

TTAB

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

Baxley

Mailed: October 6, 2009

Opposition No. 91190923

American Council on Education

v.

Center for the Application of
Information Technologies
(CAIT)

Andrew P. Baxley, Interlocutory Attorney:

On August 31, 2009, the Board sent a notice of default to applicant because no answer was of record. Although applicant's response does not include proof of service upon opposer in compliance with Trademark Rule 2.119(a), the Board, in the interest of moving this case forward without further delay, will consider that response. See *infra* regarding proof of service for filings in Board proceedings.

In response, applicant contends that it has intended to attempt to reach a mutually acceptable agreement to the parties' dispute, but that conversations between the parties have come to a standstill.

The standard for determining whether default judgment should be entered against a defendant for its failure to file a timely answer to the complaint is the Fed. R. Civ. P. 55(c) standard, i.e., whether the defendant has shown good



10-08-2009

Opposition No. 91190923

cause why default judgment should not be entered against it. 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). The determination of whether default judgment should be entered against a party lies within the sound discretion of the Board. In exercising that discretion, the Board is mindful of the fact that Board policy is to decide cases on their merits. Accordingly, the Board only reluctantly enters default judgments for failure to timely answer, and tends to resolve any doubt on the matter in favor of defendants. See TBMP Section 312.02 (2d ed. rev. 2004).

The Board finds that applicant has shown good cause to set aside the notice of default. Applicant's delay was caused by its intent to attempt to settle this case and was therefore neither willful nor in bad faith. Further, there is no evidence that opposer was at all prejudiced by applicant's delay. That is, the record does not indicate that, as a result of applicant's delay, opposer's ability to prosecute the case is adversely affected through, for example, lost evidence or unavailable witnesses. See *Pratt v. Philbrook*, 109 F.3d 18 (1st^t Cir. 1997); TBMP Section 509.01(b)(1) (2d ed.

Opposition No. 91190923

rev. 2004). In addition, applicant has a meritorious defense by way of its concurrently filed answer. Based on the foregoing, the notice of default is set aside.¹ Applicant's concurrently filed answer is accepted and made of record.

The record indicates that applicant intends to represent itself in this proceeding. While Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

In addition, applicant should note that Trademark Rules 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in

¹ Notwithstanding the foregoing, applicant is advised that the Board will look with disfavor upon further failures to comply with deadlines set by the Board or applicable rules. See Fed. R. Civ. P. 6(b); TBMP Section 509 (2d ed. rev. 2004).

Opposition No. 91190923

which such service was made, e.g., by first class mail. The statement, whether attached to or appearing on the paper when filed, will be accepted as *prima facie* proof of service.

In preparing its defense in this proceeding, applicant should review the Trademark Rules of Practice, online at <http://www.uspto.gov/web/offices/tac/tmlaw2.pdf>, and the Trademark Board Manual of Procedure (TBMP), online at <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/index.html>. The Board expects parties, whether or not they are represented by counsel, to comply with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure.

Dates herein are reset as follows.

| | |
|---|----------|
| Deadline for Discovery Conference | 11/4/09 |
| Discovery Opens | 11/4/09 |
| Initial Disclosures Due | 12/4/09 |
| Expert Disclosures Due | 4/3/10 |
| Discovery Closes | 5/3/10 |
| Plaintiff's Pretrial Disclosures | 6/17/10 |
| Plaintiff's 30-day Trial Period Ends | 8/1/10 |
| Defendant's Pretrial Disclosures | 8/16/10 |
| Defendant's 30-day Trial Period Ends | 9/30/10 |
| Plaintiff's Rebuttal Disclosures | 10/15/10 |
| Plaintiff's 15-day Rebuttal Period Ends | 11/14/10 |

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.

Opposition No. 91190923

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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

United States Patent and Trademark Office

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA. 22313-1451

If Undeliverable Return in Ten Days

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

AN EQUAL OPPORTUNITY EMPLOYER