associates Limited Partnership v. Paolo Bodo, 21 USPQ2d 1899 (Comm'r 1990); Identicon Corp. v. Williams, 195 USPQ 447 (Comm'r 1977). In exercising that discretion, the Board must be mindful of the fact that it is the policy of the law to decide cases on their merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant. See Paolo's Associates Limited Partnership v. Paolo Bodo, supra; and TBMP §317.02 (2d ed. rev. 2004).

The showing which has consistently been required by the Board and the courts in order to permit the late filing of an answer is that set forth in Federal Rule 55(c), i.e., good cause. See Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc., 21 USPQ2d 1556 (TTAB 1991); TBMP § 312.02.

Good cause is usually found when the defendant shows that (1) the delay in filing an answer was not the result of willful conduct or gross neglect on the part of the defendant, (2) the plaintiff will not be substantially prejudiced by the delay, and (3) the defendant has a meritorious defense to the action.

Applicant has submitted an unsigned letter from its Chief Operating Officer, who states that applicant filed its answer "First Class via the US Postal Service on December 12, 2007." Under cover of this letter, applicant has submitted a copy of the answer applicant contends was mailed on December 12, 2007. The answer contains a proof of mailing certificate dated December 12, 2007.

The record herein does not show that the Board received this submission. However, from the above, it is adjudged that applicant's delay was not the result of willful conduct or gross neglect.

Further, Board finds that the approximate one-month length of delay from the date applicant's answer was due and the time applicant responded to the notice of default has

not prejudiced opposer. We have also extended the discovery and trial periods by this order to avoid or mitigate any possible prejudice to opposer. *See, e.g., Anheuser-Busch, Inc. v. Martinez*, 185 USPQ 434 (TTAB 1975).

Finally, by filing an answer which denies the fundamental allegations in the notice of opposition, applicant has asserted a meritorious defense to this action.

Accordingly, the notice of default is set aside and applicant's answer is entered into this proceeding. However, inasmuch as applicant's response and applicant's answer are both unsigned, applicant must file fully-executed copies of both its response to the notice of default and its answer. Applicant is allowed until TWENTY DAYS from the mailing date of this order to comply with this order, failing which judgment may be entered against applicant.

Trial dates, including the close of discovery, are reset as indicated below.

Deadline for Discovery Conference	4/22/08
Discovery Opens	4/22/08
Initial Disclosures Due	5/22/08
Expert Disclosures Due	9/19/08
Discovery Closes	10/19/08
Plaintiff's Pretrial Disclosures	12/3/08
Plaintiff's 30-day Trial Period Ends	1/17/09
Defendant's Pretrial Disclosures	2/1/09
Defendant's 30-day Trial Period Ends	3/18/09
Plaintiff's Rebuttal Disclosures	4/2/09
Plaintiff's 15-day Rebuttal Period Ends	5/2/09

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.

Applicant should note that any paper it is required to file with the Board should not take the form of a letter; proper format should be utilized. The form of submissions is governed by Trademark Rule 2.126. See also TBMP § 106.03 (2d ed. rev. 2004). Also, the paper must be received by the Board by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized.

Applicant should further note that it is responsible for ensuring that the Board has its current correspondence address. If a party fails to notify the Board of a change of address, with the result that the Board is unable to serve correspondence on the party, default judgment may be entered against the party. See TBMP § 117.07 (2d ed. rev. 2004).